

INDIANA HORSE RACING COMMISSION  
BEFORE AN ADMINISTRATIVE LAW JUDGE

2018 JUN 22 A II: 28

INDIANA HORSE RACING COMMISSION  
STAFF,

Petitioner,

v.

DIDIEL OSORIO,

Respondent.

Administrative Complaint No. 217006

INDIANA  
HORSE RACING COMM.

**BRIEF OF COMMISSION STAFF IN SUPPORT OF COMMISSION AFFIRMATION  
OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE**

The Indiana Horse Racing Commission Staff (“Staff” or “Commission Staff”) respectfully submits this brief in support of its request that the Commission affirm the Recommended Order of Administrative Law Judge Ernest Yelton dated May 21, 2018 (“Recommended Order”), which is submitted pursuant to the Chairman’s June 7, 2018, Notice of Opportunity to Present Briefs and Oral Argument in the above-referenced matter.

**I. INTRODUCTION**

On August 10, 2017, the Stewards conducted a hearing and determined that Didiel Osorio (“Osorio” or “Respondent”) should be summarily suspended for being in possession of an electrical shocking device (“machine”) during Race 5 on the evening of August 10, 2017, at Indiana Grand. At the conclusion of the hearing, the Stewards issued Ruling No. IG-2017-1199, summarily suspending Osorio.

On August 31, 2017, the Stewards conducted a hearing on Osorio's request to set aside his summary suspension<sup>1</sup> of August 10, 2017. The Stewards issued Ruling No. IG-2017-1234, denying Osorio's request to set aside the summary suspension.

On September 8, 2017, the Commission Staff filed Administrative Complaint No. 217006 against Osorio, finding that the Respondent had violated the following seven Indiana Horse Racing Commission ("Commission") regulations and/or statutes: 71 Ind. Admin. Code 7.5-6-5, Ind. Code § 4-31-12-20, Ind. Code § 4-31-12-18, Ind. Code § 4-31-6-6, 71 Ind. Admin. Code 5.5-1-14(b)(4), 71 Ind. Admin. Code 5.5-1-14(b)(10), and 71 Ind. Admin Code 5.5-1-14(b)(16).

Osorio timely filed an Answer, and a Request for Hearing pursuant to 71 Ind. Admin. Code 10-3-20(d), on September 27, 2017. The Honorable Ernest Yelton was appointed to serve as the Administrative Law Judge on October 10, 2017 ("ALJ Yelton").

On January 18, 2018, Commission Staff deposed Osorio. Commission Staff filed a Motion for Summary Judgment on February 9, 2018. On March 9, 2018, Osorio timely filed his response to Commission Staff's Motion for Summary Judgment.

On May 21, 2018, ALJ Yelton issued his Proposed Findings of Fact, Conclusions of Law and Recommended Order. In his Recommended Order, ALJ Yelton found, among other things, that:

- After taking all the facts and circumstances under consideration, the Commission recommended that Osorio be fined \$5,000, that his license be suspended for ten (10) years and that the first place purse be forfeited.
- By using a battery or other electrical or mechanical instrument that may be used to affect the speed or actions of a horse in a race, Osorio violated IC 4-31-12-20(b)(3); IC 4-21-6-6; 71 IAC 5.5-1-14(b)(4); and 71 IAC 5.5-1-14(b) (10).

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<sup>1</sup> The August 31, 2017, Stewards Hearing focused solely on the issue of whether the summary suspension should remain in effect. The hearing did not address the merits of the case.

- The penalties of a five thousand dollar (\$5,000) fine, a ten (10) year suspension and of a forfeiture of the first place purse are all reasonable and appropriate.
- The Executive Director's ten (10) year recommended suspension and \$5,000 fine is reasonable, appropriate, and supported by substantial, reliable, and circumstantial evidence.

ALJ Yelton found that there was no genuine issue of material fact and the Indiana Horse Racing Commission ("Commission") was entitled to judgment as a matter of law, and granted the Motion for Summary Judgment pursuant to Ind. Code § 4-21.5-5.3-23(b).

Pursuant to Ind. Code § 4-21.5-3-29(d), either party generally has fifteen (15) days following receipt of the Recommended Order to file written exceptions with the Commission. Osorio timely filed his Objections to Administrative Law Judge's Finding of Fact, Conclusions of Law, and Recommended Order on June 5, 2018.

On June 7, 2018, Chairman Philip Borst issued his Notice of Opportunity to Present Briefs And Oral Argument giving notice that each party will have the opportunity to present briefs and oral arguments concerning the ALJ's Recommended Order.

## **II. RELEVANT LAW**

The Indiana Horse Racing enabling statute is at Title 4, Article 31 of the Indiana Code (Pari-mutuel Wagering on Horse Races). Pursuant to the authority established in Title 4, Article 31, the Commission has promulgated rules to regulate horse racing in Indiana. Those rules are codified at Title 71 of the Indiana Administrative Code. As an administrative agency, the Commission also derives authority from and is restricted by the Administrative Orders and Procedures Act ("AOPA") (Indiana Code Title 4, Article 21.5). The AOPA, at Ind. Code § 4-

21.5-3-1, also specifically references the Indiana Rules of Trial Procedure with respect to service of pleadings and other documents.

