

# **AGENDA ITEM NO. 1:**

Consideration of 2017 Application for Registration of the Indiana Horsemen's Benevolent & Protective Association, Incorporated.

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA  
HORSE RACING COMMISSION

2016 DEC - 5 P 3:14

IN RE:  
2017 Application For Registration of Indiana )  
Horsemen's Benevolent & Protective Association, Inc. )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2016 APPLICATION FOR  
REGISTRATION OF INDIANA HORSEMEN'S BENEVOLENT & PROTECTIVE  
ASSOCIATION PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter "the Commission") on an Application for Approval as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2017 [hereinafter "the Application"], submitted by the Indiana Horsemen's Benevolent & Protective Association, Inc. (hereinafter "the Applicant" or "IHBPA") on or about September 1, 2016. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*:

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Tuesday, December 20, 2016, at 9:30 a.m., *or* as soon as this matter advances on the Commission's agenda during its regularly scheduled meeting which will commence at 9:30 a.m. in the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205. The Hearing will relate to the following Application that was filed with the Commission on or about September 1, 2016:

2017 Application for Registration of Indiana Horsemen's Benevolent & Protective Association, Inc. Pursuant to 71 IAC 13-1-1 *et seq.*

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

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1- *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Thomas Weatherwax, Chairman; Greg Schenkel, Vice Chairman; George Pillow, Susie Lightle, and Bill McCarty, Members. Lea Ellingwood, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Mike Smith, Executive Director, will also appear for the Indiana Horse Racing Commission Staff. Holly Newell, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Ms. Ellingwood may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing,

and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 North Meridian, Suite 175, Indianapolis, Indiana 46204 (tel. no. (317) 233-3119).

### PRE-HEARING ORDER

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

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

The Commission will consider IHBPA's 2017 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC sections 13-1-1 *et seq.* filed with the Commission on or about September 1, 2016, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2017 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Time Line.

a. Hearing Date and Time.

The hearing will commence at the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205, on Tuesday, December 20, 2016, at 9:30 a.m. EST or as soon as it advances on the agenda of the Commission meeting commencing at 9:30 a.m. EST. This matter will be heard and will continue, with appropriate recesses until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of IHBPA's 2010, 2011, 2012, 2013, 2014, 2015, and 2016 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to IHBPA's 2010-2016 Applications for Registration, including, but not limited to the Amended Commission Staff Report. NOTE: No substantive changes to the Application made after Tuesday, December 13, 2016 will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be distributed to the Applicant, on or before the close of business on Wednesday, December 14, 2016.

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

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Wednesday, December 14, 2016. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any records of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibits to which it objects on or before noon on Thursday, December 15, 2016. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibits Lists of Applicant.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit Lists are to be filed with the Commission on or before noon on Tuesday, December 13, 2016. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Tuesday, December 13, 2016. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced into the record by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Tuesday, December 13, 2016.

g. Issuance of Subpoenas.

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

III. Matters Relating to the Conduct of the Hearing.

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

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

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

b. Hearing to be Conducted under Oath.

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

c. Staff Review and Presentation of Findings.

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

d. Application Hearing Time Schedule.

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

Opening Statement of Applicant	Up to 10 minutes
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Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statement	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

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

f. Commission Free to Ask Questions.

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

g. Individuals Requesting Time to Speak to the Application.

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

IV. Notice of Pre-Hearing Order.

This Notice of Hearing and Pre-Hearing Order will be served within nine days of its issuance, by first class mail, to the individuals and organizations identified on the list which is attached and identified as Exhibit "A".

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

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 30<sup>th</sup> day of November, 2016.




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Thomas Weatherwax, Chair  
On Behalf of the Indiana Horse Racing Commission

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing has been served upon the following parties by first class United States mail, postage prepaid, this 5th day of December, 2016.

