BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF, Petitioner, v. JOSEPH BALIGA, DVM, Respondent.	ADMINISTRATIVE COMPLAINT NO. 216003

NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT

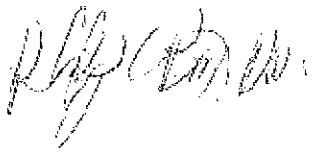
This matter is pending before the Indiana Horse Racing Commission ("Commission") on the Recommended Administrative Penalty against Joseph Baliga, DVM ("Baliga"). On March 22, 2018, the Administrative Law Judge ("ALJ") designated by the Commission, Bernard Pylitt, issued his Recommended Order Denying Baliga's Motion for Relief from Judgment. On April 5, 2018, the Commission received Baliga's Written Exceptions to the Recommended Order Denying His Motion for Relief from Judgment.

Notice is hereby given that the Commission will afford both parties an opportunity to present briefs concerning the filing of Baliga's objections and the merits of this case. Any briefs filed by Baliga or the Commission Staff must be received in the offices of the Commission by noon on June 22, 2017. The Commission will accept electronic filing at DPennycuff@hrc.IN.gov. No late filings will be accepted and/or considered.

The Commission will also consider oral argument at its meeting on June 27, 2018. The oral argument will be limited to ten minutes per side.

SO ORDERED, 7th day of June, 2018.

THE INDIANA HORSE RACING COMMISSION



By:_____

Philip C. Borst
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BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	
	)	**In Re: ADMINISTRATIVE COMPLAINT**
v.	)	**NO. 216003**
	)	
JOSEPH BALIGA, DVM,	)	**In Re: An Appeal of Judge's**
	)	**Rulings No. 16146 and16177**
	)	
Respondent	)	
	)	

RESPONDENT, DR. JOSEPH BALIGA'S, MOTION FOR RELIEF FROM JUDGMENT

Respondent, Dr. Joseph Baliga, by counsel, Peter J. Sacopulos, pursuant to Rule 60 of the Indiana Rules of Trial Procedure, respectfully moves the Indiana Horse Racing Commission for relief from the judgment entered against Dr. Joseph Baliga on March 13, 2017. In support of this motion, Respondent, Dr. Joseph Baliga, states:

1. That on October 1, 2016, the Indiana Horse Racing Commission issued an Order summarily suspending Dr. Joseph Baliga's Indiana Horse Racing Commission-issued veterinarian license and, thereafter, Respondent retained counsel, engaged in notice pleading, served discovery, etc.
2. On October 31, 2016, a hearing was conducted, at Respondent's request, before the Indiana Horse Racing Commission Judges at Hoosier Park. Following that hearing, that was decided adversely to Dr. Joseph Baliga, Respondent timely appealed the Judges' decision. While that appeal was pending, the IHRC/IHRC Staff filed an Administrative Complaint on November 10, 2016, that has as its basis the same allegations of wrongdoing against the Respondent as set forth in the Summary Suspension.

3. The IHRC's Executive Director (not the IHRC agency's ultimate authority) then issued a letter of appointment to Administrative Law Judge Bernard Pylitt to preside over both the Summary Suspension appeal and the Administrative Complaint matters. On the date that the IHRC Executive Director issued a letter notifying ALJ Bernard Pylitt that he would be so presiding, which said date was December 6, 2016, the IHRC Staff, on that very date, filed a Motion for Default Judgment against Dr. Joseph Baliga.
4. Dr. Joseph Baliga timely opposed the IHRC Staff's Motion for Default Judgment. ALJ Pylitt recommended, over Dr. Joseph Baliga's Objection, that Dr. Joseph Baliga be defaulted. On March 13, 2017, this agency adopted/approved the ALJ's recommended order thereby defaulting Dr. Baliga.
5. A timeline of filings, hearings, and litigation activity in the administrative proceedings against Respondent, Dr. Joseph Baliga, by this Commission is attached to his supporting brief in support of Respondent's Motion for Relief as Exhibit G.
6. That Respondent, Dr. Joseph Baliga, is entitled to relief from the judgment entered against him by the Indiana Horse Racing Commission on March 13, 2017, pursuant to Indiana Trial Rule 60(B)(1)(6)(8).
7. That this motion is timely filed, pursuant to Indiana Trial Rule 60(B)(8) and Respondent, Dr. Joseph Baliga, has a meritorious defense as evidenced and set forth in his supporting brief in support of Respondent's Motion for Relief from Judgment together with supporting exhibits and affidavits.

WHEREFORE, Respondent, Dr. Joseph Baliga, respectfully moves the Indiana Horse Racing Commission for an Order setting aside and granting relief from its Order of March 13, 2017, and for all other just and proper relief in the premises.

Respectfully submitted,

SACOPULOS JOHNSON& SACOPULOS
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By:_____
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 7th day of March, 2018:

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Deputy General Counsel
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Bernard L. Pylitt
Administrative Law Judge
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_____
Peter J. Sacopulos

BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	
	)	**In Re: ADMINISTRATIVE COMPLAINT**
v.	)	**NO. 216003**
	)	
JOSEPH BALIGA, DVM,	)	**In Re: An Appeal of Judge's**
	)	**Rulings No. 16146 and16177**
	)	
Respondent	)	
	)	

BRIEF IN SUPPORT OF RESPONDENT, DR. JOSEPH BALIGA'S, MOTION FOR RELIEF FROM JUDGMENT

Rule 60(B) and 55(B) of the Indiana Rules of Trial Procedure provide a party or Respondent (herein Dr. Joseph Baliga) may move the Court, or in this case, the state agency, the Indiana Horse Racing Commission, for relief from a default judgment. Dr. Joseph Baliga does so and, specifically, by way of this motion and his brief in support thereof, seeks an Order setting aside the order of default entered against him, pursuant to Indiana Trial Rule 60(B) and 55(B) and granting relief from the IHRC's Final Order of March 13, 2017.

Dr. Joseph Baliga is entitled to said relief pursuant to Indiana Trial Rule 60(B)(1) that provides for such relief upon a showing of mistake, surprise, and excusable neglect. Additionally, Dr. Joseph Baliga is entitled to relief from this agency's Order of March 13, 2017, pursuant to Indiana Trial Rule 60(B)(8) because the rule relied on and utilized to default him, 71 IAC 10-3-20(d), is unconstitutional as it is or can be used to dispose of his right to judicial review. Dr. Joseph Baliga's Motion for Relief From Judgment, together with this supporting brief, is being filed with attached exhibits. These exhibits include the Certificate of Analysis showing the results from the vial, allegedly brought in and used by Dr. Joseph Baliga, which is

negative for all substances with the exception of Lasix, an allowed race-day medication; as well as the Affidavits of Dr. Joseph Baliga, Julian Williams and Dylan Davis (these exhibits and affidavits are attached hereto, made a part hereof, and marked as Exhibits A, B, C, and D). All of these exhibits are evidence that Dr. Joseph Baliga has a meritorious defense to the allegations set forth against him in both the Summary Suspension and the Administrative Complaint filed against him by the IHRC/IHRC Staff as well as the default judgment that was entered against him.

I. RESPONDENT, DR. JOSEPH BALIGA, IS ENTITLED TO RELIEF FROM THE IHRC'S ORDER OF MARCH 13, 2017, PURSUANT TO INDIANA TRIAL RULE 60(B)(1) BECAUSE OF MISTAKE, SURPRISE, AND EXCUSABLE NEGLECT.

Dr. Joseph Baliga believed that the administrative proceedings regarding the Summary Suspension and the Administrative Complaint were all one administrative proceeding. This is because the Summary Suspension of his license by this agency on October 1, 2016, has as its basis, the same alleged violations and wrongdoing as is the basis for the later and contemporaneously filed, Administrative Complaint. Those bases include: (1) the same allegations of wrongdoing, that being Dr. Joseph Baliga administered a prohibited substance to the same Standardbred horse on September 30, 2017; (2) the same trainer; (3) the same assistant trainer; (4) the same test results; and, (4) presumably, the same witnesses and evidence—all consistent and all the same relative to both the Summary Suspension and the Administrative Complaint. In addition to these commonalities, the same Administrative Law Judge was assigned to Dr. Joseph Baliga's timely filed and pending appeal of his Summary Suspension as was assigned to the Administrative Complaint. Also, the same IHRC staff counsel was assigned to both Dr. Joseph Baliga's Summary Suspension and Administrative Complaint.

Significantly, Respondent was defaulted based on his failure to request a hearing pursuant to 71 IAC 10-3-20(d). However, Dr. Joseph Baliga had previously requested and participated in a hearing on October 31, 2016, which had as its basis the same alleged wrongdoing of September 30, 2016, and during which he denied, under oath, all allegations of wrongdoing. Respondent, Dr. Joseph Baliga was, pursuant to Indiana Trial Rule 60(B)(1), surprised and mistaken that he was required to request an additional hearing which is not so required by the IHRC/AOPA rules. His failure to request an additional hearing was/is excusable neglect.

Dr. Joseph Baliga further believed, apparently mistakenly, that the administrative proceedings against him were one continuous administrative matter. This mistake, assuming Dr. Joseph Baliga's analysis is incorrect, resulted in him not filing a separate answer or requesting a second hearing relative to the Administrative Complaint. His mistake is explained and is excusable for the reason that he had previously requested a hearing relative to the allegations of his wrongdoing of September 30, 2016, and, in fact, that hearing was conducted on October 31, 2016, before the agency's Standardbred Judges together with this agency's staff present including its Executive Director, General Counsel, and Deputy General Counsel. Further, Dr. Joseph Baliga had answered the complaints of wrongdoing against him, under oath, during the hearing of October 31, 2016, before this agency. Having done so, Respondent, Dr. Joseph Baliga, was surprised when he was served with a motion to be defaulted. His neglect in requesting a hearing on the allegations against him is excusable, pursuant to Indiana Trial Rule 60(B)(1), because he had previously requested a hearing, participated in his requested hearing and timely appealed the ruling from that hearing.

Dr. Joseph Baliga's failure to file an answer pursuant to 71 IAC 10-3-21(a) and/or request a hearing pursuant to 71 IAC 10-3-20(d) constitutes excusable neglect and mistake pursuant to Indiana Trial Rule 60(B)(1). It does so because Dr. Joseph Baliga believed that he had, in fact, both answered and requested a hearing as to the same allegations asserted against him relative to the events of September 30, 2016. He did not believe, perhaps mistakenly, that he was required to assert a second or additional request for hearing. His belief was further based on his understanding that the Summary Suspension and the Administrative Complaint were one, continuous administrative proceeding. His apparent mistake was based on his understanding and belief that he had so requested a hearing and, in fact, that a hearing on this specific issue of wrongdoing had been conducted on October 31, 2016, in which he participated and denied/answered the allegations against him. Having done so, and fully participated in the administrative proceeding against him, he was surprised to then be subject to a default judgment without a hearing on the merits. His surprise, excusable neglect, and mistake all places him squarely within the basis for relief of the default judgment pursuant to Indiana Trial Rule 60(B)(1) and 55(B).

Following the ruling of the Standardbred Judges on October 31, 2016, Dr. Joseph Baliga timely initiated an appeal. His appeal was pending when the Administrative Complaint was filed. Both were pending simultaneously. Dr. Joseph Baliga had fully engaged in all administrative proceedings and was, in fact, participating, with counsel, at a hearing in Indianapolis, Indiana, when, to his surprise, he was served with a motion to be defaulted. Any neglect relative to Respondent's failure to request a hearing pursuant to 71 IAC 10-3-20(d) is excusable in nature. His failure to do so, if required, was a mistake. Respondent, Dr. Joseph Baliga is, pursuant to

Indiana Trial Rule 60(B)(1) and 55(B), entitled to relief from the order of default entered against him.

Respondent's mistake, surprise, and excusable neglect are further evidenced by the representations of IHRC Staff Counsel and Standardbred Chief Judge Hall. Specifically, IHRC Deputy General Counsel, Holly Newell, stated, during the October 31, 2016 hearing that he (Baliga) "...requested a hearing...the merits hearing will come later...." (Emphasis added) (*See Transcript of the October 31, 2016, hearing, page 6, lines 1 and 11, which is attached hereto, made a part hereof, and marked as Exhibit "E").* Additionally, Chief Standardbred Judge Mike Hall stated, during the hearing, under oath, that the Indiana Horse Racing Commission should "...do what we can do to get this case heard on the merits...."(*See Exhibit "E" page 29, lines 19 and 20).* Each of these statements by the IHRC Staff/representatives and employees caused and led Dr. Joseph Baliga to believe and rely on, to his detriment, that a subsequent hearing would be held at which point he would be allowed to present his defense on the merits. As such, his failure to request a hearing pursuant to 71 IAC 10-3-20(d) was the result of excusable neglect, assuming a second requested hearing is required.

Dr. Joseph Baliga timely requested a hearing on the allegations against him. He participated in that hearing, answered and denied all allegations of wrongdoing, had been told during an IHRC hearing by its IHRC Staff Deputy General Counsel and its Chief Standardbred Judge, in the presence of the IHRC Staff's Executive Director and General Counsel and all other Standardbred Judges, that a merits hearing "...will come later...." Dr. Joseph Baliga had never been the subject of a Summary Suspension and Administrative Complaint being filed and pending against him simultaneously. Both contained, as their basis, the same alleged wrongdoing. He was told there would be a future hearing. His neglect in that regard is excusable.

Instead of receiving a hearing on the merits, he received a Motion for Default Judgment. He was surprised. His neglect to request a second subsequent hearing, after a hearing on the alleged allegations of wrongdoing had taken place and after he had been told my multiple employees of the Indiana Horse Racing Commission Staff that a: "...merits hearing will come later...." (emphasis added), constitutes excusable neglect pursuant to Indiana Trial Rule 60(B)(1) and is justification for Dr. Joseph Baliga being relieved of the Commission's Order entered against him on March 13, 2017.

Dr. Joseph Baliga had prepared an answer to be filed. He brought that responsive pleading with him on October 31, 2016, the day of the hearing that he requested. That answer was not filed because: (1) Dr. Joseph Baliga had requested a hearing and was participating in the hearing; (2) he answered and denied the allegations of wrongdoing of September 30, 2016, at Hoosier Park, under oath, during the hearing, and; (3) during that hearing was told/assured by the IHRC Staff, employees, and representatives that he would have a future hearing on the merits. Dr. Baliga was surprised when, instead of the promised hearing on the merits, he was served with a Motion for Default and subsequently defaulted and assessed an onerous penalty. His failure to file or submit his answer at or during the hearing of October 31, 2016, constitutes excusable neglect, mistake, and surprise on the part of Dr. Joseph Baliga that requires he be provided relief, pursuant to Indiana Trial Rule 60(B)(1). A true and exact copy of Dr. Joseph Baliga's Answer that he had prepared and brought with him to that hearing but that was not filed is attached hereto, made a part hereof, and marked as Exhibit "F."