The provisions of the Indiana Code applicable to the matter at hand is as follows:

**IC 4-31-12-20**

**Possession of stimulants, hypodermic instrument, or electrical instrument used to affect actions of a horse; penalty**

Sec. 20. (a) This section does not apply to a veterinarian licensed by the commission.

**(b) The judges or the commission may suspend the license of a person who possesses:**

- (1) a drug or chemical that may be used as a stimulant; Indiana Code 2015
- (2) a hypodermic syringe, hypodermic needle, or other instrument that may be used for injection; or
- (3) a battery or other electrical or mechanical instrument that may be used to affect the speed or actions of a horse; on the premises of a permit holder.**

**IC 4-31-12-18**

**Revocation of license**

**Sec. 18. The commission may permanently revoke the license of a person who:**

- (1) injects a drug;
- (2) administers a drench; or
- (3) uses an electrical, a mechanical, or other appliance, except the ordinary whip; for the purpose of stimulating a horse or affecting its speed in a race.**

The following IHRC rules are most relevant to Osorio's disciplinary action:

**71 IAC 7.5-6-5 Post to finish**

Sec. 5.

...  
**(d) The following shall apply to disqualifications during the race:**

...  
**(4) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer, or other person authorized to handle or attend to a horse shall be prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify the horse.**

...  
**(f) The following shall apply to use of riding crops during the race:**

...  
**(3) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone or applied by anyone to a horse at any**

time on the grounds of the association during the meeting, whether in a race or otherwise.

...

#### **71 IAC 5.5-1-14 Grounds for sanctions**

**Sec. 14. (a) The commission may refuse or deny a license application, revoke or suspend a license, or otherwise penalize a licensee, or other person, if:**

- (1) the refusal, denial, revocation, suspension, or other penalty is in the public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering; and**
  - (2) any of the conditions listed in subsection (b) apply to the applicant or licensee or person.**
- (b) The conditions referred to in subsection (a) include, but are not limited to, the following:**

...

- (4) The person has violated or attempted to violate a provision of this article, these rules, or a law or rule with respect to horse racing in a jurisdiction.**

...

- (10) The person has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility.**

...

- (16) The person has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties.**

...

#### **71 IAC 7.5-7-4 Disqualification; purse redistribution**

**Sec. 4. (a) In the event any violation of these rules is determined after a race has been completed and the purse has been distributed, the following shall apply:**

- (1) The permit holder shall be required to redistribute purses out of purse account within ten (10) days after the redistribution is ordered.**
- (2) The purse shall be redistributed according to the final placings.**

...

(Emphasis added).

### III. ANALYSIS

**A. The recommended penalty in Administrative Complaint No. 217006 is reasonable, appropriate, and consistent with previous recommended penalties for possession of a machine.**

In Administrative Complaint No. 217006, Executive Director Mike Smith (“Director Smith”) recommended that the purse earned be redistributed and pursuant to 71 IAC 10-3-20, Osorio be fined five thousand dollars (\$5,000) and that Osorio shall be ineligible for licensure for a period of ten (10) years for possession of a machine. Osorio’s recommended penalty is reasonable, appropriate, and consistent with previous recommended penalties for possession of a machine.

In Administrative Complaint No. 215012, issued on February 5, 2016, against Juan Guerrero (“Guerrero”), alleging possession or use of a machine, the recommended penalty was that pursuant to 71 IAC 10-3-20, Guerrero be fined five thousand dollars (\$5,000) and that Guerrero shall be ineligible for licensure for a period of ten (10) years. On May 16, 2016, Administrative Law Judge Bernard Pylitt (“ALJ Pylitt”) issued his Findings of Fact, Conclusions of Law and Recommended Order ruling that Director Smith’s “proposed penalty in Administrative Complaint No. 215012 [was] appropriate, reasonable, and fair considering the factors used by the commission in previous cases, as well as the facts of this case.” Guerrero Order, pg. 33-34. Further, ALJ Pylitt recommended that Guerrero be suspended and remain ineligible for licensure for a period of ten (10) years, be fined five thousand dollars (\$5,000), and the purse be redistributed. *Id.* at 34. The Commission adopted the Recommended Order of the ALJ at its June 8, 2016 meeting. A copy of Administrative Complaint No. 215012 is attached hereto as Exhibit A.

In Administrative Complaint No. 213001, issued on January 3, 2013, against Ruben Serna (“Serna”), alleging possession or use of a machine, the recommended penalty was that pursuant to 71 IAC 10-3-20, Serna be fined five thousand dollars (\$5,000) and that Serna shall be ineligible for licensure for a period of ten (10) years. Serna signed a Settlement Agreement agreeing to five (5) year suspension and a \$7,500 fine. A copy of Administrative Complaint No. 213001 is attached hereto as Exhibit B.