Thomas K. Weatherwax  
3012 Woodland Drive  
Logansport, IN 46947

Greg Schenkel  
1046 Carter's Grove  
Indianapolis, IN 46260

George E. Pillow, Jr.  
4005 Vincennes Road  
Indianapolis, IN 46268

Susie Lightle  
11582 N. 980 W.  
Greenfield, IN 46143

William D. McCarty  
4965 W. Woodland Dr.  
Bloomington, IN 47404

Mike Smith, Executive Director  
INDIANA HORSE RACING COMMISSION  
1302 N. Meridian, Suite 175  
Indianapolis, IN 46202

Steven C. Shockley, Esq.  
TAFT STETTINIUS & HOLLISTER LLP  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204

Joseph Davis  
IHBPA President  
1682 Asher Ct.  
Hebron, IN 41048

Michael R. Brown  
IHBPA Executive Director  
32 Hollaway Blvd.  
Brownsburg, IN 46112



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# **AGENDA ITEM NO. 2:**

Consideration of 2017 Application for Registration of the Indiana Standardbred Association.



STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:  
2017 Application For Registration of )  
Indiana Standardbred Association )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

INDIANA  
HORSE RACING COMMISSION  
2016 DEC -5 P 114

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2017 APPLICATION FOR  
REGISTRATION OF INDIANA STANDARDBRED ASSOCIATION  
PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association Pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2017 [hereinafter “the Application”], submitted by the Indiana Standardbred Association (hereinafter “the Applicant” or “ISA”) on or about August 30, 2016. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*:

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Tuesday, December 20, 2016, at 9:30 a.m., *or* as soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 9:30 a.m. in the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205. The Hearing will relate to the following Application that was filed with the Commission on or about August 30, 2016:

2017 Application for Registration of Indiana Standardbred Association,  
Pursuant to 71 IAC 13-1-1 *et seq.*

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

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1- *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Thomas Weatherwax, Chairman; Greg Schenkel, Vice Chairman; George Pillow, Susie Lightle, and Bill McCarty, Members. Lea Ellingwood, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Mike Smith, Executive Director, will also appear for the Indiana Horse Racing Commission Staff. Holly Newell, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Ms. Ellingwood may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing,

and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 North Meridian, Suite 175, Indianapolis, Indiana 46204 (tel. no. (317) 233-3119).

### PRE-HEARING ORDER

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

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

The Commission will consider ISA's 2017 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC sections 13-1-1 *et seq.* filed with the Commission on or about August 30, 2016, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2017 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Time Line.

a. Hearing Date and Time.

The hearing will commence at the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205, on Tuesday, December 20, 2016, at 9:30 a.m. EST or as soon as it advances on the agenda of the Commission meeting commencing at 9:30 a.m. EST. This matter will be heard and will continue, with appropriate recesses until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of ISA's 2010, 2011, 2012, 2013, 2014, 2015, and 2016 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ISA's 2010-2016 Applications for Registration. NOTE: No substantive changes to the Application made after Saturday, December 10, 2016, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be distributed to the Applicant, on or before the close of business on Wednesday, December 14, 2016.

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

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Wednesday, December 14, 2016. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any records of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibits to which it objects on or before noon on Thursday, December 15, 2016. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibits Lists of Applicant.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit Lists are to be filed with the Commission on or before noon on Saturday, December 10, 2016. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Saturday, December 10, 2016. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced into the record by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Saturday, December 10, 2016.

g. Issuance of Subpoenas.

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

III. Matters Relating to the Conduct of the Hearing.

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

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

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

b. Hearing to be Conducted under Oath.

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

c. Staff Review and Presentation of Findings.

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

d. Application Hearing Time Schedule.

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

Opening Statement of Applicant	Up to 10 minutes
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Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statement	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

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

f. Commission Free to Ask Questions.

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

g. Individuals Requesting Time to Speak to the Application.

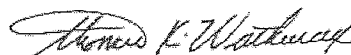
A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals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

IV. Notice of Pre-Hearing Order.

This Notice of Hearing and Pre-Hearing Order will be served within nine days of its issuance, by first class mail, to the individuals and organizations identified on the list which is attached and identified as Exhibit "A".

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

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 30<sup>th</sup> day of November, 2016.




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Thomas Weatherwax, Chair  
On Behalf of the Indiana Horse Racing Commission

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing has been served upon the following parties by first class United States mail, postage prepaid, this 5th day of December, 2016.