Surprise. That was precisely what Dr. Joseph Baliga's response/reaction was when, on December 6, 2016, the IHRC Staff's Executive Director issued a letter assigning ALJ Pylitt to preside over the recently filed Administrative Complaint and on that same date, he was served

with a motion for default. Surprise understates Dr. Joseph Baliga's reaction and response: astonishment is a far more accurate description of his feeling and response. It is difficult to contemplate a case of greater surprise ever being presented as a basis for relief pursuant to Indiana Trial Rule 60(B)(1).

This is because Dr. Joseph Baliga had, as shown on the timeline of administrative filings and events, a true and exact copy of which is attached hereto, made a part hereof, and marked as Exhibit "G", prior to December 6, 2016, done the following: (1) retained counsel; (2) engaged in pleading practice; (3) engaged in the discovery process; (4) requested a hearing; (5) attended and testified at the hearing (October 31, 2016); (6) was told and assured by IHRC Staff, including the IHRC Staff Deputy General Counsel and Standardbred Chief Judge, that he would receive a subsequent hearing on the merits; and (7) he had answered and denied all allegations of wrongdoing and timely perfected an appeal of the Standardbred Judges' ruling against him which said appeal was pending, contemporaneously with the Administrative Complaint, at the time the IHRC Staff chose to file a Motion for Default. Yes. He was surprised.

Dr. Joseph Baliga's surprise was palpable: his neglect, if any, was/is excusable as was/is any mistake. Dr. Joseph Baliga's reaction/action fits squarely into Indiana Trial Rule 60(B)(1) and he should be afforded relief of the Commission's Order of March 13, 2017, and be provided the opportunity to defend himself at a hearing on the merits.

II. RESPONDENT, DR. JOSEPH BALIGA IS ENTITLED TO RELIEF FROM THE IHRC'S ORDER OF MARCH 7, 2017, PURSUANT TO INDIANA TRIAL RULE 60(B)(8) AND SPECIFICALLY FOR THE REASON THAT HIS CONSITUTIONAL RIGHTS HAVE BEEN DENIED BY WAY OF SAID ORDER

Dr. Joseph Baliga is further entitled to relief of this Commission's Order/Judgment of March 13, 2017, pursuant to Indiana Trial Rule 60(B)(8), and specifically because said Order is

contrary to Indiana Statutory Law and, specifically, 71 IAC 10-2-1 and 71 IAC 10-3-2, and in violation of Dr. Joseph Baliga's constitutionally guaranteed rights.

The rights of a person subject to the actions or proceedings of the Indiana Horse Racing Commission are set out in the Indiana Administrative Code of Regulations and the Indiana Code. If a person is subject to a proceeding before the judges he has certain rights. If he is subject to a proceeding before the Commission, he has rights not only under the Indiana Administrative Code but also the Indiana Code. Specifically, Indiana Administrative Code 71 IAC 10-2-1 and 71 IAC 10-3-2(b). 71 IAC 10-2-1 states:

> "Sec. 1.
> (a) In a disciplinary hearing conducted by the judges, a person who is the subject of the disciplinary hearing is entitled to:
> (1) proper notice of all charges against the person; and
> (2) confront the evidence presented against the person, including the right:
> (A) to counsel at the person's expense;
> (B) to present a defense;
> (C) to call witnesses; and
> (D) to cross examine witnesses testifying against the person.
> (b) After being informed by the judges of a violation and the proposed penalty to be imposed, a licensee may waive his or her right to a disciplinary hearing by executing a written waiver. In doing so, the licensee consents to the imposition of the penalty."

71 IAC 10-3-2(b) states:

> "A party to a proceeding has the right to present a direct case, cross examine each witness, submit legal arguments, and otherwise participate fully in the proceeding."

Dr. Joseph Baliga's rights as someone affected by proceeding(s) before the Commission are protected and recognized and controlled by both the rules set out in 71 IAC 10, et seq. and I.C. 4-21.5, et seq. However, the Commission's Order of March 13, 2017, defaulting Dr. Joseph

Baliga, based on an alleged violation of 71 IAC 10-3-20(d) deprives Dr. Joseph Baliga of his guaranteed rights pursuant to 71 IAC 10-2-1 and 71 IAC 10-3-2, et al. This is because the court's Order of March 13, 2017, improperly deprives Dr. Joseph Baliga of his right to judicial review and the ability to present a defense, call witnesses, and to cross-examine witnesses testifying against him.

The rule in question, 71 IAC 10-3-20(d), states:

> "Not later than the twentieth day after the date on which the executive director delivers or sends the administrative complaint, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article."

This rule is problematic in several respects. It is internally inconsistent in that it purports to give the person subject to a proceeding the option to make a written request for a hearing in that it states he may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Furthermore, it states that failure to make such a request in writing constitutes a waiver of his right to a hearing on the administrative penalty but does not address what in fact he is waiving. It is not clear whether he is waiving the right to present evidence as to the occurrence or as to the penalty. Additionally, and most importantly, it deprives him of the long-standing and constitutional right to judicial review. In essence, it uses an administrative rule (which has been historically adopted since 1994 by use of the emergency rule powers) to amend I.C. 4-21.1-5 so as to place Dr. Joseph Baliga in default whereas in fact, he is not in default under I.C. 4-21.5 for the reason that he has retained counsel and has denied from the outset the allegations of the Commission arising out of the incident in question. The Commission was never misled about Dr. Joseph Baliga's involvement in the proceedings and his

strenuous denial of the allegations, or his desire and belief/detrimental belief that he would be afforded an opportunity to present a defense on the merits. This agency's Order of March 13, 2017, deprives Dr. Joseph Baliga of his guaranteed right in this respect.

An agency may not by its rules and regulations add to or detract from the laws enacted nor may it by rule, extend its powers beyond those conferred upon it by law. *Lee Alan Bryan T Healthcare Facilities v. Hamilton* 788 N.E.2d 495, 500 (Ind. App. 2003).

The Indiana Horse Racing Commission, in voting to accept the ALJ's Recommended Order and in issuing its Order against Dr. Joseph Baliga dated March 13, 2017, incorrectly and improperly deprived Dr. Baliga of his constitutional rights including his right of due process. Dr. Joseph Baliga was led to believe that there would be a hearing on the merits of the allegations against him. The Indiana Horse Racing Commission's Order of March 13, 2017, denies and robs him of that opportunity which is guaranteed by both the laws of the State of Indiana as well as this state's constitution and the federal constitution. As such, Dr. Joseph Baliga is entitled to relief of said Order pursuant to Indiana Trial Rule 60(B)(8).

III. RESPONDENT, DR. JOSEPH BALIGA, DVM, HAS A MERITORIOUS DEFENSE PURSUANT TO INDIANA TRIAL RULE 60(B) AND INDIANA TRIAL RULE 55(B) AND IS ENTITLED TO RELIEF FROM THE IHRC'S ORDER OF DEFAULT

There are only two (2) witnesses privy to the allegations of Dr. Joseph Baliga's alleged wrongdoings of September 30, 2016. Those two (2) witnesses are the Respondent, Dr. Joseph Baliga, and Hoosier Park Security Guard, David Hicks. Dr. Joseph Baliga has testified that he did not administer anything improper to IAM Bonasera on September 30, 2016, at Hoosier Park. *(See Exhibit E, page 14, lines 22-25 as well as page 312, lines 10-12 of the transcript of the trial of Dylan Davis and Julian Williams in connection with Administrative Complaint Numbers 216007 and 216008; a true and exact copy of said trial transcript is attached hereto, made a*

part hereof, and marked as Petitioner's Exhibit H). His position and testimony has remained consistent; he denies administering any prohibited substance as alleged.

The other witness privy to the allegations of September 30, 2016, is David Hicks. The IHRC/IHRC Staff's allegations and case against Dr. Joseph Baliga boils down to the credibility and power of observation of Hoosier Park Security Guard, David Hicks. David Hicks, it has been and will be shown, by way of his prior statement, deposition testimony, and testimony during the trial of Williams and Davis, completely lacks credibility. In fact, David Hicks was the only witness that testified, called by either Respondents, Williams and Davis, and/or the IHRC Staff, that was subject to impeachment. He was, in fact, impeached two (2) separate times. (*See lines 17-19, on page 89 and lines 6-7, on page 125 of the certified transcript of the trial of Dylan Davis and Julian Williams, marked as Exhibit H, wherein the IHRC-appointed ALJ, Bernard Pylitt, states witness, David Hicks', testimony has been impeached).*

Witness, David Hicks, provided a recorded statement, an affidavit, deposition testimony and testimony at/during the Dylan Davis and Julian Williams' trial. Each time Hicks provided a statement and/or testified, his account varied so significantly and widely that it is not possible to determine what Hicks saw or where.

A recorded statement was taken from David Hicks on the evening of September 30, 2016. In that statement, Hicks stated that before he came to the security office, he returned to the Lasix room, searching for a vial. He further stated that he went through both trash cans "clear to the bottom" yet found nothing. (*See page 21, lines 24-25, and page 22, lines 3-6 of the September 30, 2016, recorded statement of David Hicks, a true and exact copy of which is attached hereto, made a part hereof, and marked as Exhibit I).*

Then, six weeks later, on November 10, 2016, Hicks appeared at the office of the Indiana Horse Racing Commission Counsel, Newell and Ellingwood, and, with their aid, prepared an Affidavit of what occurred on September 30, 2016. In this sworn statement, Hicks testified that after LASIX rounds were completed, he discovered the vial in the trash bin in the LASIX room. This is in direct contrast to his recorded statement given on the date of the race. (*See a true and exact copy of David Hicks' Affidavit, dated November 10, 2016, a true and exact copy of which is attached hereto, made a part hereof, and marked as Exhibit J*).

At the trial/hearing of Licensees, Dylan Davis and Julian Williams, David Hicks testified that he had reviewed his recorded statement both before giving his deposition testimony and again before the hearing, and proceeded to testify that his recorded statement was accurate. Yet, he testified, during and in connection with the trial of Licensees, Dylan Davis and Julian Williams, that he only went through the trash can in the LASIX room, one time—not two. (*See testimony of David Hicks provided during the trial of Licensees, Dylan Davis and Julian Williams, Administrative Complaint Numbers 216007 and 216008, pages 118, 132, 139 and 140 Exhibit H*).

There were/are additional inconsistencies in David Hicks' testimony. These include Mr. Hicks' inconsistent testimony as to the vial he allegedly found in the trash can in the LASIX room on the evening of September 30, 2016. For example, in his recorded statement (*Exhibit I*), Hicks stated the lid on the vial containing the alleged prohibited substances was blue. Yet, photographs of the vial "found" by Hicks, and taken by IHRC Staff employee, Sgt. Pyle, show the lid on the subject vial is red. This is significant not only because it is further evidence that Hicks lacks credibility and that the IHRC has no credible evidence against Dr. Joseph Baliga, but also because Hicks, as the LASIX escort, opened dozens of LASIX bottles all having blue lids

that day. A red lid would have been out of the norm, calling into serious question Hicks' all-important power to perceive/observe as well as his credibility.

This was not the only inconsistency in Hicks' testimony in regard to the subject vial. He testified, in his deposition (*a true and exact copy of the transcript of Hicks' deposition testimony is attached hereto, made a part hereof, and marked as Exhibit K)* that the vial had a label that had been torn off and that he could/did observe glue where the label had been. Yet, when confronted with the photographs of the subject vial, taken by Sgt. Pyle (*True and exact copies of Sgt. Pyle's photographs are attached hereto, made a part hereof, and collectively marked as Exhibit L*), he changed his story, conflicted his own earlier testimony, and admitted that the label: (1) was still on the subject vial, and; (2) that he could not see any glue. These inconsistencies clearly and absolutely call into question Hicks' veracity and perception. And, equally important, call into question the IHRC/IHRC Staff's ability to prove the allegations it has made against Dr. Joseph Baliga and are further evidence that Dr. Joseph Baliga has and will be successful in presenting a meritorious defense on his own behalf as contemplated and required by Indiana Trial Rule 60(B).

Witness, David Hicks', credibility is further compromised based on his alleged "observation" despite obstructions, timing issues, his responsibilities and his physical position relative to the subject horse. For example, Mr. Hicks testified he saw Dr. Baliga remove a syringe from his sweatshirt and administer the content to IAM Bonasera. Yet, nine (9) standardbred horses received LASIX in the fifth race at Hoosier Park on September 30, 2016, all between 1:24 p.m. and 1:32 p.m. The sequence of administration was not numerical. In fact, horse number 2 was the first to receive LASIX at 1:24 p.m., followed by horse numbers 1, 5, 6, 4, 3, 7, 8, and 9. This is significant because in eight (8) minutes, Dr. Joseph Baliga and David

Hicks had to traverse nine (9) stalls. During this time, Hicks had to travel to the stall, ask the dosage, retrieve the correct syringe, confirm the tattoo number on the right side of the horse (LASIX is administered on the left), hand the groom the clipboard for signature, record his license number, and record the time of administration for each horse. Despite this tight schedule, Hicks testified he had ample time to witness Dr. Joseph Baliga allegedly sneak a syringe from his sweatshirt and administer its contents to IAM Bonasera. Hicks was on the opposite side of the horse and IAM Bonasera was in stall one (1) by the door where the horses enter which would have made his ability to observe Dr. Joseph Baliga's actions on the opposite side of the horse, all the more difficult. All of this brings into serious question whether Hicks could have or did have a clear view of Dr. Joseph Baliga while he administered LASIX or whether his line of sight was obscured, partially or completely.

Hicks' credibility and veracity are further compromised by his inconsistent and conflicting testimony as to his reporting of the alleged incident to presiding Standardbred Judge, Michael Hall. Hicks testified that he called Judge Hall after the LASIX administration for the 7th or 8th race on September 30, 2016. (*See Hicks' testimony, Exhibit H, at page 114, line 25 and page 115, lines 1-5).* Yet Standardbred Chief Judge Hall testified that he did not speak with Hicks, by phone, that day. (*See testimony of Standardbred Chief Judge, Michael Hall, and specifically Judge Hall's testimony at the trial of Dylan Davis and Julian Williams, page 273, lines 7-10 of Exhibit H*). Instead, Chief Judge Hall testified he met with Hicks in his office on September 30, 2016, to discuss the matter. Yet Hicks denies any personal meeting with the Judges on that date. *(See testimony of Standardbred Chief Judge Hall, at page 268, lines 24-25, and page 280, lines14-17 of Exhibit H).*

David Hicks' credibility and veracity are further compromised by his testimony relative to his duties as a LASIX escort. Mr. Hicks testified that he understood his duties, as a LASIX escort, to include confronting LASIX veterinarians if he observed something that he (Hicks) felt to be inappropriate. (*See Hicks' testimony, Exhibit H, page 144, lines 16-18*). Yet, Hicks at no time on September 30, 2016, confronted Dr. Joseph Baliga. Why? Because he was, at best, unsure as to what he had observed and what Dr. Joseph Baliga's actions were other than administering LASIX to a Standardbred horse entered in Race 5 at Hoosier Park on that date. The fact is that Hicks' credibility and veracity as well as inconsistent positions and testimony, as the IHRC/IHRC Staff's only eyewitness, together with the negative test results clearly evidences that Dr. Joseph Baliga has a meritorious defense.