In Administrative Penalty Preliminary Report No. PR 98012, issued on December 4, 1998, against Dean Sarvis (“Sarvis”), alleging possession or use of a machine, the recommended penalty was that pursuant to the provisions of 71 IAC 10-3-20, Sarvis be fined an additional four thousand dollars (\$4,000) and that Sarvis be suspended and ineligible for licensure for a period of ten (10) years in addition to the penalty (\$1,000 fine and sixty (60) day suspension) imposed by the Board of Stewards. The Commission fined Sarvis \$1,000 as recommended by the ALJ and suspended Sarvis for ten (10) years. A later Settlement agreement reduced the suspension to four (4) years. A copy of Administrative Penalty Preliminary Report No. PR 98012 is attached hereto as Exhibit C.

In all three previous cases involving a licensee and possession of a machine, the Commission Staff has recommended penalties of suspension and being ineligible for licensure for a period of ten (10) years, fines totaling five thousand dollars (\$5,000), and redistribution of purse<sup>2</sup>. Therefore, the recommended penalty in this case is appropriate, reasonable, and consistent with previous recommended penalties.

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<sup>2</sup> Purse redistribution was not recommended in the Serna case due to the factual circumstances. Specifically, the machine was not discovered after a race, and accordingly the Commission Staff could not identify in which race it might have been used.

Osorio obfuscates the issue by comparing the Commission Staff's recommended penalty to the final penalties imposed on the licensees after adjudication or settlement agreements, or both, were completed.

- The Final Order of the Commission, issued on June 23, 2016, adopting the Recommended Order of the ALJ, suspended Guerrero for ten (10) years, imposed a fine of \$5,000, unplaced the horse Stone Toasted, and redistributed the purse.
- Serna is distinguished by the circumstances surrounding the discovery of the machine in question. In the Serna case, the machine was found in his dorm room, and not on his person. Additionally, Serna's fine increased by \$2,500 in the Settlement Agreement.
- The Sarvis matter is distinguished by the fact that the ALJ recommended a ten (10) year suspension and a fine of \$1,000, which the Commission approved. The reduction to four (4) years in a settlement agreement was approved approximately four years later.

The Commission Staff has been consistent in its recommended penalties. Osorio, like all other licensees who face discipline, had the opportunity to reach a settlement agreement with the Commission Staff, but no such agreement was reached.

Despite Osorio's claim, there are no mitigating circumstances. First, the ten (10) year penalty recommended by Commission Staff is the standard recommended penalty for possession of a machine, as shown by previous administrative complaints. It does not require any aggravating circumstances. Second, Osorio's claim to have been fully cooperative in this matter is incorrect. IHRC Investigator Antionette Sperle ("Investigator Sperle") discovered the device



in Osorio's possession. She stated that Osorio made multiple attempts to hide the machine, swapping it from hand to hand, and even putting it down his pants in a failed attempt to avoid being caught. Investigator Sperle asked Osorio to remove the machine from his pants for safety reasons while he was escorted to the jockey's room. Without responding, Osorio headed for the jockey's room. Upon arrival, Osorio was escorted to the paddock judge's unoccupied office. The Clerk of Scales Steve Cahill, Security Supervisor Mike Shaw ("Shaw"), and Sheriff's Deputy Mike Cleveland ("Deputy Cleveland") all assisted in the search of Osorio. The door closed and minutes later Shaw came out holding the machine and showed it to Investigator Sperle. Deputy Cleveland stated the machine was found in Osorio's right pant leg, and Osorio had still tried to hide it in his hand. (Affidavit of Antoinette Sperle, pgs. 2-3, attached hereto as Exhibit D). As shown by Investigator Sperle's affidavit, Osorio was explicitly *uncooperative*, rather than cooperative as he has claimed.

Osorio's claim that the absence of machine violations on his Association of Racing Commissioners International (ARCI) Record does not support a ten (10) year suspension is unavailing. Ind. Code § 4-31-12-18(3) allows the Commission to permanently revoke the license of a person who uses a machine. The statute does not contemplate the history of the violator in imposing a permanent revocation of the person's license. The possession or use of a machine is one of the cardinal sins of horse racing. The device inflicts pain upon the equine athletes, can result in a horse going off course and risking the health and safety of other horses and riders, and is an attempt to cheat.

Osorio's claim that his admission to the violation should be a mitigating factor is also futile. While admirable, Osorio's admission after the fact does not lessen the severity of the

violation. By having the machine, Osorio violated Commission rules, engaged in conduct that is against the best interest of horse racing, compromises the integrity of operations at the track, and created a safety issue.

**B. The recommended penalty in Administrative Complaint No. 217006 is reasonable and appropriate given Osorio's admission of possessing a machine and; therefore, not arbitrary and capricious.**

The crux of Respondent's arbitrary and capricious claim is the magnitude of Osorio's interest in avoiding suspension and lack of sufficient evidence to support the conclusion that the penalties are reasonable and appropriate. "A decision is deemed arbitrary and capricious when it is 'patently unreasonable and is made without consideration of the facts and in total disregard of the circumstances. . . .'" *Ind. Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 380 (Ind. 2017) (citing *A.B. v. State*, 949 N.E.2d 1204, 1217 (Ind. 2011) (internal quotations omitted)). "Such a decision will also lack any basis which might lead a reasonable person to the same conclusion." *Id.* "In other words, '[a]n action of an administrative agency is arbitrary and capricious only where there is no reasonable basis for the action.'" 79 N.E.3d 371 (citing *Breitweiser v. Ind. Office of Env'tl. Adjudication*, 810 N.E.2d 699, 702 (Ind. 2004)).