Thomas K. Weatherwax  
3012 Woodland Drive  
Logansport, IN 46947

Roger A. Young, Esq.  
40 W. Court St., Suite D  
Franklin, IN 46131

Greg Schenkel  
1046 Carter's Grove  
Indianapolis, IN 46260

Jack Kieninger  
ISA President  
311 American Legion Place  
Greenfield, IN 46140

George E. Pillow, Jr.  
4005 Vincennes Road  
Indianapolis, IN 46268

Susie Lightle  
11582 N. 980 W.  
Greenfield, IN 46143

William D. McCarty  
4965 W. Woodland Dr.  
Bloomington, IN 47404

Mike Smith, Executive Director  
INDIANA HORSE RACING COMMISSION  
1302 N. Meridian, Suite 175  
Indianapolis, IN 46202



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# **AGENDA ITEM NO. 3:**

Consideration of 2017 Application for Registration of the Indiana Thoroughbred Owners' and Breeders' Association.

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2017 Application For Registration of Indiana )  
Thoroughbred Owner's and Breeder's Association. )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

NOTICE OF HEARING AND PRE-HEARING ORDER ON 2017 APPLICATION FOR  
REGISTRATION OF INDIANA THOROUGHBRED OWNER'S AND BREEDER'S  
ASSOCIATION PURSUANT TO 71 IAC 13-1-1 ET SEQ.

This matter comes before the Indiana Horse Racing Commission (hereinafter "the Commission") on an Application for Approval as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2017 [hereinafter "the Application"], submitted by the Indiana Thoroughbred Owner's and Breeder's Association (hereinafter "the Applicant" or "ITOBA") on or about September 1, 2016. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*:

NOTICE OF HEARING

The Indiana Horse Racing Commission will hold a hearing on Tuesday, December 20, 2016, at 9:30 a.m., *or* as soon as this matter advances on the Commission's agenda during its regularly scheduled meeting which will commence at 9:30 a.m. in the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205. The Hearing will relate to the following Application that was filed with the Commission on or about September 1, 2016:

2017 Application for Registration of Indiana Thoroughbred Owner's and Breeder's Association, Pursuant to 71 IAC 13-1-1 *et seq.*

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

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1- *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Thomas Weatherwax, Chairman; Greg Schenkel, Vice Chairman; George Pillow, Susie Lightle, and Bill McCarty, Members. Lea Ellingwood, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Mike Smith, Executive Director, will also appear for the Indiana Horse Racing Commission Staff. Holly Newell, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Ms. Ellingwood may be contacted for



information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 North Meridian, Suite 175, Indianapolis, Indiana 46204 (tel. no. (317) 233-3119).

### PRE-HEARING ORDER

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

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

The Commission will consider ITOBA's 2017 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC sections 13-1-1 *et seq.* filed with the Commission on or about September 1, 2016, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2017 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Time Line.

a. Hearing Date and Time.

The hearing will commence at the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205, on Tuesday, December 20, 2016, at 9:30 a.m. EST or as soon as it advances on the agenda of the Commission meeting commencing at 9:30 a.m. EST. This matter will be heard and will continue, with appropriate recesses until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of ITOBA's 2010, 2011, 2012, 2013, 2014, 2015, and 2016 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ITOBA's 2010-2016 Applications for Registration. NOTE: No substantive changes to the Application made after Saturday, December 10, 2016, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be distributed to the Applicant, on or before the close of business on Wednesday, December 14, 2016.

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

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Wednesday, December 14, 2016. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any records of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibits to which it objects on or before noon on Thursday, December 15, 2016. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibits Lists of Applicant.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit Lists are to be filed with the Commission on or before noon on Saturday, December 10, 2016. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Saturday, December 10, 2016. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced into the record by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Saturday, December 10, 2016.

g. Issuance of Subpoenas.

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

III. Matters Relating to the Conduct of the Hearing.

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

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

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

b. Hearing to be Conducted under Oath.

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

c. Staff Review and Presentation of Findings.

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

d. Application Hearing Time Schedule.

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

Opening Statement of Applicant

Up to 10 minutes

Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statement	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

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

f. Commission Free to Ask Questions.