David Hicks is the only individual giving eyewitness testimony of allegedly improper conduct by Dr. Joseph Baliga. However, he has given inconsistent and contradictory statements as to what he saw and did on September 30, 2016. Further, he is the only witness called by either side during the two (2) day trial of Licensees, Dylan Davis and Julian Williams, the Trainer and Assistant Trainer of the horse, IAM Bonasera, that was impeached—on two (2) separate occasions. (*See lines 17-19, on page 89, and lines 6-7, on page 125 of the certified transcript of the trial of Dylan Davis and Julian Williams, marked as Exhibit H, wherein the IHRC-appointed ALJ, Bernard Pylitt, states witness, David Hicks', testimony has been impeached—two (2) times).*

Dr. Joseph Baliga's denial of the events of September 30, 2016, together with David Hicks' questionable ability to observe Dr. Joseph Baliga's actions while administering LASIX, is further evidence of Dr. Joseph Baliga's ability to successfully mount and present a meritorious defense in this matter.

The IHRC/IHRC Staff will not be successful in meeting its burden of proving, by a preponderance of the evidence, that Dr. Joseph Baliga injected the horse IAM Bonasera with anything other than LASIX on September 30, 2016. The vial containing the alleged prohibited substance has been tested. The test results of that vial revealed only the presence of LASIX. The IHRC/IHRC Staff has not alleged any positive blood serum and/or urine samples. As such, the presumption is that any such test(s) were/are negative. The IHRC/IHRC Staff's only eyewitness lacks credibility and veracity. In summary, the Indiana Horse Racing Commission/IHRC Staff has no evidence against Dr. Joseph Baliga. Dr. Joseph Baliga has not only a meritorious defense; he has a strong, strong meritorious defense that should he be granted relief of this agency's Order of March 13, 2017, may very well result in a successful dispositive motion in his favor and against the IHRC/IHRC Staff.

In addition, the affidavits of IAM Bonasera's Trainer and Assistant Trainer, Dylan Davis and Julian Williams, (*See Exhibits C and D*) are further evidence of Dr. Joseph Baliga's ability to present a meritorious defense. Both Licensees, Dylan Davis and Julian Williams state, under oath, in their Affidavits, that they at no time requested or authorized Dr. Joseph Baliga to administer any substance other than LASIX to IAM Bonasera on September 30, 2016. Licensees, Dylan Davis and Julian Williams' sworn positions support and corroborate Dr. Joseph Baliga as well as the test results, all of which were/are negative. The allegation of wrongdoing by Dr. Joseph Baliga on September 30, 2016, will not be proven by a preponderance of the evidence. All of the above places Dr. Joseph Baliga squarely within the parameters of Indiana Trial Rule 60(B)(1)(6)(8) and establishes that Dr. Joseph Baliga has a strong meritorious defense and should be afforded relief of the Indiana Horse Racing Commission's Order/Judgment of March 13, 2017.

IV. BALIGA IS ENTTILED TO RELIEF PURSUANT TO TRIAL RULE 60(B)(8) FOR THE REASON THAT ADMINISTRATIVE RULE 71 IAC 10-3-20(d) IS AN IMPERMISSIBLE RESTRICTION ON THE RIGHT OF A PARTY TO BE HEARD AND TO SEEK JUDICIAL REVIEW AND IS FURTHERMORE IN DEROGATION OF THE FUNDAMENTAL RIGHTS AND DUTIES AS PROVIDED BY THE ADMINISTRATIVE ORDERS AND PROCEDURE ACT, IC 4.21.5-1-1, ET SEQ.

Indiana has long recognized that the due process rights of a party affected by the actions of an administrative agency include the right to seek judicial review. This recognition is grounded in case law, statutes, and the state and federal constitutions.

In *Warren v. Indiana Telegraph Company,* 217 Ind. 93, 26 N.E.2d 399 (1940), the Supreme Court of Indiana recognized that due process of law requires an opportunity for judicial review of the actions of an administrative agency. It held that in order to meet the requirements of due process of law, there must be judicial review of an administrative body for purpose of adjudicating whether the agency has acted within the scope of its powers, whether the substantial evidence supports the factual conclusions, and whether the determination comports with the law applicable to the facts found. This judicial review necessarily entails the determination of matters of jurisdiction or the power of the administrative body to decide the question of what it has undertaken to decide and whether or not it is grounded upon constitutional or statutory authority; the existence of which is always a judicial question.

Due process is broad and comprehensive. It implies matters not readily definable with precision but including the elements of reasonable notice, opportunity for fair hearing, the right to have a court of competent jurisdiction to determine whether or not the finding is supported by the evidence.

In essence, the *Warren* court stated that orders of an administrative body are subject to judicial review in order to meet the requirements of due process.

The holding in *Warren* has been affirmed in subsequent decisions. In *The City of Indianapolis v. Clarke*, 245 Ind. 628, 196 N.E.2d 896, the Indiana Supreme Court, citing *Warren,* supra, held that due process required that a hearing on damages be afforded the individual affected by the actions of an administrative agency, which in this case was the Board of Public Works in a condemnation action. In *Mathis v. Cooperative Vendors Inc.*, 170 Ind. App. 659, 354 N.E.2d 269 (1976), the Indiana Court of Appeals, again citing *Warren,* supra, stated the due process and separation of powers doctrines demanded judicial review of administrative decisions be available.

In *Salk v. Weinraub,* 271 Ind. 115, 390 N.E.2d 995 (1979), the Indiana Supreme Court once again affirmed that there is a right to judicial review in administrative decisions. Citing *Warren,* supra, it held that the decision in *Warren*, established standards so that a review of administrative agencies would comport with the minimum requirements of due process. The court in *Salk,* supra, stated that these standards have now been superseded by the Administrative Adjudication Act found then at 4-22-1-1. This act applied law to agencies as intended to establish a uniform method for judicial review of administrative decisions.

The adoption of the Administrative Adjudication Act (now the Administrative Orders and Procedures Act as of 2011) was intended to codify the long-standing tradition begun with *Warren,* that judicial review is available as part of the rights of a person as part of his or her right to due process.

Dr. Joseph Baliga has rights not only under the AOPA but also the Indiana Code including 71 IAC 10-2-1 and 71 IAC 10-3-2(b). 71 IAC 10-2-1 and 71 IAC 10-3-2(b) set forth, supra, at page 8 guarantee Dr. Joseph Baliga the right to present a defense, call witnesses and cross examine those testifying against him. Dr. Joseph Baliga has been denied those guaranteed

rights. He has also been denied his right, pursuant to 71 IAC 10-3-2(b) to present a case in chief, cross examine each witness, and fully participate in that/these proceedings.

Dr. Joseph Baliga's rights before the Commission are protected by both the rules set out in 71 IAC 10, et seq. and I.C. 4-21.5, et seq. A problem, however, arises in connection with the rule at issue in this case, which is found at 71 IAC 10-3-20(d). Its application to Baliga deprives him of his right to judicial review and the ability to present a defense, call witnesses, and to cross-examine witnesses testifying against him. 71 IAC 10-3-20(d) is setforth, supra, at page 9. This rule is problematic. It is so because it deprives Dr. Joseph Baliga of the long-standing and constitutional right to judicial review. The IHRC, in defaulting Dr. Joseph Baliga, uses an administrative rule (which has been historically adopted since 1994 by use of the emergency rule powers) to amend I.C. 4-21.1-5 so as to place Baliga in default whereas in fact, he is not in default under I.C. 4-21.5 for the reason that he has retained counsel and has denied, from the outset, the allegations of the Commission arising out of the incident in question. Further, Dr. Joseph Baliga was told by agency counsel at an agency hearing with the agency's Executive Director and all Judges present, that he had requested a hearing and that a hearing on the merits would follow. This not only violated Dr. Joseph Baliga's rights, it constitutes a misuse of Indiana Trial Rule 55.

This raises serious questions as to whether the agency is acting in a manner that recognizes the rights of those who are subject to its actions. Furthermore, there is a question as to whether it is properly exercising its rule making authority. An agency may not by its rules and regulations add to or detract from the laws enacted nor may it by rule, extend its powers beyond those conferred upon it by law. *Lee Alan Bryan T Healthcare Facilities v. Hamilton* 788 N.E.2d 495, 500 (Ind. App. 2003).

In *Indiana Horse Racing Commission v. Martin* 990 N.E.2d 498 (Ind. App. 2013), the Court of Appeals held that the Indiana Horse Racing Commission was charged with adopting regulations that the Commission determines are in the public interest in the conduct of recognized meetings and wagering on horse racing in Indiana pursuant to I.C. 41-31-3-9. The Commission is authorized to adopt rules establishing procedures for a license application and fees as part of its rulemaking powers pursuant to I.C. 41-31-6-2. To adopt a rule that deprives a person of judicial review and consequently the right to due process is an unauthorized exercise of that rulemaking authority. The IHRC's emergency rules codified at 71 IAC 10-3-20(d) represents an ultra vires action of this state agency and it is upon that ultra vires action that Baliga was improperly defaulted and is entitled to relief pursuant to Indiana Trial Rule 60(B)(8).

The administrative decision making as it pertains to rule making procedures must in and of itself satisfy due process. It must be done in accordance with previously stated ascertainable standards. These standards should be written with sufficient precision to give fair warning as to what the agency will consider in making its decision. Ascertainable standards provide those persons having potential contact with the administrative body of fair warning of the criteria by which their petitions will be considered. *Indiana Department of Environmental Management. AMEX Inc.* 592 N.E.2d 1209 (Ind. App. 1988).

The deprivation of the right to judicial review is not an exercise of power which is necessary and proper to carry out the policies of the Indiana Horse Racing Commission and to promote efficient administration by the Commission. See *Little Beverage Company Inc. v. Deprez* 777 N.E.2d 74 (Ind. App. 2002). Instead it was/is an ultra vires act and, as such, was not and is not a proper basis for default of Baliga.

Therefore, the use of 71 IAC 10-3-20(d) to amend and preempt the rule pertaining to the entry of default judgments in I.C. 4-21.5-5 raises fundamental questions as to whether Baliga was deprived of his rights to due process. These policies involved in affording a party a hearing and the rights at issue therein were recently considered in *Melton v. Indiana Athletic Trainers Board* 53 N.E3d 1210 (Ind. App. 2016). In *Melton*, the Court of Appeals, on a Petition for Judicial Review after a default judgment was entered at the administrative level, held that due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses. The opportunity to be heard is a fundamental requirement of due process. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. In order to determine specific dictates of due process in a given situation, it is necessary to balance three distinct factors: (1) the private interests that will be effected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, along with the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest in, including the function involved in the fiscal and administrative burden that the additional or substitute procedural requirements will entail. Although due process is not dependent on the underlying facts of the particular case, it is nevertheless flexible and calls for such procedural protections as a particular situation demands.

In *Melton*, the Indiana Athletic Trainers Board found that Appellant was in default because she failed to appear for a hearing despite the fact that she was represented by an attorney at this hearing. It ordered her athletic training license to be suspended for at least seven (7) years. The Board filed a Notice of Proposed Default, she opposed this motion, and the board ruled five to zero to suspend her license. A Petition for Judicial Review was filed and a Motion to Dismiss was filed by the Board. The Court granted the Motion to Dismiss and dismissed the Petition for

Judicial Review. The Court of Appeals reversed this decision and interpreted I.C. 4-21.5-5-3-24 and found that the Appellant was not in default under the AOPA and had not waived her right to seek judicial review. The Court of Appeals remanded the case to the Board and ordered that a hearing be held.

The Court in Melton, supra, noted, in considering the process wherein a party is deprived of the right to judicial review by the entry of a default, that an administrative law judge may enter a proposed order of default or not. In Melton, supra, the discretion exercised by the administrative law judge in entering the order of default was found to be in violation of the appellant's right to due process and was set aside. In reviewing the Motion for Default Judgment filed herein and the Recommended Order of Administrative Law Judge Pylitt that was adopted by the Indiana Horse Racing Commission, it appears that Administrative Law Judge Pylitt does not believe that he has such discretion. An overly strict and unconstitutional interpretation of the twenty (20) day notice rule, in his mind, did not give him the discretion to enter the proposed Order of Default. In fact, he had such discretion and if he had such discretion, that discretion can be reviewed as to whether or not it constituted an abuse of discretion and whether or not it constituted a deprivation of the right to due process. The *Melton* court felt that in the case before it, that such rights of due process were violated. In this case, where Baliga has denied and contested the allegations against him and has appeared by counsel, a Court of Appeals would have little difficulty in ruling against the Commission.

The Indiana Horse Racing Commission's use of an administrative rule to deprive Baliga of his rights to due process is inconsistent with established case law and statutory enactments. Baliga was led to believe that there would be a hearing on the merits of the allegations against him. To seek and obtain a default judgment against him, by the use of an administrative rule

designed to deal with parties or individuals who do not participate or respond to a pending administrative proceeding, is grossly unfair.

Furthermore, it undermines the AOPA in that it creates a more restrictive basis to default a party who is the subject of an administrative action and in doing so deprives the party of his right to judicial review. The waiver of a right to a hearing and to judicial review is in derogation of IC 4-21.5-2-1 which states that the AOPA creates minimum procedural rights and imposes minimal procedural duties. This includes the right to be heard and to seek judicial review. A waiver, as contemplated by the AOPA, of these minimal rights and duties is not permitted by IC 4-21.5-5-2-2 which provides that: "...Except to the extent precluded by a law, a person may waive any right conferred upon that person by this article. This section does not permit the waiver of any procedural duty imposed by this article...." The administrative rule in question imposes a waiver of a hearing and judicial review by the mere omission of an act. This circumvents the protection afforded those affected by administrative agencies by the AOPA.

V. CONCLUSION

Dr. Joseph Baliga has established that he fits squarely into Indiana Trial Rule 60(B)(1)(6) and (8). The IHRC's Order of March 13, 2017, should be set aside and Dr. Joseph Baliga afforded the opportunity to defend the allegations of wrongdoing at a hearing on the merits.

Dr. Joseph Baliga has also established that he has a meritorious defense to the IHRC's allegations of his alleged violations of September 30, 20176. The affidavit of Trainer, Dylan Davis, and Assistant Trainer, Julian Williams, as well as Dr. Joseph Baliga's affidavit are evidence that Dr. Joseph Baliga has a meritorious defense. Further, evidence of Dr. Joseph Baliga's meritorious defense is the negative test results that evidence `Baliga did not administer a prohibited substance as alleged.