71 IAC 10-3-12(f) provides that the ALJ may use the special skills and knowledge of the commission staff in evaluating the evidence. Subsection (f) further provides that "the commission staff may recommend the imposition of penalties and sanctions authorized by statute which the administrative law judge may in its discretion accept, reject, or modify." Director Smith commenced his duties on February 1, 2016, and is the highest ranking member of the Commission Staff. He is responsible for ensuring that that pari-mutuel horse racing in Indiana is conducted with the highest of standards and the greatest level of integrity. Decades of

experience as a racehorse owner and trainer, and member of the State of Indiana General Assembly are also relevant to Director Smith's current regulatory position. Director Smith has a familiarity with the rules and regulations regarding the possession and use or both of a machine or electrical instrument by a jockey.

Pursuant to 71 IAC 10-3-20(b), Director Smith is responsible for proposing a penalty, including any suspension or fine, for a violation of the Commission's statutes and administrative rules. In determining the proposed administrative penalty, Director Smith is required to consider the seriousness of the alleged violation. After reviewing the evidence outlined in Administrative Complaint No. 217006, it was Director Smith's opinion a proposed penalty which included a ten (10) year suspension and a \$5,000 fine was appropriate. In determining the proposed penalty, he considered the following factors:

- Possession of a machine is expressly forbidden by state statute and Commission regulation.
- Possession of a machine negatively impacts the integrity of the sport. It upsets fair play in both betting on a horse race and the athletic contest.
- Use of a machine is cruel to the animal.
- Use of a machine is a safety issue because you cannot know how an electrical jolt to a horse, whether during a race or during training, will cause the horse to behave. A horse may react violently, posing a threat not only to the horse and jockey, but to any person or horse in the immediate vicinity.

ALJ Yelton's Recommended Order was issued after considering the facts and circumstances of Osorio's machine possession and therefore, is not patently unreasonable. The

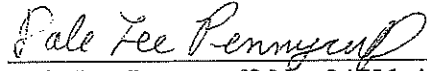
three other administrative complaints involving possession or use of a machine (Guerrero, Serna, and Sarvis) clearly provide a basis upon which a reasonable person would reach the conclusion that a ten (10) year suspension and \$5,000 fine is the standard recommended penalty for possession of a machine during a race. Commission Staff has a reasonable basis for asking Osorio be suspended for ten (10) years and be fined \$5,000 for possession of a machine, the recommended penalty in the three previous administrative complaints for machine violations, *supra*. Furthermore, the machine violation triggers 71 IAC 7.5-7-4(a)(2) which requires the purse be redistributed.

Osorio's claim that his magnitude of interest in avoiding suspension makes ALJ Yelton's Recommended Order arbitrary and capricious is unavailing. The magnitude of person's interest in an agency decision is not considered when the agency decision is being reviewed to determine if it was arbitrary or capricious. In fact, most every licensee who faces discipline has an interest in not being punished, whether facing a monetary fine, a short suspension of their license, or a long-term consequence.

#### **IV. CONCLUSION**

ALJ Yelton's Recommended Order is well-supported by fact and law. The ALJ's proposed penalty is consistent with the Commission's statutorily mandated responsibility of protecting the integrity of horse racing and pari-mutuel wagering, and is consistent with the penalty sought in the three prior cases in Indiana involving electrical shocking devices. Accordingly, Commission Staff respectfully requests that the Commission enter a Final Order affirming in all respects ALJ Yelton's Recommended Order of May 21, 2018.

Respectfully submitted,



Dale Lee Pennycuff, No. 34731-49  
Counsel

Indiana Horse Racing Commission  
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Indianapolis, IN 46204

*Counsel for Indiana Horse Racing Commission Staff*


CERTIFICATE OF SERVICE

I hereby certify that before noon on June 22, 2018, I served the following parties with the foregoing Brief, via email and U.S. Mail, first class, postage paid:

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The Honorable Ernest Yelton  
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Counsel  
Indiana Horse Racing Commission

ADMINISTRATIVE PENALTY COMPLAINT

RE: Juan Guerrero  
239 Granite Drive  
Lucama, NC 27854

ADMINISTRATIVE COMPLAINT NO.: 215012

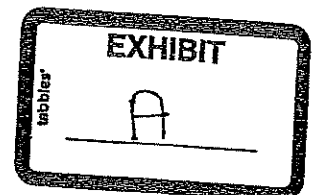
**AUTHORITY**

71 IAC 10-3-20 provides that the Commission has delegated to the Executive Director the authority to prepare and issue reports recommending the assessment of an administrative penalty, including fines and other proposed sanctions. Specifically, 71 IAC 10-3-20(b) states:

The commission delegates to the executive director the authority to prepare and issue administrative complaints pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines that a violation has occurred, the executive director shall issue an administrative complaint that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction, including suspension, or revocation. Furthermore, when the judges have issued a ruling that a violation has occurred, the executive director may issue an administrative complaint identifying the underlying ruling that serves as the basis for the administrative complaint, the fact that an administrative penalty is to be imposed, the additional amount to be assessed, and any other proposed sanction including additional suspension or revocation. The amount of the penalty may not exceed five thousand dollars (\$5,000) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation.