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

g. Individuals Requesting Time to Speak to the Application.

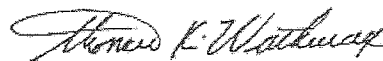
A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals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

IV. Notice of Pre-Hearing Order.

This Notice of Hearing and Pre-Hearing Order will be served within nine days of its issuance, by first class mail, to the individuals and organizations identified on the list which is attached and identified as Exhibit "A".

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

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 5th day of December, 2016.




---

Thomas Weatherwax, Chair  
On Behalf of the Indiana Horse Racing Commission

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing has been served upon the following parties by first class United States mail, postage prepaid, this 5th day of December 2016.

Thomas K. Weatherwax  
3012 Woodland Drive  
Logansport, IN 46947

Greg Schenkel  
1046 Carter's Grove  
Indianapolis, IN 46260

George E. Pillow, Jr.  
4005 Vincennes Road  
Indianapolis, IN 46268

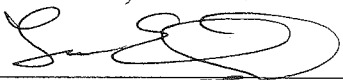
Susie Lightle  
11582 N. 980 W.  
Greenfield, IN 46143

William D. McCarty  
4965 W. Woodland Dr.  
Bloomington, IN 47404

Mike Smith, Executive Director  
INDIANA HORSE RACING COMMISSION  
1302 N. Meridian, Suite 175  
Indianapolis, IN 46202

Herb Likens  
ITOBA President  
7609 West 300 North  
Anderson, IN 46011

Pete Sacopulos  
Sacopulos Johnson & Sacopulos  
676 Ohio Street  
Terre Haute, IN 47807



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# **AGENDA ITEM NO. 4:**

Consideration of 2017 Application for Registration of the Quarter Horse Racing Association of Indiana, Incorporated.

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA  
HORSE RACING COMMISSION

2016 DEC - 5 P 3:15

IN RE:  
2017 Application For Registration of Quarter )  
Horse Racing Association of Indiana, Inc. )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2017 APPLICATION FOR  
REGISTRATION OF QUARTER HORSE RACING ASSOCIATION of INDIANA  
PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association Pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2017 [hereinafter “the Application”], submitted by the Quarter Horse Racing Association of Indiana (hereinafter “the Applicant” or “QHRAI”) on or about August 30, 2016. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*:

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Tuesday, December 20, 2016, at 9:30 a.m., *or* as soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 9:30 a.m. in the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205. The Hearing will relate to the following Application that was filed with the Commission on or about August 30, 2016:

2017 Application for Registration of Quarter Horse Racing Association of  
Indiana Pursuant to 71 IAC 13-1-1 *et seq.*

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

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1- *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Thomas Weatherwax, Chairman; Greg Schenkel, Vice Chairman; George Pillow, Susie Lightle, and Bill McCarty, Members. Lea Ellingwood, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Mike Smith, Executive Director, will also appear for the Indiana Horse Racing Commission Staff. Holly Newell, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Ms. Ellingwood may be contacted for

information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 North Meridian, Suite 175, Indianapolis, Indiana 46204 (tel. no. (317) 233-3119).

### PRE-HEARING ORDER

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

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

The Commission will consider QHRAI's 2017 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC sections 13-1-1 *et seq.* filed with the Commission on or about August 30, 2016, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2017 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

#### II. Application Process Time Line.

##### a. Hearing Date and Time.

The hearing will commence at the Farm Bureau Building at the Indiana State Fairgrounds, 1202 E. 38<sup>th</sup> Street, Indianapolis, Indiana 46205, on Tuesday, December 20, 2016, at 9:30 a.m. EST or as soon as it advances on the agenda of the Commission meeting commencing at 9:30 a.m. EST. This matter will be heard and will continue, with appropriate recesses until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

##### b. Incorporation by Reference of QHRAI's 2010, 2011, 2012, 2013, 2014, 2015, and 2016 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to QHRAI's 2010-2016 Applications for Registration. NOTE: No substantive changes to the Application made after Saturday, December 10, 2016, will be considered as part of the Application.

##### c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be distributed to the Applicant, on or before the close of business on Wednesday, December 14, 2016.