Default judgments are not favored. It has long been the preferred policy of this state that courts decide a controversy on its merits. *Citimortgage, Inc. v. Barabas,* 975 N.E.2d 805 (Ind. 2012); *Cherokee Air Products, Inc. v. Burlington Ins. Co.,* 887 N.E.2d 984 (Ind. App. 2008). In fact, the late Professor William F. Harvey, arguably the state's leading author and civil procedure authority, stated as follows in his discussion of Indiana Trial Rule 55:

> "The Indiana courts have acknowledged, in applying Trial Rule 55, a cautious approach should be taken in granting motions for default judgments in cases involving a material issue of fact, substantial amounts of money, or weighty policy determinations. Sears Roebuck and Co. v. Soja, 932 N.E.2d 245 (Ind. Ct. App. 2010), transfer denied, (Jan. 21, 2011). In fact, Indiana courts have stated a strong public policy favoring the disposition of cases on their merits. Citimortgage, Inc. v. Barabas, 975 N.E.2d 805 (Ind. 2012). In deciding whether to enter a default judgment, the trial court must balance the need for an efficient judicial system and society's interest in finality of judgment against Indiana's judicial preference for deciding disputes on the merits. Seleme v. JP Morgan Chase Bank, 982 N.E.2d 299 (Ind. Ct. App. 2012), transfer denied, 988 N.E.2d 797 (Ind. 2013); Bunch v. Himm, 879 N.E.2d 632 (Ind. Ct. App. 2008). Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party. Thomison v. IK Indy, Inc., 858 N.E.2d 1052 (Ind. Ct. App. 2006)."

See, Harvey, *Indiana Practice*, Volume 3, §55.1.

The IHRC/IHRC Staff represented to a licensee (Dr. Joseph Baliga) at an agency hearing, on the record, that Dr. Joseph Baliga had "...requested a hearing...(and) the merits hearing will come later...." Instead of receiving a hearing on the merits, Dr. Joseph Baliga received a Motion for Default. This was not the proper use of Trial Rule 60; it was instead a "gotcha tactic."

Justice, fairness, equity and integrity all require that the IHRC's Order of March 7, 2017, defaulting Dr. Joseph Baliga should be set aside and Dr. Joseph Baliga given the hearing on the merits he was assured he would receive.

Respectfully submitted,

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By:_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 7th day of March, 2018:

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_____
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BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	
Petitioner,	**In Re: ADMINISTRATIVE COMPLAINT NO. 216003**
v.	
JOSEPH BALIGA, DVM,	**In Re: An Appeal of Judge's Rulings No. 16146 and 16177**
Respondent.	

RECOMMENDED ORDER DENYING
DR. JOSEPH BALIGA'S MOTION FOR RELIEF FROM JUDGMENT

This matter comes before the Administrative Law Judge upon receipt of a Motion for Relief from Judgment ("Motion for Relief")[1] filed on March 7, 2018 by Dr. Joseph Baliga ("Dr. Baliga") pursuant to Rule 60 of the Indiana Rules of Trial Procedure.

On March 8, 2018, Administrative Law Judge Pylitt inquired whether the parties intended to respond and reply and suggested March 24 for the IHRC Staff to Respond and March 30, 2018 to file his Reply, if any. Four days later, on March 12, 2018, counsel for Dr. Baliga emailed the ALJ, with copy to counsel for IHRC Staff, requesting that the ALJ recuse himself or else Dr. Baliga would file a Motion seeking Disqualification pursuant to IC 4-21.5-3-10 reminding that the Indiana Horse Racing Commission ("IHRC") is the ultimate authority to rule on his request.

Having determined that the Motion for Relief fails to state a basis for relief, no further briefing is necessary. Although no Motion seeking his Disqualification has been filed, ALJ

[1] It is significant to note that the Motion for Relief was filed utilizing the Administrative Complaint number as well as the Appeal of Judge Ruling numbers. However, these are separate disciplinary matters and the Appeal of Judge Ruling numbers was dismissed on January 19, 2017, more than one (1) year before the filing of this Motion for Relief.

Pylitt finds no basis to disqualify himself from considering of this Motion pursuant to IC 4-21.5-3-10.

The Indiana Supreme Court has made it crystal clear that a judge is presumed by law to be unbiased and unprejudiced. *Clemens v. State*, 610 N.E.2d 236, 244 (Ind. 1993). A mere allegation of bias, without a specific showing in support, is insufficient to require disqualification. *Blair v. Emmert*, 495 N.E.2d 769 (Ind. App. 1986). Adverse rulings are insufficient to show bias per se. *Taylor v. State*, 587 N.E.2d 1293 (Ind. 1992). Even a strained relationship between the judge and a party's attorney is not a ground for disqualification. *Briggs v. Clinton County Bank and Trust Co.*, 452 N.E.2d 989, 1007 (Ind. App. 1983).

ALJ Pylitt vacates his request for a Response from the IHRC Staff by March 23, 2018, and renders this Recommended Order to allow the full IHRC to consider Dr. Baliga's Motion for Relief in an expedited fashion.[2]

Having carefully reviewed the Motion for Relief, as well as pleadings previously filed, the relevant law, taken official notice of the Indiana Horse Racing Commission("IHRC") records and Madison County, Indiana records, and being duly advised, ALJ Pylitt renders this Recommended Order DENYING Dr. Baliga's Motion for Relief from Judgment.

Given the protracted litigation including several of the same issues previously raised in the instant Motion for Relief, a review of previous rulings is necessary and appropriate for the IHRC to completely address the issues contained in the Motion for Relief.

[2] On March 20, 2018, counsel and the ALJ were advised via email that the IHRC intends to meet during the week of April 16, 2018.

RELEVANT PROCEDURAL HISTORY

On December 16, 2016, ALJ Pylitt issued his Recommended Order Granting Default Judgment against Dr. Joseph Baliga under Administrative Complaint No. 216003, which was approved in its entirety by the IHRC on March 13, 2017. A true and accurate copy is attached hereto as Exhibit "A". That Final Order of the IHRC is the Judgment from which Dr. Baliga seeks relief.

The follow portion of ALJ Pylitt's previous Recommended Order traced the procedural history up to the March 13, 2017 Final Order of the IHRC:

"On Tuesday morning, December 6, 2016, a lengthy Prehearing Conference was conducted in the original appeal of Judges' Ruling Nos. 16146 and 16177 summarily suspending Dr. Baliga. Holly Newell appeared on behalf of the Commission Staff. Pete Sacopulos appeared on behalf of Dr. Baliga. Counsel for the Commission Staff provided a copy of Administrative Complaint No. 216003, which was filed on November 10, 2016 pursuant to 71 IAC 10-3-20, to the ALJ and counsel for Dr. Baliga, along with a Motion for Default Judgment alleging that Dr. Baliga failed to request a hearing in writing within 20 days following receipt of the Administrative Complaint. During said Prehearing Conference counsel for Dr. Baliga acknowledged receipt of said Administrative Complaint and indicated that no request was made in writing for a hearing. Counsel for the Commission Staff filed a Motion for Default pursuant to IC 4-21.5-3-24 and 71 IAC 10-3-20(d) earlier that morning.

After reviewing the Motion for Default and the relevant statute and regulations, the ALJ promptly issued and served upon counsel a proposed default judgment pursuant to IC 4-21.5-3-24 (b) and advised Dr. Baliga that if he desired to file a written motion requesting that the proposed default order not be imposed and stating the grounds relied, as mandated by statute,

said motion must be filed within seven (7) days pursuant to the statute. Counsel was further advised that the statute provides that the failure to file a timely written motion shall require the ALJ to issue the default order in accordance with IC 4-21.5-3-24 (d).

As required by statute, the ALJ provided the parties with the following statement of grounds for the proposed default:

> 1. On December 6, 2016, Bernard Pylitt was appointed to serve as Administrative Law Judge to hear this Administrative Complaint.
> 2. Administrative Complaint No. 216003 was filed on November 10, 2016 pursuant to 71 IAC 10-3-20.
> 3. Counsel for Dr. Baliga acknowledged receipt of said Administrative Complaint and that it appears that no request was made in writing for a hearing.
> 4. Dr. Baliga was required to request a hearing in writing within 20 days following receipt.
> 5. Twenty-six days have elapsed since the delivery of Administrative Complaint No. 216003 to Dr. Baliga and his counsel.
> 6. IHRC has not received a written request for a hearing from Dr. Baliga on Administrative Complaint No. 216003.
> 7. Dr. Baliga is not known to be on active duty in any of the armed services of the United States.
> 8. Dr. Baliga is not a minor or incompetent.
> 9. 71 IAC 10-3-20 (d) provides that failure to request a hearing within the prescribed period results in a waiver of a right to a hearing on the Administrative Penalty sought as well as any right to judicial review.
> 10. Administrative Complaint No. 216003 seeks the imposition of a $20,000 fine, a five (5) year suspension of his Indiana Horse Racing Commission license, and a permanent ban from participation in the Lasix administration program at Indiana pari-mutual horse racing tracks.
> 11. The proposed default order adopts the punishment sought by the Indiana Horse Racing Commission Staff in the Administrative Complaint.

On Monday, December 12, 2016, counsel for Dr. Baliga filed a timely combined Verified Objection to the Motion for Default and proposed Default Order requesting that a default judgment not be entered for the following reasons:

> 1. Dr. Baliga denies the allegations in the Administrative Complaint but failed to provide any specifics.
> 2. At the October 31, 2016 hearing on the Summary Suspension before the Standardbred Judges, Dr. Baliga "was not allowed to offer any evidence on the merits" of his defense.

3. Paragraph 10 of the Verified Objection concedes that his counsel "did not realize that the Administrative Complaint had been filed with a separate Administrative Complaint number" and "mistakenly believed" that he had already asked for a hearing.
4. In paragraph 12 of the Verified Objection, counsel admits that he did not file an Answer to the Administrative Complaint filed on November 10, 2016 or request a hearing in writing.
5. Counsel asserts that his failure to file an Answer is "excusable neglect" under Indiana Trial Rule 60 (B).
6. The Indiana Supreme Court does not favor Default Judgments.

Following receipt of the Verified Objection, the ALJ emailed counsel and made it clear that any and all pleadings or information the parties wanted to be considered on the Default Motion and Objection must be submitted by the close of business on Wednesday, December 14, 2016.

On Wednesday afternoon, December 14, 2016, counsel for Commission Staff filed its timely Reply to Dr. Baliga's Verified Objection and contends that:

1. Dr. Baliga failed to establish excusable neglect under Trial Rule 60(B) or that he is entitled to relief for equitable reasons and failed to establish a meritorious claim or defense to the Administrative Complaint given his conclusory Affidavit which simply stated that he had "a meritorious defense" without providing any specifics.
2. Counsel for Dr. Baliga has practiced in front of the Commission "many times" and is also a licensee requiring him to be knowledgeable of and abide by Commission rules and regulations pursuant to 71 IAC 5.5-1-27.

On Thursday morning, December 15, 2016, and one (1) day after the deadline imposed by the ALJ for the submission of any additional pleadings, counsel for Baliga filed his Reply Brief in Support of his previous Verified Objection alleging that counsel for the Commission Staff "is attempting to mislead the ALJ into believing that a Trial Rule 60 (b) motion is pending before the ALJ. Such is not the case". Additionally, counsel asserts that IC 4-21.5-3-24 does not require a showing of a meritorious defense. However, Dr. Baliga ignores the primary argument he made in his Verified Objection which places significance upon the fact that he somehow has a

meritorious defense which further excuses his neglect in filing a timely written request for a hearing as required by regulation.

Not only was Dr. Baliga's Response untimely but it is also misleading and disingenuous. It is irrelevant whether a Trial Rule 60 (b) motion is pending or not. Dr. Baliga's counsel, in his Verified Objection relies heavily upon the wording and significance of Trial Rule 60 (b) while attempting to justify his neglect in failing to file a timely written request for a hearing once the Administrative Complaint was served upon Dr. Baliga and himself. Counsel for Dr. Baliga cannot have it both ways. His negligence in failing to file a timely written request for a hearing as mandated by the regulation was either excusable or not. The ALJ founds that it was not given the fact that counsel for Dr. Baliga has practiced in front of the Commission "many times" and was also a licensee requiring him to be knowledgeable of and abide by Commission rules and regulations pursuant to 71 IAC 5.5-1-27."

In rendering his Recommended Decision Granting the Default Judgment, ALJ Pylitt made the following Findings of Fact:

"The ALJ having considered the pleadings submitted, and taken official notice of the IHRC business records confirming that a timely written request for a hearing on the Administrative Complaint was not filed by Dr. Baliga, now finds as follows:

1. The ALJ has subject matter and jurisdiction over Dr. Baliga in this matter;
2. Dr. Joseph Baliga and his counsel were properly served with a copy of Administrative Complaint No. 216003, filed on November 10, 2016 pursuant to 71 IAC 10-3-20;
3. The case number assigned to the Administrative Complaint was in a totally different format from that assigned to the earlier appeal from the Judge's Rulings summarily suspending Dr. Baliga;
4. The caption of the Administrative Complaint reversed the names of the parties in the caption from that found in the caption of the appeal of the Summary Suspension;

5. The penalties sought in the Administrative Complaint were totally different and substantially more significant than the mere Summary Suspension imposed by the Judges which was being appealed;
6. The regulations which served as the basis under the Indiana Administrative Code for filing the Administrative Complaint are different from those cited in the appeal from the Summary Suspension by the Judges;
7. Dr. Baliga was required to request a hearing in writing within 20 days following receipt of the Administrative Complaint;
8. Official notice is taken of the Indiana Horse Racing Commission records which clearly indicate that Dr. Baliga's counsel has regularly appeared in regulatory matters involving licensees before this ALJ, before the full Commission, and has sought judicial review of Commission decisions. Additionally, counsel is a licensee who is obligated to be aware of and comply with the regulations. As such, he is extremely knowledgeable and aware of the regulations governing the Commission;
9. There is nothing in the Indiana Horse Racing Commission records indicating that counsel sought any clarification from the Commission or its Staff whether a written request for a hearing was required;
10. Counsel for Dr. Baliga has practiced in front of the Commission regularly and is also a licensee requiring him to be knowledgeable of and abide by Commission rules and regulations pursuant to 71 IAC 5.5-1-27;
11. Counsel for Dr. Baliga admits that he failed to request a hearing in writing in a timely fashion, or otherwise respond to the Administrative Complaint;
12. The Indiana General Assembly has determined that the time limit for requesting a hearing following the receipt of an Administrative Complaint is jurisdictional;
13. Counsel for Dr. Baliga's suggested explanation for failing to file an Answer to the Administrative Complaint since he "mistakenly believed" he had already requested a hearing the Summary Suspension ruling is not credible;
14. Counsel's failure to recognize the difference between the pending appeal of the Judges Summary Suspension and the subsequent independent Administrative Complaint is inexcusable, and does not constitute excusable neglect under Indiana Trial Rule 60 (B);
15. Dr. Baliga is not an infant, incompetent, or in military service;
16. Commission Staff filed a Motion for Default on December 6, 2016;
17. Twenty-six (26) days had elapsed between the filing of the Administrative Complaint and Commission Staff's Motion for Default filed on December 6, 2016;
18. On December 6, 2016, the ALJ issued a Proposed Default Order and emailed a copy to counsel; and
19. On December 12, 2016, counsel for Dr. Baliga filed a timely response in opposition to the Proposed Default Order issued by the ALJ.

At the conclusion of his December 16, 2016 Recommended Order, ALJ Pylitt made the following recommendations which were adopted as its Final Order by the full IHRC:

> Therefore, the ALJ recommends that the Commission Staff's Motion for Default Judgment be GRANTED in favor of the Indiana Horse Racing Commission, and against Dr. Joseph Baliga.