**NOTICE:** The person who is the subject of this Administrative Complaint has twenty (20) days after the issuance of this report to make a written request for a hearing pursuant to 71 IAC 10-3-20(d).

The remainder of that section outlines how that report is to be served and how a person against whom penalties and other sanctions are assessed may contest the recommendation of the Executive Director.



## REVIEW OF INFORMATION

1. The 2015 Indiana Horse Racing Commission ("IHRC") jockey license application form signed and submitted by Juan Guerrero on or about April 7, 2015.
2. The Indiana Horse Racing Commission Pari-Mutuel Rules for Flat Racing (71 IAC) and any relevant provisions of the Indiana Pari-Mutuel Wagering on Horse Racing Act found at IC 4-31-1, et seq.
3. Official program pages from Race 10 run on August 11, 2015 at Indiana Grand, hereafter referred to as Exhibit 1.
4. Electrical device discovered on the roof (get name of specific building) on August (get date it was found), 2015. The device is currently being held by IHRC Security pursuant to chain of custody requirements and will be made available as required by the appropriate trial rules.
5. Video of Race 10 on August 11, 2015 at Indiana Grand.
6. Transcript of Indiana Horse Racing Commission Hearing before the Board of Stewards on August 12, 2015, hereafter referred to as Exhibit 2.
7. Transcript of Indiana Horse Racing Commission Hearing before the Board of Stewards on August 27, 2015, hereafter referred to as Exhibit 3.
8. Indiana Horse Racing Commission Steward's Ruling No. 15576, hereafter referred to as Exhibit 4.
9. Association of Racing Commissioners International (ARCI) Comprehensive Ruling Report on Juan Guerrero, hereafter referred to as Exhibit 6.

## FINDINGS OF FACT

1. Mr. Guerrero was duly licensed by the IHRC as a jockey in 2015.
2. As a licensee, Mr. Guerrero is subject to IHRC rules and regulations.
3. On or about August 11, 2015, Commission Staff received information that Mr. Guerrero would be using an electrical shocking device during Race 10 on Trainer Randy Smith's quarter horse. That information also stated that Guerrero would be wearing gloves with holes cut into the palm through which the metal prongs of the shocker would stick to make contact with the horse.



4. After Race Number 10, Commission Investigator, Kevin Tompkins, advised Guerrero he would be escorted the paddock to search him for the electrical shocking device. Tompkins observed Guerrero attempt to obfuscate an item in his hand.
5. While en route to the paddock, Guerrero suddenly bolted away from Tompkins toward the jockey's quarters. Tompkins took chase after Guerrero and observed him throwing an item toward the casino building.
6. While searching the grounds on August 12, 2015, Tompkins located an electrical shocking device on the casino building.
7. The gloves worn by Guerrero in Race 10 had two holes punched into it as described in the information provided to Commission Staff.
8. Mr. Guerrero violated IAC 7.5-6-5(d)(4) and IAC 7.5-6-5(f)(3).
9. Mr. Guerrero violated Ind. Code 4-31-12-20.
10. Mr. Guerrero's conduct falls within the provisions of 71 IAC 5.5-1-14(b)(4), 71 IAC 5.5-1-14(b)(10), and 71 IAC 5.5-1-14(b)(16).

#### RECOMMENDED PENALTY

WHEREAS Commission regulation 71 IAC 2-11-1 specifically states:

In assessing penalties, the Commission shall consider the severity of the violation and may consider the licensee's record, including the number and recency of past rulings in Indiana or other racing jurisdictions with special notice taken of the same or related offenses. The licensee's criminal record may also be considered.

WHEREAS the findings of fact clearly demonstrate that penalties be imposed.

IT IS HEREBY RECOMMENDED that pursuant to 71 IAC 10-3-20, Mr. Guerrero be fined five thousand dollars (\$5,000) and that Mr. Guerrero shall be ineligible for licensure for a period of ten (10) years.

During the period of the suspension and ineligibility for licensure, Mr. Guerrero will be excluded and denied access to all grounds under the jurisdiction of the Indiana Horse Racing Commission.