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

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Wednesday, December 14, 2016. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any records of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibits to which it objects on or before noon on Thursday, December 15, 2016. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibits Lists of Applicant.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit Lists are to be filed with the Commission on or before noon on Saturday, December 10, 2016. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Saturday, December 10, 2016. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced into the record by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Saturday, December 10, 2016.

g. Issuance of Subpoenas.

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

III. Matters Relating to the Conduct of the Hearing.

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

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

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

b. Hearing to be Conducted under Oath.

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

c. Staff Review and Presentation of Findings.

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

d. Application Hearing Time Schedule.

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

Opening Statement of Applicant	Up to 10 minutes
--------------------------------	------------------

Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statement	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

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

f. Commission Free to Ask Questions.

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

g. Individuals Requesting Time to Speak to the Application.

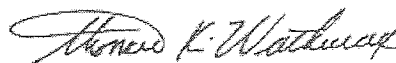
A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals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

IV. Notice of Pre-Hearing Order.

This Notice of Hearing and Pre-Hearing Order will be served within nine days of its issuance, by first class mail, to the individuals and organizations identified on the list which is attached and identified as Exhibit "A".

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

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 30<sup>th</sup> day of November, 2016.




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Thomas Weatherwax, Chair  
On Behalf of the Indiana Horse Racing Commission

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing has been served upon the following parties by first class United States mail, postage prepaid, this 5th day of December, 2016.

Thomas K. Weatherwax  
3012 Woodland Drive  
Logansport, IN 46947

Greg Schenkel  
1046 Carter's Grove  
Indianapolis, IN 46260

George E. Pillow, Jr.  
4005 Vincennes Road  
Indianapolis, IN 46268

Susie Lightle  
11582 N. 980 W.  
Greenfield, IN 46143

William D. McCarty  
4965 W. Woodland Dr.  
Bloomington, IN 47404

Mike Smith, Executive Director  
INDIANA HORSE RACING COMMISSION  
1302 N. Meridian, Suite 175  
Indianapolis, IN 46202

Roger Lewis  
QHRAI President  
3405 N. 525 E.  
Franklin, IN 46131

QHRAI  
P.O. Box 399  
Shelbyville, IN 46176



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# **AGENDA ITEM NO. 5\*:**

Consideration of the Administrative Law Judge's Amended Recommended Findings of Fact, Conclusions of Law and Recommended Order Granting IHRC Staff's Motion of Summary Judgment in the matter of Christopher Short.

\*For complete documentation, please contact our office.

## Ellingwood, Lea

---

**From:** chris short [hearne154@gmail.com]  
**Sent:** Friday, December 16, 2016 7:14 AM  
**To:** Ellingwood, Lea; Newell, Holly  
**Subject:** Appeal brief for Christopher Lee Short case 16107

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

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To whom it may concern

Thank you for your time on looking at this case for Christopher Lee Short.

I would like for the commission to look into my ruling on my dexamethaxone postive on Shocking Image.

The ruling on my postive was 15 days 1500 and the purse returned base on having a prior postive in ohio for a banamine overage which ruling was 1000.00 fine and the purse back.

My understanding from with my hearing with the judges at hoosier i get yhe days based on a prior this year that wasnt in Indiana.

This is my complaint as follows

Look at to other trainers ...

Trent Stohler 2 banamine positives at hoosier park....fine no days.

TIm Clevenger 2 bute positives at hoosier park ....fine no days

I have never been fined or suspended in the state of Indiana and my prior was in the state of Ohio. I understand it is a postive but it is a class 4 drug just as Mr Stohler and Mr Clevenger.All im asking is a level playing field of a fine and the purse back and no days if you would please look at this matter.

Best regards and again thank you for you time.

Christopher Short

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

2016 DEC 15 P 2: 38

CHRISTOPHER SHORT,

Petitioner,

v.

INDIANA HORSE RACING  
COMMISSION STAFF,

Respondent.