It is further recommended that the Indiana Horse Racing Commission enter an Order stating that Dr. Joseph Baliga's failure to timely request a hearing on the Administrative Complaint as required by I.C. 4-21.5-3-24 and 71 IAC 10-3-20(d) resulted in his waiver of his right to a hearing on the administrative penalty and therefore waived his right to judicial review.

It is further recommended that the Indiana Horse Racing Commission enter an Order that Dr. Baliga's counsel's failure to file a timely written request for a hearing on the Administrative Complaint was inexcusable under Trial Rule 60 (B).

A. DECEMBER 6, 2016 PREHEARING CONFERENCE AND PREHEARING ORDER

Following the original Prehearing Conference conducted on December 6, 2016 on Dr. Baliga's appeal of the Judge's Rulings, a Prehearing Order was issued which summarized the discussion with counsel about the limited scope of the hearing initially scheduled for January 26, 2017 on Dr. Baliga's appeal of the initial summary suspension:

> Counsel discussed the limited scope of any hearing before the ALJ pursuant to 71 IAC 10-2-3. Counsel for Baliga was unable to identify any other regulation which authorized a hearing on the merits. While Baliga is entitled to a hearing before the ALJ, the ALJ determined after a careful review of the regulations governing the Indiana Horse Racing Commission that said hearing is limited to whether Baliga's actions on September 30, 2016 constituted an immediate danger to the public health, safety, or welfare, or are not in the best interest of racing, or compromise the integrity of operations at a track.

B. IHRC JUDGES LIFT SUMMARY SUSPENSION OF DR. BALIGA ON JANUARY 17, 2017

While awaiting final review of the ALJ'S Recommended Order by the IHRC, Dr. Baliga filed Motions for Consolidation of the original summary suspension appeal and the Administrative Complaint on January 17, 2017. On that same day, the IHRC Judges issued Ruling No. 17001, lifting the summary suspension of Dr. Baliga under Rulings Nos. 16146 and 16177. As a result of that Ruling, IHRC Staff moved to vacate the scheduled hearing on Dr.

Baliga's appeal since the summary suspension no longer existed thereby causing the appeal to be moot.

ALJ Pylitt issued an Order granting the request and dismissing Dr. Baliga's appeal as a matter of law. As a result, on January 19, 2017, ALJ Pylitt denied the Motions for Consolidation and dismissed the appeal as a matter of law since the issue raised was moot. From that point forward no appeal of the Judges' Rulings exixsted. Any effort to reopen that appeal by this Motion for Relief is invalid since that ruling was made more than one (1) year before the filing of this Motion for Relief.

C. DR. BALIGA FILES A PETITION FOR JUDICIAL REVIEW IN MADISON COUNTY

Following the IHRC's Final Order rendered on March 13, 2017, Dr. Baliga filed a Petition for Judicial Review in the Madison County Circuit Court under Cause Number 48C06-1704-MI-000307 raising many of the same issues brought in this instant Motion for Relief. On July 17, 2017, IHRC Staff filed its Motion to Dismiss. A hearing was conducted before Judge Mark Dudley on September 29, 2017 resulting in the issuance of an Order on October 20, 2017 granting the Motion to Dismiss. Dr. Baliga filed a Motion to Correct Errors on November 20, 2017 which Motion was denied on December 4, 2017.

In his Order, Judge Dudley stated that "The issue is whether the court has jurisdiction to hear plaintiff, Joseph Baliga's Petition for Judicial Review. The two questions posed by the IHRC's Motion are whether the IHRC followed its own rules when it defaulted Baliga and did its rules comport with the statutory provisions governing defaults at the agency level. The answer to both questions is yes."

Further, Judge Dudley found "IHRC's regulations require a written demand for a hearing in response to the filing of an Administrative Complaint and Baliga failed to file any written

response to IHRC's complaint. IHRC followed its own rules when it entered a default against Baliga." Judge Dudley concluded his Order by holding that:

> Baliga's argument hinges on acts that took place on October 31, 2016, ten (10) days before IHRC filed its administrative complaint. It is impossible to file a response or request for a hearing before the complaint is even filed. A fundamental problem for Baliga's position is that the regulatory framework of the IHRC allows for two separate and distinct disciplinary processes that can exist independent of one another even though both procedures can cover the same fact pattern...Baliga's default results in waiver of judicial review and this court lacks jurisdiction to consider his Petition.

A true and accurate copy of Judge Dudley's Order is attached hereto as Exhibit "B".

RATIONAL FOR RENDERING THIS RECOMMENDED DECISION

Indiana Trial Rule 60 (B) provides that "on motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect;..." The Rule further provides that a Motion must be filed not more than one year (emphasis added) after the judgment was entered for mistake, surprise, or excusable neglect. The IHRC's Final Order at the heart of the Motion for Relief was rendered on March 13, 2017. Therefore, Dr. Baliga's Motion for Relief was timely filed on March 7, 2018.

However, the Motion for Relief is simply one more attempt to take "another bite out of an apple" that had been previously scrutinized and decided by the ALJ, the full IHRC, and Madison County Circuit Judge Mark Dudley. Significantly, on December 16, 2016, ALJ Pylitt found, and the full IHRC adopted as its Final Order, the following:

> 1. ....
> 2. Dr. Joseph Baliga and his counsel were properly served with a copy of Administrative Complaint No. 216003, filed on November 10, 2016 pursuant to 71 IAC 10-3-20;

3. The case number assigned to the Administrative Complaint was in a totally different format from that assigned to the earlier appeal from the Judge's Rulings summarily suspending Dr. Baliga;
4. The caption of the Administrative Complaint reversed the names of the parties in the caption from that found in the caption of the appeal of the Summary Suspension;
5. The penalties sought in the Administrative Complaint were totally different and substantially more significant than the mere Summary Suspension imposed by the Judges which was being appealed;
6. The regulations which served as the basis under the Indiana Administrative Code for filing the Administrative Complaint are different from those cited in the appeal from the Summary Suspension by the Judges;
7. Dr. Baliga was required to request a hearing in writing within 20 days following receipt of the Administrative Complaint;
8. Official notice is taken of the Indiana Horse Racing Commission records which clearly indicate that Dr. Baliga's counsel has regularly appeared in regulatory matters involving licensees before this ALJ, before the full Commission, and has sought judicial review of Commission decisions. Additionally, counsel is a licensee who is obligated to be aware of and comply with the regulations. As such, he is extremely knowledgeable and aware of the regulations governing the Commission;
9. There is nothing in the Indiana Horse Racing Commission records indicating that counsel sought any clarification from the Commission or its Staff whether a written request for a hearing was required;
10. Counsel for Dr. Baliga has practiced in front of the Commission regularly and is also a licensee requiring him to be knowledgeable of and abide by Commission rules and regulations pursuant to 71 IAC 5.5-1-27.
11. Counsel for Dr. Baliga admits that he failed to request a hearing in writing in a timely fashion, or otherwise respond to the Administrative Complaint;
12. . . .
13. Counsel for Dr. Baliga's suggested explanation for failing to file an Answer to the Administrative Complaint since he "mistakenly believed" he had already requested a hearing the Summary Suspension ruling is not credible;
14. Counsel's failure to recognize the difference between the pending appeal of the Judges Summary Suspension and the subsequent independent Administrative Complaint is inexcusable, and does not constitute excusable neglect under Indiana Trial Rule 60 (B).

Further, the Recommended Order granting Default Judgment in favor of the Indiana Horse Racing Commission against Dr. Baliga concluded:

It is further recommended that the Indiana Horse Racing Commission enter an Order stating that Dr. Joseph Baliga's failure to timely request a hearing on the Administrative Complaint as required by I.C. 4-21.5-3-24 and 71 IAC 10-3-20(d) resulted in his waiver of his right to a hearing on the administrative penalty and therefore waived his right to judicial review.

It is further recommended that the Indiana Horse Racing Commission enter an Order that Dr. Baliga's counsel's failure to file a timely written request for a hearing on the Administrative Complaint was inexcusable under Trial Rule 60 (B).

More significantly, Judge Dudley, after independently reviewing the administrative record and Final Order of the IHRC, entered his Order granting the IHRC Staff's Motion to Dismiss and independently found as a matter of law that:

1. The IHRC followed its own rules when it defaulted Baliga.
2. The IHRC Rules comport with the statutory provisions governing defaults at the agency level.
3. The IHRC's regulations require a written demand for a hearing in response to the filing of an Administrative Complaint and Baliga failed to file any written response to IHRC's complaint.
4. A fundamental problem for Baliga's position is that the regulatory framework of the IHRC allows for two separate and distinct disciplinary processes that can exist independent of one another even though both procedures can cover the same fact pattern.
5. Dr. Baliga's default results in waiver of judicial review.

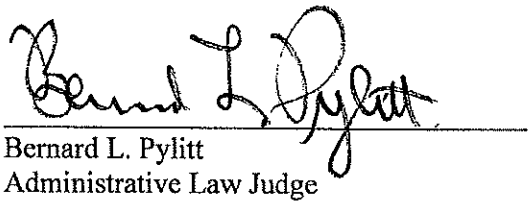
RECOMMENDED ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

Dr. Baliga's Motion for Relief from the IHRC's Final Order rendered on March 13, 2017 fails to raise any new information, basis, fact, or argument that had not previously been considered and rejected in his challenge to the Recommended Order Granting Default Judgment issued by ALJ Pylitt on December 16, 2016, the full IHRC in affirming said Recommended Order as its Final Order, and/or in Judge Mark Dudley's Order Dismissing Dr. Baliga's Petition for Judicial Review. No evidence of mistake, surprise, or excusable neglect[3] has been pled, or exists, as required by Indiana Trial Rule 60(B). Therefore, it is recommended that the Indiana Horse Racing Commission DENY Dr. Baliga's Motion for Relief from Judgment.

[3] See ALJ's previous Finding of Fact 14 in his December 16, 2016 Recommended Order Granting Default Judgment finding no excusable negligence under Indiana Trial Rule 60(B). Nothing new is presented in Dr. Baliga's Motion for Relief.

Pursuant to I.C. § 4-21.5-3-29(d), Brower has fifteen (15) calendar days following receipt of this Recommended Order DENYING his Motion for Relief from Judgment to file written exceptions with the Indiana Horse Racing Commission.

IT IS SO RECOMMENDED THIS 22nd DAY OF MARCH 2018.



Bernard L. Pylitt
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Recommended Order has been duly served via email and first-class United States mail, postage prepaid this 22nd day of March 2018 to the following parties of record:

Peter Sacopulos
Sacopulos Johnson & Sacopulos
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Terre Haute, IN 47807
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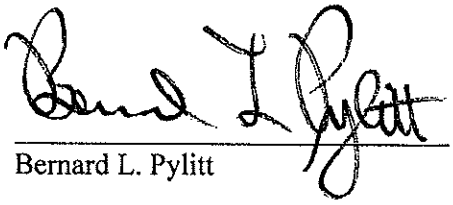

Bernard L. Pylitt

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BEFORE THE INDIANA HORSE RACING COMMISSION

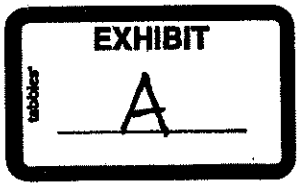
INDIANA HORSE RACING COMMISSION STAFF,	)	2017 MAR 13 P 2:16
Petitioner,	)	INDIANA HORSE RACING COMM
v.	)	In Re: ADMINISTRATIVE COMPLAINT NO. 216003
JOSEPH BALIGA, D.V.M.	)	
Respondent.	)	

Final Order

This matter is pending before the Indiana Horse Racing Commission ("Commission") on the Administrative Complaint against Joseph Baliga, D.V.M. dated November 10, 2016. On December 6, 2016, the Administrative Law Judge ("ALJ") designated by the Commission, Bernard Pylitt, issued his "Recommended Order Granting Default Judgment Against Dr. Joseph Baliga" ("Recommended Order") in this case. On December 28, 2016, Dr. Baliga filed his objections to the Recommended Order. On March 3, 2017, Dr. Baliga and the Commission Staff filed their respective briefs and on March 7, 2017, the Commission heard oral argument in the proceedings.

After considering the record in this matter, and the ALJ's Recommended Order, as well as the objections, briefs and arguments of the parties, the Commission, at its meeting of March 7, 2017, voted as follows. Commissioners Schenkel, Pillow, McCarty and Lightle voted to affirm said Recommended Order and adopt it as the final order in this proceeding.

The final vote of the Commission was, therefore, 4 to 0 in favor of affirming said Recommended Order and adopting it as the final order in this proceeding.



The Recommended Order is attached hereto and incorporated herein by reference as Exhibit A.

ISSUED this 13th day of March, 2017.

THE INDIANA HORSE RACING COMMISSION

By: _____
Greg Schenkel, Interim Chairperson
Voting to affirm

_____
George Pillow, Member
Voting to affirm

_____
Bill McCarty, Member
Voting to affirm

_____
Susie Lightle, Member
Voting to affirm

Copies forwarded by electronic mail and U.S. Mail on March 13th 2017:

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Holly Newell
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856864

STATE OF INDIANA

SS:

COUNTY OF MADISON

IN THE MADISON CIRCUIT COURT
DIVISION 6

2017 TERM

JOSEPH BALIGA
Plaintiff

CAUSE NO. 48C06-1704-MI-307

Vs.

INDIANA HORSE RACING COMMISSION,
INDIANA HORSE RACING COMMISSION
STAFF
Defendants

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

The parties appeared in person and by counsel on September 29, 2017, for a hearing on Defendants, Indiana Horse Racing Commission and Indiana Horse Racing Commission Staffs' (collectively "IHRC"), Motion to Dismiss. The parties fully briefed the issue.

The issue is whether this court has jurisdiction to hear plaintiff, Joseph Baliga's ("Baliga"), Petition for Judicial Review. The two questions posed by the IHRC's motion are whether the IHRC followed its own rules when it defaulted Baliga and did its rules comport with the statutory provision governing defaults at the agency level. The answer to both questions is yes. Baliga is a licensed veterinarian by the State of Indiana and subject to administrative oversight by IHRC. On October 1, 2016, Baliga's license was summarily suspended pursuant to 71 IAC 10-2-3 and denominated as Ruling 16146. The basis for the suspension dealt with an allegation that Baliga improperly administered Lasix on September 30, 2016, while at Hoosier Park. A hearing was held on October 31, 2016, regarding the summary suspension. Baliga and his attorney attended the hearing. The judges at Hoosier Park upheld the suspension on November 1, 2016, Ruling number 16177. On November 14, 2016, Baliga filed his Notice of Appeal of the judge's November 1, 2016, decision.[1] A licensee such as Baliga is entitled to an evidentiary hearing after a summary suspension is upheld. 71 IAC 10-2-1. Baliga is also entitled to appeal the affirmation of the summary suspension. 71 IAC 10-2-9. Baliga opted for the appeal instead of proceeding to an evidentiary hearing. The judges that

[1] Baliga on November 17, 2016 filed State Form 48793 Denominated Appeal and referenced ruling number 16177.