  
\_\_\_\_\_  
Michael Smith, Executive Director

Date: 2-5-16

Indiana Horse Racing Commission

cc: IHRC Stewards  
Terry Richwine

INDIANA HORSE RACING COMMISSION  
1302 North Meridian Street, Suite 172  
Indianapolis, IN 46202  
Tel: 317-233-3119  
Fax: 317-233-4470

ADMINISTRATIVE PENALTY COMPLAINT

2013 JAN -4 A 11:45

RE: Ruben Serna  
423 North Broadway Street  
Joliet, IL 60435

ADMINISTRATIVE COMPLAINT NO.: 213001

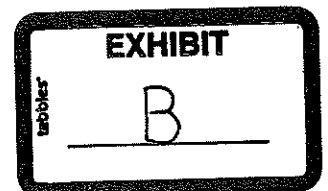
**AUTHORITY**

71 IAC 10-3-20 provides that the Commission has delegated to the Executive Director the authority to prepare and issue reports recommending the assessment of an administrative penalty, including fines and other proposed sanctions. Specifically, 71 IAC 10-3-20(b) states:

The commission delegates to the executive director the authority to prepare and issue administrative complaints pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines that a violation has occurred, the executive director shall issue an administrative complaint that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction, including suspension, or revocation. Furthermore, when the judges have issued a ruling that a violation has occurred, the executive director may issue an administrative complaint identifying the underlying ruling that serves as the basis for the administrative complaint, the fact that an administrative penalty is to be imposed, the additional amount to be assessed, and any other proposed sanction including additional suspension or revocation. The amount of the penalty may not exceed five thousand dollars (\$5,000) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation.

**NOTICE:** The person who is the subject of this Administrative Complaint has twenty (20) days after the issuance of this report to make a written request for a hearing pursuant to 71 IAC 10-3-20(d).

The remainder of that section outlines how that report is to be served and how a person against whom penalties and other sanctions are assessed may contest the recommendation of the Executive Director.



## REVIEW OF INFORMATION

1. The 2012 Indiana Horse Racing Commission ("IHRC") jockey license application form signed and submitted by Ruben Serna on May 7, 2012.
  2. The 2012 IHRC exercise rider license application form signed and submitted by Ruben Serna on April 5, 2012.
  3. The Indiana Horse Racing Commission Pari-Mutuel Rules for Flat Racing Racing (71 IAC) and any relevant provisions of the Indiana Pari-Mutuel Wagering on Horse Racing Act found at IC 4-31-1, et seq.
  4. Official program pages from Races 9, 10 and 11 run on September 14, 2012 at Hoosier Park, hereafter referred to as Exhibit 1.
  5. Electrical device discovered at the Starting Gate of Hoosier Park on September 14, 2012, hereafter referred to as Exhibit 2.
  6. Electrical device discovered in the dorm room of Manuel and Ruben Serna on September 20, 2012, hereafter referred to as Exhibit 3.
  7. One partial roll of Nexcare First Aid Tape discovered in the dorm room of Manuel and Ruben Serna on September 20, 2012, hereafter referred to as Exhibit 4.
  8. Hoosier Park Incident Report dated September 20, 2012, hereafter referred to as Exhibit 5.
  9. Indiana Horse Racing Commission Case Report (Case No. 12-090009A), hereafter referred to as Exhibit 6.
  10. Transcript of Indiana Horse Racing Commission Hearing before the Board of Stewards on September 21, 2012, hereafter referred to as Exhibit 7.
  11. Indiana Horse Racing Commission Steward's Ruling No. 12690, hereafter referred to as Exhibit 8.
  12. Wolf Technical Services, Inc. Evidence Inspection Report, dated December 12, 2012, hereafter referred to as Exhibit 9.
  13. Association of Racing Commissioners International (ARCI) Comprehensive Ruling Report on Ruben Serna, hereafter referred to as Exhibit 10.
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## FINDINGS OF FACT

1. Mr. Serna was duly licensed by the IHRC as an exercise rider and a jockey in 2012.
2. As a licensee, Mr. Serna is subject to IHRC rules and regulations.
3. On or about September 14, 2012, after Race Number 9, an electrical device was discovered at the starting gate of Hoosier Park. Ruben Serna rode in three of the 11 races that night, including Race Number 9.
4. On or about September 20, 2012, a distinct additional electrical device was discovered in the dorm room of Manuel Serna, where Ruben Serna resides.
5. Mr. Serna violated IAC 7.5-6-5(d)(4) and IAC 7.5-6-5(f)(3).
6. Mr. Serna violated Ind. Code 4-31-12-20.
7. Mr. Serna's conduct falls within the provisions of 71 IAC 5.5-1-14(b)(4) and 71 IAC 5.5-1-14(b)(10).

## RECOMMENDED PENALTY

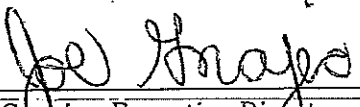
WHEREAS Commission regulation 71 IAC 2-11-1 specifically states:

In assessing penalties, the Commission shall consider the severity of the violation and may consider the licensee's record, including the number and recency of past rulings in Indiana or other racing jurisdictions with special notice taken of the same or related offenses. The licensee's criminal record may also be considered.

WHEREAS the findings of fact clearly demonstrate that penalties be imposed.

**IT IS HEREBY RECOMMENDED** that pursuant to 71 IAC 10-3-20, Mr. Serna be fined five thousand dollars (\$5,000) and that Mr. Serna shall be ineligible for licensure for a period of ten (10) years.

During the period of the suspension and ineligibility for licensure, Mr. Serna will be excluded and denied access to all grounds under the jurisdiction of the Indiana Horse Racing Commission.

  
\_\_\_\_\_  
Joe Gorajec, Executive Director  
Indiana Horse Racing Commission

Date: 1/3/13

cc: IHRC Stewards  
Terry Richwine

INDIANA HORSE RACING COMMISSION  
1302 North Meridian Street, Suite 172  
Indianapolis, IN 46202  
Tel: 317-233-3119  
Fax: 317-233-4470

# ADMINISTRATIVE PENALTY

## PRELIMINARY REPORT

RE: Dean A. Sarvis  
933 Jenny Court  
Florence, KY 41042

Preliminary Report #: PR 98012

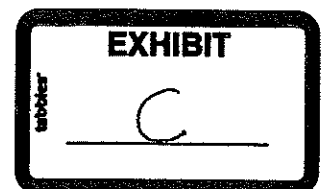
### AUTHORITY

71 IAC 10-3-20 provides that the Commission has delegated to the Executive Director the authority to prepare and issue reports recommending the assessment of an administrative penalty, including fines and other proposed sanctions. Specifically, 71 IAC 10-3-20 (b) states:

The commission delegates to the executive director the authority to prepare and issue preliminary reports pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines the violation has occurred, the executive director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction. The amount of the penalty may not exceed Five Thousand Dollars (\$5,000.00) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation.

**NOTICE:** The person who is the subject of this Administrative Penalty has twenty (20) days after the issuance of this report to make a written request for a hearing pursuant to 71 I.A.C. 10-3-20 (d).

The remainder of that section outlines how that report is to be served and how a person against whom penalties and other sanctions are assessed may contest the recommendation of the Executive Director.



## REVIEW OF INFORMATION

1. The 1998 Indiana Horse Racing Commission occupational license application signed by Dean Sarvis.
2. The pari-mutuel statutes - Title 4, Article 31.
3. Indiana Horse Racing Commission rules governing pari-mutuel racing in Indiana found at IAC Title 71.
4. Indiana Horse Racing Commission ruling # 98599.
5. Notice of hearing for Dean Sarvis issued by Leland Seba on November 22, 1998.
6. Transcript of hearing before the Board of Stewards on November 25, 1998.
7. Indiana Horse Racing Commission Ruling # 98606.
8. Electrical device referred to as "exhibit 1" at the November 25, 1998 hearing.
9. Miscellaneous decisions from Illinois and Arizona imposing sanctions for possession of electrical devices.

## FINDINGS OF FACT

1. Dean Sarvis was duly licensed as a jockey in 1998.
2. Mr. Sarvis violated IAC 7.5-6-5 (d) 4 and IAC 7.5-6-5 (f) 2.
3. Mr. Sarvis violated IC 4-31-12-20.
4. Mr. Sarvis' conduct falls within the provisions of 71 IAC 5.5-1-14 and specifically within the provisions of subsections (b) (4) & (10).



**RECOMMENDED PENALTY**

WHEREAS Commission regulation 71 IAC 2-11-1 specifically states:

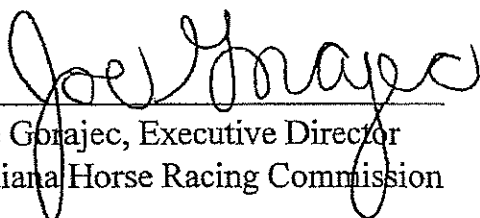
"In assessing penalties, the Commission shall consider the severity of the violation .....

WHEREAS the finding of facts clearly demonstrate that penalties be imposed.

IT IS HEREBY RECOMMENDED that pursuant to the provisions of 71 IAC 10-3-20, Mr. Sarvis be fined an additional four thousand (\$4,000) dollars and be suspended and be ineligible for licensure for a period of ten (10) years in addition to the penalty (\$1,000 fine and sixty (60) day suspension) imposed by the Board of Stewards.

During the period of the suspension and ineligibility for licensure, Mr. Sarvis will be excluded and denied all grounds under the jurisdiction of the Indiana Horse Racing Commission.

IT IS FURTHER RECOMMENDED that in future years any application for licensure be presented in person to the Executive Director.

  
\_\_\_\_\_  
Joe Gorajec, Executive Director  
Indiana Horse Racing Commission

Date: 12/4/98

cc: Robin Babbitt, Esq.  
Jeffrey Lockwood, Esq. (via certified mail)  
Dean Sarvis (via certified mail)

INDIANA HORSE RACING COMMISSION  
ISTA Center - Suite 412  
150 West Market Street  
Indianapolis, Indiana 46204  
Tel: (317) 233-3119  
Fax: (317) 233-4470

## NOTICE

The person who is the subject of this Administrative Penalty has twenty (20) days after the issuance of this report to make a written request for a hearing pursuant to 71 I.A.C. 10-3-20 (d). Additionally, if the person who is the subject of this Administrative Penalty, no later than ten (10) days after the issuance of this preliminary report, delivers or has delivered to the Executive Director of the Commission materials which should be considered in mitigation of the proposed penalty, then the Executive Director may, in his discretion, either withdraw the Administrative Report issued, modify or amend it as he sees fit, or allow the report to stand as originally issued. In the absence of specific notice to the contrary, the person who is the subject of this Administrative Penalty is to assume that the report will stand as originally issued.