EXHIBIT
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imposed the November 1, 2016, summary suspension lifted the suspension on January 18, 2017, Ruling 17001, and as a result, the judges' decision is not at issue in this case.

IHRC pursued a second form of action against Baliga for his alleged improper use of Lasix.[2] IHRC filed an administrative complaint on November 10, 2016 with a complaint number of 216003. IHRC emailed the complaint to Baliga's attorney on November 10, 2016 and mailed the complaint to both Baliga and his attorney. The IHRC administrative complaint covered the same facts as covered by the judges' summary suspension entered on October 1, 2016 and affirmed on November 1, 2016. 71 IAC 10-3-20 requires a licensee to request a hearing within twenty (20) days if he wishes to contest the administrative complaint. The language of 71 IAC 10-3-20(d) reads:

> (d) Not later than the twentieth day after the date on which the executive director delivers or sends the administrative complaint, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article.

It is undisputed that Baliga failed to file *any* written document within twenty (20) days of receiving IHRC's administrative complaint. The twenty (20) day window expired on November 30, 2016. The IHRC's staff moved for a default judgment against Baliga on December 6, 2016. The assigned Administrative Law Judge recommended the imposition of a default judgment on December 16, 2016. The IHRC voted on March 7, 2017, and then entered a default judgment against Baliga on March 13, 2017. Baliga argues his oral request for a hearing made to the judges on October 31, 2016, satisfies the requirements of 71 IAC 10-3-20(d). The court is not persuaded. IHRC's regulations require a written demand for a hearing in response to the filing of an administrative complaint and Baliga failed to file any written response to IHRC's complaint. IHRC followed its own rules when it entered a default against Baliga.

---

[2] Indiana Code 4-31-13-2 permits Stewards and Judges to fine a licensee no more than $5,000.00 and suspend her license for not more than one (1) year. Indiana Code 4-31-13-1 permits the IHRC to suspend a licensee with no time limitations and may impose a fine in excess of $5,000.00 if the alleged offense occurred over more than one (1) day, then the fine may be $5,000.00 for each day during which the violation to continues to occur. In this case the commission sought and received, by default, a suspension of five (5) years and a fine of $20,000.00.

The court now looks to the second question of whether IHRC rules are in accord with the authorizing statute. I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

> (a) At any stage of a proceeding, if a party fails to:
>
> (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
> (2) file a responsive pleading required by statute or rule;
> (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
> (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;
>
> the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
>
> (b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.
>
> (c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.
>
> (d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a

party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

> (a) Pleadings filed with the commission include the following:
> (1) Appeals
> (2) Applications
> (3) Answers
> (4) Complaints
> (5) Exceptions
> (6) Replies
> (7) Motions
> Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The regulation is not exclusive and does not define each term. Indiana Code 4-21.5-3-24 does not define a pleading. The intent of the statute is to allow agencies to default participants if they are not pursuing their claims. Examples of not pursuing a claim are not responding as required by a rule, not attending a hearing, or doing nothing for sixty (60) days. Here, Baliga failed to respond at all to the IHRC complaint, and as such, the agency rule requiring a written hearing request, (a response) is in accord with Indiana Code 4-21.5-3-24 allowing an agency to default someone when she does not file a pleading. IC 4-21.5-5-5(b) states that one in default under Article 21.5 waives her right to judicial review. 71 IAC 10-3-20(d) mirrors this statutory provision and alerts those subject to IHRC regulation that judicial review is waived when a request for a hearing is not filed.

Baliga's argument hinges on acts that took place on October 31, 2016, ten (10) days *before* IHRC filed its administrative complaint. It is impossible to file a response or request a hearing before the complaint is even filed. A fundamental problem for Baliga's position is that the regulatory framework of the IHRC allows for two separate and distinct disciplinary processes that can exist independent of one another even though both procedures can cover the same fact pattern. Baliga views them as one process with the same actors and the IHRC views them as separate and distinct. Baliga raised no challenges at the agency level as to the propriety of two independent and distinct disciplinary processes that can cover the same factual pattern and that exist independent of one another and the court does not take up that argument here. Baliga's default results in waiver of judicial review and this court lacks jurisdiction to consider his Petition. The court grants IHRC's Motion to Dismiss.

All of which is so ordered, this 20th day of October 2017.

The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6

Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt

BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	
	)	**In Re: ADMINISTRATIVE COMPLAINT**
v.	)	**NO. 216003**
	)	
JOSEPH BALIGA, DVM,	)	**In Re: An Appeal of Judge's**
	)	**Rulings No. 16146 and16177**
	)	
Respondent	)	
	)	

RESPONDENT, JOSEPH BALIGA, DVM'S EXCEPTIONS TO THE RECOMMENDED ORDER DENYING HIS MOTION FOR RELIEF FROM JUDGMENT

Respondent, Joseph Baliga, DVM, (hereinafter "Baliga"), by counsel, Peter J. Sacopulos, timely files his written exceptions to the Recommended Order Denying His Motion for Relief From Judgment and respectfully requests the IHRC reject said Recommended Order and enter an Order granting him relief from the prior judgment/order of the IHRC dated March 15, 2017.

Baliga agrees that ALJ Pylitt contacted counsel regarding a briefing schedule relative to Baliga's Motion for Relief From Judgment and that a briefing schedule was established. Baliga takes exception to the ALJ's position that no further briefing is necessary. That position is incorrect, adversarial, and prejudicial to Baliga. ALJ Pylitt's decision, without consultation of counsel, to dispense with "further briefing" was and is improper and eliminates Baliga's opportunity to learn of the IHRC Staff's position as well as to Baliga's right to reply and to supplement the record in this matter.

Baliga agrees that on March 12, 2018, he provided written notice to ALJ Pylitt requesting he recuse himself. The reason for this request is that Bernard Pylitt had served as administrative law judge in the companion cases of Licensees, Dylan Davis and Julian Williams. In doing so, ALJ Pylitt found that Baliga was/is not truthful. Certainly, such a finding creates an obvious conflict for an administrative law judge from sitting in judgment of the person he previously judged and concluded is not truthful. Baliga is entitled to a fair and impartial administrative law judge to sit in judgment of his case.

Because of this, the undersigned counsel respectfully requested that ALJ Pylitt recuse himself and, should he not do so, a motion to disqualify him as administrative law judge would be filed. ALJ Pylitt ignored and failed to respond/answer the undersigned's request regarding his recusal. Instead, ALJ Pylitt simply dispensed with the briefing schedule and issued a Recommended Order adverse to Baliga. Failure to respond to the undersigned counsel's request, dispensing with an established briefing schedule, and issuing a recommended order of denial

resulted in bias and prejudice to Baliga. These actions by this ALJ are additional examples of Bernard Pylitt inappropriately advocating for the IHRC Staff. The same are also additional examples of the bias and prejudice Bernard Pylitt has visited and continues to visit upon Baliga.

Baliga agrees that he intends to and will file a motion to disqualify ALJ Pylitt upon receiving relief from the March 15, 2017, judgment.

Additionally, Baliga takes exception with ALJ Pylitt sitting in judgment of his Motion for Relief From Judgment. He does so because ALJ Pylitt is not properly appointed pursuant to I.C. 4-21.5-3-9. I.C. 4-21.5-3-9 requires the ultimate authority, that being the Indiana Horse Racing Commission, to appoint an administrative law judge. Because the Motion for Relief from Judgment is a separate matter and because it seeks relief from a final judgment rather than a recommended order, which was issued by Pylitt, the IHRC is the proper party to consider and rule upon Baliga's Motion for Relief from Judgment. In short, the IHRC should have an initially ruled on Baliga's Motion for Relief from Judgment not the ALJ that issued a recommended order. ALJ Pylitt has issued his recommended order without authority and in contradiction to Indiana Trial Rule 60(B).

Baliga further takes exception to the footnote on page one (1) of the Recommended Order Denying Dr. Joseph Baliga's Motion for Relief from Judgment. He does so because the same incorrectly and inappropriately suggests there was a final order entered relative to the summary suspension of Baliga's license. That is not the case. In fact, the IHRC Staff voluntarily dismissed the summary suspension matter at a point in time when Baliga had timely perfected an appeal of the Judges' ruling. As such, Baliga's Trial Rule 60 Motion for Relief is timely: he is seeking relief from the final order of judgment of March 15, 2017, issued by the IHRC.

Additionally, Baliga takes exception with the ALJ's comment, set forth in said footnote, that the summary suspension and the administrative complaint are "separate disciplinary actions." That is not the case. Both the summary suspension and the administrative complaint allege the same wrongdoing by Baliga. In addition, they have as their bases, the same horse, the same date, the same trainer, the same assistant trainer, the same race, the same venue, etc. The IHRC Staff and ALJ Pylitt's desire that the summary suspension and the administrative complaint be "separate" does not make them so. They are not and this reference is both inaccurate, incorrect, and misleading.

Baliga further takes exception to the ALJ's decision, without counsel being provided any notice or Baliga being given an opportunity to be heard, that he rendered a recommended order to: "...allow the full IHRC to consider Dr. Baliga's Motion for Relief in an expedited fashion...." The expeditious hearing of Baliga's Motion for Relief from Judgment by the Indiana Horse Racing Commission is not appropriate grounds, bases, or excuse for Baliga being denied knowledge of the Commission Staff's position relative to his motion and Baliga being afforded the opportunity to reply, thereby supplementing the record as to this issue.

RELEVANT PROCEDURAL HISTORY

The Relevant Procedural History set forth on pages three (3) through six (6) of the Recommended Order of March 22, 2018, restates and incorporates portions of the Recommended Order of December 16, 2016. Baliga relies on and incorporates by reference his exceptions to said Recommended Order of December 16, 2016, that Baliga timely filed of record on December 29, 2016, and is attached hereto, made a part hereof, and marked as Exhibit "A."

Further, Baliga agrees that a true and exact copy of the Honorable Mark Dudley's Order of October 20, 2017, is attached to the recommended order of March 22, 2018, as Exhibit "B." However, Baliga takes exception with the Relevant Procedural History in that it is incomplete and thereby inaccurate for failure to state that Baliga timely perfected an appeal of the trial court's order and that his appeal is presently pending before the Indiana Court of Appeals and docketed as cause number 17A-MI-3009.

RATIONAL FOR RENDERING THIS RECOMMENDED DECISION

Baliga takes exception with the conclusion that his pending Motion for Relief from Judgment is "another bite out of an apple." It is not. In fact, it is a totally different apple that is presented by way of Baliga's pending motion. It is so for several significant reasons.

Indiana Trial Rule 60(B) provides that: "...on motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect...." This rule provides the opportunity for Baliga to seek relief from a judgment by default. There was no judgment or judgment by default until March 15, 2017. The arguments relative to the Staff's Motion for Default, Baliga's opposition, and the Recommended Order all predate the March 15, 2017, order of default. As such, pursuant to Indiana Trial Rule 60(B), prior to March 15, 2017, Baliga was not the subject of a judgment by default and a Trial Rule 60(B) motion was not available. Pursuant to Trial Rule 60(B), this is a "new apple" and Baliga's "first bite of that new apple."

Additionally, at the time Baliga was defaulted, there had been no hearing on the merits. Subsequent to March 15, 2017, a hearing was conducted in the companion cases of Dylan Davis and Julian Williams. Several significant facts were established as a result of that/those hearings that evidence Baliga has the basis for a meritorious defense. These significant facts included that both the blood-serum and urine samples taken from the subject horse, IAM BONASERA, were negative. The test results of the vial alleged to have contained a prohibited substance that was improperly administered to the horse on race day was tested and the results were also negative. Further, the IHRC/IHRC Staff's one (1) eyewitness was subject to repeated impeachment. He (Hicks) was/is the only witness subject to impeachment in the two (2) – day trial of the companion cases and the only witness presented that allegedly witnessed Baliga do any prohibited act.

All of the above are highly significant facts evidencing Baliga's position that he has a meritorious defense. This is significant because Indiana Trial Rule 60(B) requires the party seeking relief to establish he/she has a meritorious defense and because ALJ Pylitt, in his

Recommended Order of March 22, 2018, fails to address, at all, the issue of Baliga's evidence in support of his position that he does have a meritorious defense.

Further, at the time of the Recommended Order of December 16, 2016, a timely filed appeal of Baliga's summary suspension was pending. The IHRC Staff voluntarily dismissed the same. This is significant because Baliga was not afforded an opportunity to present a defense on the merits and because the IHRC Staff represented, on the record, at Baliga's summary suspension hearing that: "...Baliga requested a hearing...the merits hearing will come later...." This goes directly to mistake, surprise, and excusable neglect as argued in Baliga's Trial Rule 60(B) motion and supporting brief.

A further reason that Baliga's pending Motion for Relief from Judgment is "a different apple" is that Baliga has submitted the affidavits of Dylan Davis and Julian Williams as well as his affidavit in support of his pending Motion for Relief from Judgment. All evidence mistake, surprise, and excusable neglect, and that Baliga has a meritorious defense and support his position that he is entitled to relief from the March 15, 2017, judgment of default.

ALJ Pylitt's conclusion that "...no evidence of mistake, surprise, or excusable neglect has been pled, or exists..." is simply wrong. Such a statement leaves one to wonder whether the ALJ in fact read Baliga's Motion for Relief from Judgment and supporting brief. A review of Baliga's Motion for Relief from Judgment, supporting brief, and exhibits leads to the inference he has not.

Respectfully submitted,

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By:_____
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 5th day of April, 2018:

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Peter J. Sacopulos

BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	
	)	**In Re: ADMINISTRATIVE COMPLAINT**
v.	)	**NO. 216003**
	)	
JOSEPH BALIGA, DVM,	)	
	)	
Respondent	)	

RESPONDENT, DR. JOSEPH BALIGA'S VERIFIED OBJECTIONS TO FINDINGS OF FACT AND RECOMMENDED ORDER GRANTING DEFAULT JUDGMENT

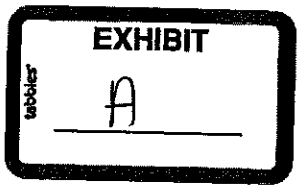
Respondent, Dr. Joseph Baliga, by counsel, Peter J. Sacopulos, pursuant to I.C. 4-21.5-3-29 and in compliance with ALJ Bernard L. Pylitt's Findings of Fact and Recommended Order Granting Default Judgment, respectfully submits his Verified Objections and Exceptions to the ALJ's proposed Findings of Fact and Recommended Order of December 16, 2016. In support of Dr. Baliga's Verified Objections and Exceptions set forth herein, Dr. Baliga states:

I. Respondent's Objections and Exceptions as to the ALJ's Procedural History

1. The procedural history as recited by the ALJ on pages one through three is correct with the exception that the ALJ does not refer to or include Baliga's brief that was filed in support of his Verified Objection and Motion Under I.C. 4-21.5-3-24(b).

2. The section of the Recommended Order that is entitled "Procedural History," contains items that are not "procedural history," but are instead findings of fact or conclusions of law. The last paragraph of page four and the first full paragraph of page five of the Recommended Order does not involve "procedural history;" instead it is a recitation of the ALJ's opinion with which Baliga disagrees with as set forth herein below.