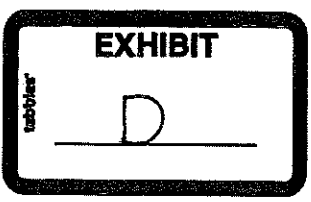
STATE OF INDIANA  
HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	IN RE: ADMINISTRATIVE
v.	)	COMPLAINT No. 217006
	)	
DIDIEL OSORIO,	)	
Respondent	)	
	)	

**AFFIDAVIT OF ANTIONETTE SPERLE**

Comes now the undersigned, and being duly sworn upon his oath, alleges and says as follows:

1. I am an adult, over eighteen (18) years of age, of sound mind, and have personal knowledge of and am competent to testify as to the matters contained herein.
2. I am an investigator for the Indiana Horse Racing Commission ("IHRC").
3. I have worked in this position since April 2012.
4. On August 10, 2017, at approximately 4:00 p.m., I watched the horses for Race 5 at Indiana Grand Racing and Casino ("Indiana Grand") load into the starting gate on the turf.
5. When the No. 9 horse, Deep Explorer, walked by to enter the starting gate, I noticed the jockey, Didiel Osorio ("Osorio), had his left hand arched up at an odd angle while holding the reigns.
6. After Race 5 went off, I walked to the Winner's Circled and watched Osorio get off the No. 9 horse, Deep Explorer.
7. Osorio's left hand was still in the arched position.
8. I observed Osorio shake the trainer's hand with his (Osorio's) right hand, and take the tack off the horse Deep Explorer, which Osorio draped over his (Osorio's) left hand and arm.



9. I was standing outside of the Winner's Circle, but next to the scales behind the entrance gate, at approximately 4:05 p.m. when Osorio handed his tack to his valet, Ramon Rechy, at which time I observed two metal prongs sticking out of the glove on his left hand.

10. As Osorio stepped out of the Winner's Circle, I ask him to remove his gloves and hand them to me. I also ask Steve Cahill ("Cahill"), Clerk of Scales, who was about two feet away, to come closer so he could be a witness.

11. I said to Osorio: "I know you have a machine in your glove, I saw it clear as day. Just take off your gloves and hand it to me."

12. Osorio took off his right glove first and handed it to me. I told him to take off his other glove. Osorio used his right hand to take off his left glove and at that time I witnessed Osorio take the machine from his left glove and place it into his right hand, which he immediately closed.

13. Osorio handed me the left glove, in which I observed two holes in the palm, and then reached his right hand behind his back.

14. I reached for Osorio's right wrist in an attempt to recover the machine, but was not fast enough. I witnessed Osorio quickly put the machine in the back of his pants on the right side.

15. For safety reasons, I told Osorio to remove the machine from his pants and hand it over as he would be escorted to the jockey's room. Osorio did not respond, but did start walking to the jockey's room.

16. I asked Cahill to walk with Osorio and I back to the jockey's room, which he did.

17. When we arrived at the jockey's room, Cahill, Osorio, and I walked immediately to the far room on the right, the paddock judge's office, which was unoccupied.

18. I ask Security Supervisor Mike Shaw ("Shaw") to assist in the search of Osorio since Osorio would need to remove his pants to get the machine, and I am the opposite sex of

Osorio. Sheriff's Deputy Mike Cleveland ("Deputy Cleveland") went into the room with Osorio, Cahill and Shaw.

19. I informed Cahill, Shaw and Deputy Cleveland that I was sure Osorio had a machine in his pants and ask them to search Osorio.

20. The door closed and minutes later Shaw came out holding the machine and showed it to me.

21. Deputy Cleveland stated the machine was found in Osorio's right pant leg, and Osorio had still tried to hide it in his hand.

22. I notified the Stewards immediately after the machine was recovered at approximately 4:12 p.m.

23. Shaw and I escorted Osorio to the Stewards' office, where they met with him at 4:25 p.m. Leandro Goncalves was present as Osorio's representative.

24. I was present during said meeting when Osorio explained that he did something stupid and he was not in the right frame of mind since he had just come back from a recent suspension.

25. Osorio was summarily suspended by the stewards at that meeting.

Further Affiant Sayeth Not.

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

2/8/18

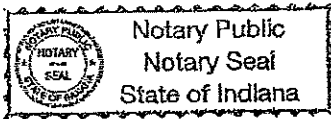
Date

Antionette Sperle

Antionette Sperle

STATE OF INDIANA )  
 ) SS:  
COUNTY OF SHELBY )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Mrs. Antionette Sperle and acknowledged the execution of the foregoing instrument this 8<sup>th</sup> day of February, 2018.



Melissa Ball  
Notary Public

Melissa Ball  
Printed Name

My Commission Expires:

July 17, 2024

County of Residence:

Johnson