3. Further, the ALJ does not list a complete set of reasons for Respondent's requested denial of the IHRC Staff's Motion for Default Judgment. In addition to the six reasons listed, Respondent argued and advanced these additional reasons: (7) the IHRC Staff knew that the Respondent denied/denies the allegations set forth in the Administrative Complaint, those being the alleged events of September 30, 2016; (8) that both the Summary Suspension and the Administrative Complaint include common questions of law and fact; (9) that even if the neglect was/is not excusable, which Respondent maintains that it was/is, that Indiana Trial Rule 60(B)(8) requires default judgment not be entered if there are justifiable reasons that exist. In this case,



there is justifiable reason why a specific request for hearing was not filed that includes two actions that were simultaneously maintained by the Indiana Horse Racing Commission, those being the Summary Suspension and the Administrative Complaint. Both of which have as their basis the same alleged incident of September 30, 2016. In the case of the Summary Suspension, hearings were had, discovery initiated, requests for appeal timely filed and pursued etc. The ALJ's Recommended Order should be rejected. To do otherwise would result in the the licensee/professional being stripped of his IHRC license for five (5) years, suffering a lifetime ban from LASIX administration in the State of Indiana and suffering a significant monetary fine. For this penalty to be imposed with no hearing on the merits is additional justifiable reason to deny the requested Motion for Default Judgment as is the time line in question. That being even if Dr. Baliga's actions/denial are determined not to constitute an answer, his request for hearing was only days past due when the IHRC filed the Motion for Default Judgment.

II. Objections to Proposed Findings of Fact

1. Respondent does not object to Finding of Fact number one.

2. Respondent does not object to Finding of Fact number two.

3. Respondent objects to Finding of Fact number three. Both the IHRC's Summary Suspension and the IHRC's Administrative Complaint identify Dr. Joseph Baliga as a Respondent and both list as Petitioner, the IHRC/IHRC Staff. In fact, Respondent's Notice of Appeal that was timely filed of record reflects the identity of the parties as Respondent and Petitioner and both filings by the IHRC relate to the alleged incident of September 30, 2016, that occurred at Hoosier Park.

4. Respondent, in part, objects to Finding of Fact number four. The appeal that was timely filed of record, a true and exact copy of which is attached hereto and marked as Exhibit "A", reflects parties as IHRC and Dr. Baliga. Both the Summary Suspension and the Administrative Complaint set forth Respondent's name in the upper left corner of the first page. Respondent further objects to this finding in that it suggests the possible order listing the two parties, IHRC/IHRC Staff and Dr. Baliga, as being a dispositive fact relative to Dr. Baliga being denied an opportunity to present a defense as to the merits of the allegations set forth against him. In fact, Respondent believes a just, fair and equitable outcome requires an examination of the parties' actions preceeding the IHRC Staff's filing of the Motion for Default Judgment that includes, and that is undisputed, Dr. Baliga's hiring of counsel, counsel entering an Appearance on behalf of Dr. Baliga, a motion filed on behalf of Dr. Baliga regarding scheduling, an objection to that motion filed by the IHRC Staff, discovery being served and objections being filed to that discovery, hearings being set, hearings being conducted, the allegations of September 30, 2016 at Hoosier Park being denied by Dr. Baliga in both the Summary Suspension and the Administrative Complaint, under oath, and a timely appeal being filed and pending.

5. Respondent objects, in part, to Finding of Fact number five. While Respondent admits

that the penalties sought are different, the underlying event leading to both the Summary Suspension action and the corresponding Administrative Complaint are the same. Both relate to the alleged events of September 30, 2016 at Hoosier Park. Both relate to the same day, the same horse, the same trainer, the same owner, the same LASIX escort, the same urine and blood serum samples/test results as well as the same allegations that Dr. Baliga has denied, under oath, and that Dr. Baliga seeks to defend on the merits for which he has, to date, been denied, and for which he has sought and preserved his right to appeal.

6. Respondent objects to Finding of Fact number six for the reason that it is not a finding of fact at all, but instead is a conclusion of law.

7. Respondent objects to Finding of Fact number seven for the reason that it is not a finding of fact at all, but instead is a conclusion of law. Subject to this objection, however, Respondent agrees that I.C. 4-21.5-3-24(d) requires, in the absence of an answer, a request for hearing within twenty (20) days of receipt of an Administrative Complaint. The hearing request is to place the IHRC on notice of the Licensee/Respondent's intent to dispute the allegations, have his or her case heard and determined on the merits, and to preserve his or her right to an impartial hearing and, if necessary, to judicial review. Although a formal notice was not filed within twenty (20) days of the filing of the Administrative Complaint, Dr. Baliga clearly demonstrated his intent to be heard on the facts and circumstances surrounding the events of September 30, 2016 that is the subject of both the IHRC's Summary Suspension matter and the Administrative Complaint. He retained counsel, he sought a hearing in the Summary Suspension matter, he initiated discovery, he filed motions regarding scheduling issues, he prepared for, attended and participated in hearings and timely appealed the decision entered against him which said appeal remains pending. Additionally, he denied, under oath, the allegations made against him in the summary suspension hearing, those being common allegations regarding the alleged events of September 30, 2016 at Hoosier Park. Respondent argues this denial, under oath, constitutes an answer pursuant to 71 IAC 10-3-21, thereby preserving his right to a hearing and judicial review and that the same, together with the pending appeal, evidenced the Respondent's intent to be heard and heard on the merits. Also, and significantly, counsel for the IHRC, Holly Newell, knew of all the above as she was/is counsel of record in both pending matters.

8. Respondent objects, in part, to Finding of Fact number eight. The undersigned counsel has represented multiple licensees in matters before the Indiana Horse Racing Commission and has represented and defended several licensees in matters wherein the IHRC has assigned Bernard Pylitt as the Administrative Law Judge and in which the licensee petitioned for judicial review of the IHRC's final ruling. The undersigned counsel had not, until representing Respondent in this matter, been involved in a matter or situation where his client was the Respondent in two paralleling and coinciding actions arising from the same incident and in which his client had engaged and participated in litigation on a summary suspension matter including hearings, scheduling matters, discovery, and the filing of and preserving his right to appeal after denying, under oath, the allegations against him. In this case, Dr. Baliga took all of these steps and engaged in said litigation in connection with the same allegations in the summary

suspension matter as have been alleged in the administrative complaint. Both matters involve the same alleged event.

9. Respondent does not object to Finding of Fact number nine.

10. Respondent objects, in part, to Finding of Fact number ten. The undersigned counsel has represented multiple licensees in matters before the Indiana Horse Racing Commission and has represented and defended several licensees in matters wherein the IHRC has assigned Bernard Pylitt as the Administrative Law Judge and in which the licensee petitioned for judicial review of the IHRC's final ruling. The undersigned counsel had not, until representing Respondent in this matter, been involved in a matter or situation where his client was the Respondent in two paralleling and coinciding actions arising from the same incident and in which his client had engaged and participated in litigation on a summary suspension matter including hearings, scheduling matters, discovery, and the filing of and preserving his right to appeal after denying, under oath, the allegations against him. In this case, Dr. Baliga took all of these steps and engaged in said litigation in connection with the same allegations in the summary suspension matter as have been alleged in the administrative complaint. Both matters involve the same alleged event.

11. Respondent objects, in part, to Finding of Fact number eleven. He admits that a formal request for hearing, pursuant to I.C. 4-21.5-3-24(b) was not made. Respondent maintains that the Recommended Order granting Default Judgment should be rejected because this was not a case of Dr. Baliga and/or Dr. Baliga's counsel ignoring or not addressing the IHRC/IHRC Staff's alleged incident of September 30, 2016. In fact, to the contrary, Dr. Baliga, under oath, has denied wrongdoing related to the alleged incident of September 30, 2016 in both the Summary Suspension matter and the Administrative Complaint matter and attended and testified at a hearing on that/this matter, engaged in discovery, requested that he be heard on the merits of his defense, objected to being denied his right to present a defense on the merits, and appealed a ruling that was entered against him which remains pending. It is clear from the proceedings, taken in total, from September 30, 2016 to date, that Dr. Baliga has, is, and continues to deny the allegations against him, that the record in this matter reflects the same, and that counsel for the IHRC had full knowledge of Dr. Baliga's position.

12. Respondent objects to Finding of Fact number twelve for the reason that it is not a finding of fact at all, but instead is a conclusion of law. Respondent further objects to Finding of Fact number twelve for the reason that, it is a mis-statement of the law. The Indiana General Assembly did not determine that the time limit for requesting a hearing following receipt of an administrative complaint is jurisdictional. That time limit was imposed by the IHRC in its regulations. **Regulations are not enacted by the General Assembly.** Regulations are promulgated by agencies, which in this case, is the IHRC. The Indiana General Assembly has made no determination as to whether or not the IHRC's regulation that was promulgated is appropriate or not.

13. Respondent objects, in part, to Finding of Fact number thirteen. The undersigned counsel admits that he mistakenly believed he had requested a hearing. Baliga and the undersigned counsel object to the balance of the Finding of Fact number thirteen. The undersigned counsel believes that since both the Summary Suspension and the Administrative Complaint have as their subject the same incident of September 30, 2016, that Dr. Baliga has denied, under oath, his answer to that/those allegations as well as the extensive litigation/work and exchange with counsel for the IHRC/IHRC Staff including motions, pleading, service of discovery, hearings, transcripts of hearings, and a timely filed appeal as well as his specific objection to not being permitted the opportunity to be heard on the merits, has preserved his right to hearing on the merits in this matter and, if necessary, to judicial review. The ALJ's conclusion that the undersigned counsel's mistake was not "credible" is against the weight of the evidence.

Additionally, the IHRC's filing of the Administrative Complaint under a separate administrative number was and is a source of confusion. This can be seen in the ALJ's Order of December 6, 2016, entitled "Order Following Prehearing Conference and Scheduling Hearing." The hearing of December 6, 2016, was scheduled to hear and address issues related to administrative matters 16176 and 16177 regarding the summary suspension. The order itself is captioned, in part, "In Re: An Appeal of Judges' Ruling 16146 and 16177." Yet, the ALJ references Administrative Complaint 216003 in that Order. The Administrative Law Judge also references all three administrative numbers in his recommended order granting default judgment against Dr. Baliga. Doing so is understandable when all three matters are related to the same alleged incident.

Counsel for Dr. Baliga had, relative to defending his client as to the alleged incident of September 30, 2016, appeared, engaged in motion pleading, engaged in and initiated discovery, attended and represented his client at a hearing, wherein Dr. Baliga testified under oath that he denied the allegations asserted against him relative to the alleged incident of September 30, 2016, and timely filed for an appeal that is pending regarding the same alleged incident that is the subject of the IHRC's Administrative Complaint. For the ALJ to find that the undersigned counsel's position that he "believed" he had preserved his right to a hearing on the merits relative to the alleged incident of September 30, 2016, lacks credibility, is simply unfair.

14. Respondent objects to Finding of Fact number fourteen. Counsel recognizes that a summary suspension and an administrative complaint have been filed. Counsel believes that there are compelling reasons that fairness and equity require the ALJ's recommended order of December 16, 2016 be rejected. Those reasons do constitute excusable neglect and include the following:

> (1) The undersigned counsel believed that his client answered and denied the allegations relative to the subject alleged incident of September 30, 2016 at Hoosier Park and that the right to a hearing had been preserved.

(2) That significant work was performed as to the defense of the allegation that is the subject of both the Administrative Complaint and the Summary Suspension including motion pleading, initiating discovery, preparing for hearings, attending and participating in hearings, the offering of the testimony of Dr. Baliga, under oath, denying the allegations against him that constitute an answer, and the timely filing and preserving of an appeal in the summary suspension matter regarding the alleged events of September 30, 2016.

(3) The undersigned counsel did not realize that the Administrative Complaint had been filed with a separate administrative complaint number. Because a hearing had taken place and a timely request for appeal to preserve Dr. Baliga's right to present testimony and evidence on the merits of his defense had been filed, the undersigned counsel mistakenly believed that a written request for hearing was not necessary.

(4) Baliga, in connection with the timely filing of his Verified Objection to Petitioner's Motion for Default and Respondent's Motion Under IC 4-21.5-3-24(b) That The Proposed Default Order Not Be Imposed tendered as Exhibits "5" and "6" an Answer and Request for Hearing on December 12, 2016. This was done within days of the twenty (20) day deadline pursuant to 71 IAC 10-3-20(d) and days of the IHRC/IHRC Staff's Motion for Default Judgment.

(5) In fact, when the undersigned counsel was personally served a copy of the IHRC's Motion for Default, at the prehearing conference, in connection with Administrative Cause Number 216003, the undersigned counsel was dismayed because he felt that he had preserved the right to his client's hearing by the proceedings that had taken place in Administrative Cause Numbers 16146 and 16177.

(6) Adding to this confusion is the fact that Administrative Cause Numbers 16146, 16177, and Administrative Complaint Number 216003, filed by the IHRC against Dr. Baliga involve and have as the subject of their Complaint the common incident that occurred on the same date, involving the same horse, and the same allegations supported by the same witness(es).

(7) This confusion is seen in the ALJ's Order that addresses all pending matters regarding Dr. Baliga and does so because of the commonality of the underlying alleged incident that Dr. Baliga has answered and has denied, under oath.

(8) Even assuming the undersigned counsel's confusion and neglect is not excusable, there are grounds and basis as set forth herein, that justify the IHRC rejecting the ALJ's proposed order. Indiana Courts have a long history of dislike for default judgments. The recommended order granting the default judgment

should be rejected because the grounds and basis set forth herein justify relief from the ALJ's recommended order. The ALJ's recommended order, if not denied, would result in Dr. Baliga not having his "day in court" in these administrative proceedings, not having a hearing on the merits of his defense and being denied the right to a judicial review of an administrative order which seeks a potential career ending penalty that includes a 5 year suspension, a lifetime ban from participation of LASIX administration in the State of Indiana, at Indiana's pari-mutuel horse racing tracks as well as a monetary fine of $20,000. Additionally, the history of the parties, the litigation and counsel from September 30, 2016 to date, suggests equity and fairness requires a hearing on the merits and, if necessary, the Respondent's right to judicial review. These are ample grounds and basis for the IHRC to deny the ALJ's recommended order. To suspend a professional's practice without a hearing on the merits, given the extensive procedural history relative to the alleged incident of September 30, 2016, is unjust, unfair, and does not further the integrity of Indiana racing.

(15) Respondent does not object to Finding of Fact number fifteen.

(16) Respondent does not object to Finding of Fact number sixteen.

(17) Respondent does not object to Finding of Fact number seventeen.

(18) Respondent does not object to Finding of Fact number eighteen.

(19) Respondent does not object to Finding of Fact number nineteen.

III. Objection to Recommended Order

A recommended order of default is improper in this case. The IHRC filed its Motion for Default pursuant to IC 4-21.5-3-24 and 71 IAC 10-3-20(d), as well as Indiana Trial Rule 55. The ALJ then issued a written notice of a proposed default with dismissal order which said order is dated December 6, 2016 and was issued in accordance with IC 4-21.5-3-24(a). Therefore, these entire proceedings pertaining to a default judgment sought by the IHRC have been conducted in accordance with IC 4-21.5-3-24.

IC 4-21.5-3-24(b) provides that within seven days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. Counsel for Dr. Baliga did so in a timely fashion.

While counsel for Dr. Baliga discussed, in his objection to the default and brief, an Indiana Supreme Court case that was decided under Indiana Trial Rule 60(B), there was never an

Indiana Trial Rule 60(B) motion pending before the ALJ, as no order of default had ever been entered. Counsel for Baliga merely discussed the Indiana Supreme Court Case of *Huntington National Bank vs. Car-X Assoc. Corp*, 39 N.E.3d 652, as discussed further below, to show the disfavor that the Indiana Supreme Court has for default judgments, as well as the relief which would be afforded by Indiana Trial Rule 60(B).

IC 4-21.5-3-24(b) is silent as to what would constitute sufficient grounds to be put forward by the party against whom a default is sought. One may only assume that the grounds set forth in Indiana Trial Rule 60(B) would be applicable, although there is nothing in IC 4-21.5-3-24(b) that requires that a meritorious defense be asserted or evidence of said meritorious defense be presented. Nevertheless, Baliga in fact tendered his Affidavit stating that not only did he have a meritorious defense but also stating that he has at all times denied the allegation that he administered a substance to a horse on the date in question that was other than LASIX. See paragraphs two and three of the Affidavit of Dr. Joseph Baliga.

The ALJ relies on the Indiana Court of Appeals Decision in *Thompson v. Thompson*, 811 N.E.2d 888, 903-04 (Ind. Ct. App. 2004) in recommending that the IHRC Staff's Motion for Default Judgment be granted and the recommended penalties be imposed. The ALJ does so despite the strong and historical position of the Indiana courts disfavoring default judgments and Indiana's preferred policy that courts/administrative agencies decide matters on the merits (see *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805 (Ind. 2012) and *Cherokee Air Products, Inc. v. Burlington Ins. Co.*, 887 N.E.2d 984 (Ind. App. 2008)).

The case of *Thompson v. Thompson*, supra, is a decision involving a Petition for Dissolution and associated issues. That decision and the portion of the same relied on by the Administrative Law Judge in his recommended order is distinguishable from the issue presented in Respondent's Objection to the ALJ's Findings of Fact and Recommended Order of December 16, 2016. Specifically, the portion of the decision in *Thompson v. Thompson*, supra, dealing with excusable neglect involves relief from an order that had been entered. In the case of Dr. Baliga, no order has been entered–only recommended. Also, the Court in *Thompson v. Thompson*, supra, included in its analysis that the husband (Jack) was required to establish a meritorious defense. That is not the case or required by I.C. 4-21.5-3-24. That being said, Dr. Baliga has denied, under oath, the allegations against him relative to the alleged incident of September 30, 2016, thereby answering the same and preserving his right to a hearing on the merits and, if necessary, his right to judicial review. Further, the fact that precipitated the filing of the Indiana Trial Rule 60(B) motion in *Thompson v. Thompson*, supra, involved a hearing where counsel failed to appear. This was not the case in the matter before the Commission. Both Dr. Baliga and the undersigned counsel appeared at all hearings in both the summary suspension and the administrative complaint matter.

The Indiana Court of Appeals in *Thompson v. Thompson*, supra, did hold, in pertinent part, consistent with Indiana case law history that: "...in making decisions regarding relief from judgment,...the trial court (administrative agency) must balance the need for an efficient judicial

system against the judicial preference for resolving the dispute on their merits...." See *Thompson v. Thompson,* supra, at 903 (emphasis added). Additionally, the ALJ ignored Respondent's argument pursuant to Indiana Trial Rule 60(B)(8) that has been set forth and articulated herein.

The general rule in Indiana is that default judgments are not favored. In fact, the late Professor William F. Harvey, arguably the state's leading author and civil procedure authority, states as follows in his discussion of Indiana Trial Rule 55:

> "The Indiana courts have acknowledged, in applying Trial Rule 55, a cautious approach should be taken in granting motions for default judgments in cases involving a material issue of fact, substantial amounts of money, or weighty policy determinations. Sears Roebuck and Co. v. Soja, 932 N.E.2d 245 (Ind. Ct. App. 2012), transfer denied, (Jan. 21, 2011). In fact, Indiana courts have stated a strong public policy favoring the disposition of cases on their merits. Citimortgage, Inc. v. Barabas, 975 N.E.2d 805 (Ind. 2012). In deciding whether to enter a default judgment, the trial court must balance the need for an efficient judicial system and society's interest in finality of judgment against Indiana's judicial preference for deciding disputes on the merits. Seleme v. JP Morgan Chase Bank, 982 N.E.2d 299 (Ind. Ct. App. 2012), transfer denied, 988 N.E.2d 797 (Ind. 2013); Bunch v. Himm, 879 N.E.2d 632 (Ind. Ct. App. 2008). Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party. Thomison v. IK Indy, Inc., 858 N.E.2d 1052 (Ind. Ct. App. 2006)."

See, Harvey, *Indiana Practice,* Volume 3, §55.1.

The Indiana Supreme Court in 2015, over a decade after the Indiana Court of Appeals' decision in *Thompson v. Thompson*, supra, made its feelings known not only about default judgments being entered but also as to attorneys using Trial Rule 55 as a surprise sword.

In *Huntington National Bank v. Car-X Assoc. Corp,* 39 N.E.3d 652, the court first examined the question of whether or not the bank's failure to appear and defend the lawsuit in a timely fashion constituted "excusable neglect" under Indiana Trial Rule 60(B)(1). The trial court had entered a default judgment against the bank when it had been served with a complaint and summons on January 27, 2014, but still had not filed its answer as of February 25, 2014, which was six days after its deadline to respond. In declining to find that the neglect of the bank was "excusable," the court noted that while all neglect is not excusable, it is "excusable" within the meaning of the Rule, when it is something that can be explained by an unusual, rare, or unforeseen circumstance. The court decided that the bank's normal employee being on maternity leave was not a circumstance that should be used as an excuse for delaying judicial proceedings beyond the court deadlines. The court noted that because there is no general rule as to what constitutes excusable neglect under Trial Rule 60(B)(1), each case must be determined on its particular facts. *Huntington National Bank,* 39 N.E.3d *at* 655.

In this case, counsel for the Respondent sets forth in his verified motion the sworn reasoning as to why the answer and request for hearing were not timely filed, which was because of his confusion concerning the administrative complaint being filed under a separate cause number. Counsel's sworn statement as to his belief that his client's right to a hearing on the merits had been preserved because of actions taken in the separate cause should constitute excusable neglect within the meaning of the rule. This situation, at least as pertaining to defense counsel, is unusual, as the defense counsel felt that he had previously filed whatever was necessary, only to find out later that he had not because the two matters were pending under separate cause numbers.

Even if the ALJ determines that Dr. Baliga is not entitled to relief on the basis of excusable neglect, Trial Rule 60(B)(8) requires that a default judgment be avoided for "any reason justifying relief from the operation of the judgment" other than those set forth in other subsections of Trial Rule 60. Of course, the party must file the motion within reasonable time and allege a meritorious claim or defense.

In *the Huntington National Bank* case, the court found that the bank was entitled to relief under 60(B)(8) for equitable reasons, such as its substantial interest in the real estate through its mortgage, its "excusable reason" for untimely responding, its quick action to set aside the default judgment once the complaint and summons were discovered, its significant loss if the default judgment were not set aside, and the minimal prejudice to *Car-X* should the case be reinstated. In this case, Dr. Baliga submits that the principles of equity, fairness and justice require that he be able to have a hearing on the substantive allegations and the merits of his meritorious defense for the following equitable reasons: (1) Dr. Baliga's quick action in preparing this objection and motion along with the proposed Answer and Request for Hearing; (2) a significant loss to be imposed upon Dr. Baliga if the default judgment is entered; (3) the public policy of the courts in this State to decide cases on the merit rather than procedural traps; and (4) the lack of prejudice to the IHRC should its motion be denied and the case go forward on the merits.

Further, and most importantly, the Indiana Supreme Court in the *Huntington National Bank* case made itself very clear, with two full paragraphs of discussion, that a default judgment is "an extreme remedy," and should not be used as a, "trap to be set by counsel to catch unsuspecting litigants" or as a "gotcha" device when an email or even a phone call to the opposing party inquiring about the receipt of service would prevent a windfall recovery and enable fulfillment of the Court's strong preference to resolve cases on the merits. *See Huntington National Bank*, 39 N.E.3d *at* 11, citing *Smith vs. Johnston,* 711 N.E.2d *at* 1259, 1264 (Ind. 1999); *Coslett v. Weddle Bros. Const. Co. Inc.*, 798 N.E.2d *at* 859, 861 (Ind. 2003). In discussing counsel using a default judgment as a trap or a "gotcha" device instead of emailing or calling opposing counsel, the court stated as follows:

> "This is especially true where, as here, it is easy to locate the opposing party or counsel, and just as simple to pick up a phone and remind counsel of an imminent deadline—a courtesy every attorney would like (and very well may need)

extended to him or her at some point in his or her career. Such a moment of professionalism and civility can reap significant dividends both in the resolution of the case itself and in the legal community in general. By fostering a spirit of fair competition and collegiality, courteous attorneys better serve their clients and greatly improve the quality of our profession...Though trial courts may continue to grant default judgments where a party undoubtedly fails to defend or prosecute a lawsuit, **we strongly urge attorneys not to resort to seeking such a measure** unless and until no other method would move the case forward." (Emphasis added).

Huntington National Bank 39 N.E.3d *at* 652.

IV. Conclusion

For the foregoing reasons, Dr. Baliga respectfully requests the Indiana Horse Racing Commission to reject the Recommended Order Granting Default Judgment, and that Dr. Baliga be allowed to defend the allegations against him on the merits, as is favored under Indiana law, and allow him to call witnesses and offer evidence as to his defense and that his right to both a hearing and judicial review, if necessary, be preserved.

Respectfully submitted,

SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945

By: _____
Peter J. Sacopulos, #14403-84
Counsel for Dr. Joseph Baliga

VERIFICATION

I hereby affirm under the penalties of perjury that the above and foregoing representations are true and correct to the best of my knowledge.

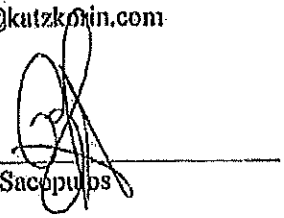
_____
Peter J. Sacopulos

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record via email and first class U.S. Mail, postage prepaid, this 28th day of December, 2016:

Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
Hnewell@hrc.IN.gov

The Honorable Bernard L. Pylitt
Administrative Law Judge
Katz & Korin
334 North Senate Avenue
Indianapolis, IN 46204-1708
bpylitt@katzkorin.com



Peter J. Sacopulos

SUMMARY SUSPENSION HEARING
BEFORE THE IHRC JUDGES AT HOOSIER PARK

INDIANA HORSE RACING COMMISSION STAFF, Petitioner, v. JOSEPH BALIGA, Respondent	)	In re: Judges' Ruling 16146

NOTICE OF APPEAL

Petitioner/Licensee Dr. Joseph Baliga, by counsel, Peter J. Sacopulos, pursuant to 71 IAC 10-2-9, hereby appeals the Judges' Ruling of November 1, 2016. In support of this appeal, Petitioner/Licensee Dr. Joseph Baliga states:

1. On November 1, 2016, the Standardbred Judges at Hoosier Park issued Ruling #16177, a true and exact copy of which is attached hereto, made a part thereof, and marked as Exhibit "A."

2. The Licensee and Petitioner herein, is Dr. Joseph Baliga, DVM; 12609 S. County Road 875 W, Daleville, IN 47334; his telephone number is 708-363-1932; and, pursuant to 71 IAC 10-2-9 he timely appeals the Judges' Ruling attached as Exhibit "A." Further, the Petitioner/Licensee's signature, as required by 71 IAC 10-2-9 (c) (1) is affixed below.

3. The Judges' Ruling that is being timely appealed, is in error for the following reasons:

   a. The Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff failed to provide any evidence of wrongdoing and failed to provide any testimony of any witness or person having personal knowledge of the alleged event(s) that are the subject of the summary suspension;

   b. The only testimony provided by a witness with personal knowledge of the circumstances surrounding the alleged event which would be the subject of the summary suspension and the Judges' Ruling of November 1, 2016, was provided by the undersigned Petitioner/Licensee who, under oath, categorically denied such allegation(s);

EXHIBIT
11 A11

c. Respondent requested samples of both blood serum and urine be taken, yet no test results were offered resulting in a lack of evidence of the subject Standardbred horse being administered any substance other than LASIX.

d. That the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff had the duty to prove, by a preponderance of the evidence, the alleged violation occurred but offered no evidence or testimony, of any witness with personal knowledge of any event in this case, to support the continuation of a summary suspension.

Respectfully Submitted,

Peter J. Sacopulos, #14403-84
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by first class U.S. Mail, postage prepaid, this 14th day of November, 2016:

Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
HNewell@hrc.in.gov

IHRC JUDGES
Hoosier Park
4500 Dan Patch Circle
Anderson, IN 46013
judges@hrc.in.gov

Peter J. Sacopulos

INDIANA HORSE RACING COMMISSION
APPEAL

State Form 48793 (R3 /7-13)

In Re: 16177 (Ruling Number)

DR. JOSEPH BALIGA
(Name of Appellant)

708-363-1932
(Telephone)

12609 S. Co. Rd. 875 W,Daleville
(Address) (City)

Indiana 47334
(State) (ZIP)

970519
(IN License Number)

07/19/1955
(Date of Birth *(month, day, year)*)

I hereby appeal the decision of the Judges/Stewards at Hoosier Park on 11/01/2016 (Date of Ruling *(month, day, year)*) in connection with the above referenced ruling.

Reasons for Appeal *(attach additional sheets if necessary)*: See attached Notice of Appeal that was timely filed with the Commission on 11/14/2016.

Peter J. Sacopulos, Counsel of Record for Appellant, Dr. Joseph Baliga.----This form is being submitted to supplement Petitioner's Notice of Appeal that was timely filed on 11/14/2016, which is attached.

(Signature of Appellant)

11-17-2016
(Date *(month, day, year)*)

If you will be represented by legal counsel and know the name of your attorney, please complete the following.

Name of Attorney: Peter J. Sacopulos, #14403-84

Mailing Address: 676 Ohio Street

Terre Haute, IN 47807

Telephone Number / Fax Number: 812-238-2565 / 812-238-1945

DO NOT WRITE BELOW THIS LINE.

All appeals shall be made in writing and must be filed with the Commission within fifteen (15) days after the Judges' or other Officials' ruling is served upon the Appellant.

(Signature of Judge/Steward or Other Official)

Distribution: Executive Director, Judges/Stewards, Appellant

Additional Exhibits belonging to the following matter can be viewed @ the IHRC Office.

Joseph Baliga, DVM

v.

Indiana Horse Racing Commission Staff