In Re: Appeal of Judges' Ruling No. 16107

INDIANA  
HORSE RACING COMMISSION

**BRIEF OF COMMISSION STAFF IN SUPPORT OF COMMISSION AFFIRMATION  
OF AMENDED PROPOSED FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER**

The Indiana Horse Racing Commission Staff ("Staff" or "Commission Staff") respectfully submits this brief in support of its request that the Commission affirm the Amended Proposed Findings of Facts, Conclusions of Law, and Recommended Order issued by Administrative Law Judge Ernest Yelton ("Judge Yelton") on November 29, 2016<sup>1</sup> ("Recommended Order"), which is submitted pursuant to the Chairman's December 12, 2016 Notice of Opportunity to Present Briefs and Oral Argument in the above-referenced matter.

**I. PROCEDURAL HISTORY**

On July 26, 2016, the Hoosier Park Judges conducted a hearing and issued Ruling No. 16107 against Petitioner Christopher Short ("Short"), concluding that he had violated Indiana Horse Racing Commission ("IHRC") medication rules, and penalizing him according to the Association of Racing Commissioners International Uniform Classification Guidelines and Foreign Substances and Recommended Penalties and Model Rule ("Model Penalties") then in

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<sup>1</sup> Judge Yelton issued Proposed Findings of Facts, Conclusions of Law, and Recommended Order on November 16, 2016, but that Recommended Order was amended on November 29, 2016. The November 29, 2016 Amended Recommended Order is ripe for Commission consideration.

effect. Short appealed Ruling No. 16107, and the matter was assigned to ALJ Yelton for hearing. On September 21, 2016, Commission Staff filed its Motion for Summary Judgment, to which Short did not respond.

ALJ Yelton issued his Recommended Order on November 29, 2016. On December 12, 2016, Short sent an email to Commission Staff with the subject line: "Questions on my appeal complaint #16107." Commission Staff forwarded the document to counsel for Commission, and the matter was scheduled for hearing before the Commission.

## II. ANALYSIS

The Indiana Administrative Orders and Procedures Act ("AOPA") provides that a party may file objections to an ALJ's Proposed Order within 15 days. (I.C. 4-21.5-3-29). The rule requires that the person objecting identify the basis of the objection with reasonable particularity.

Short's objections appear to raise concerns about other rulings issued at Hoosier Park that he believes are on point, but resulted in different penalties. The reference to the Stohler and Clevenger rules is inappropriately raised at this point. The information is outside of the record of this matter, and not appropriate for Commission consideration.<sup>2</sup>

Short also seems to propose a settlement in this case, essentially asking that the suspension be waived. While the Commission Staff can entertain settlement in the matters it prosecutes, such consideration is appropriate before a Motion for Summary Judgment has been filed and granted. Further, the Short ruling adhered to the Model Penalties and IHRC rules in effect at the time.

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<sup>2</sup> Commission Staff reviews dozens of medication positives during the course of the race meet. Each must be considered on the basis of its own facts. In this case, Short has referred to two rulings in which the IHRC judges articulated mitigating factors that led to the distinct penalties.



### III. 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. Short's objections to ALJ Yelton's well-reasoned and fully supported Recommended Order are wholly without merit. Accordingly, Commission Staff respectfully requests that the Commission enter a Final Order affirming in all respects ALY Yelton's Recommended Order of November 29, 2016.

Respectfully submitted,

  
Holly Newell, 25029-29  
General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian, Suite 175  
Indianapolis, IN 46204

*Counsel for Indiana Horse Racing Commission Staff*

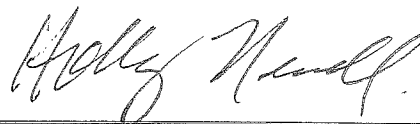
CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I served the following parties with the foregoing Brief, via email and U.S. Mail, first class, postage paid:

Christopher Short  
445 South East Street, Apt. H  
Lebanon, OH 45036  
Hearme154@gmail.com

Ernest Yelton  
Administrative Law Judge  
8269 North State Road 59  
Brazil, IN 47834  
eyelton@frontier.com

Lea Ellingwood *via hand delivery*  
Counsel to the IHRC  
1302 North Meridian Street, Suite 175  
Indianapolis, IN 46202  
lellingwood@hrc.in.gov



---

Holly Newell

**STATE OF INDIANA**  
**INDIANA HORSE RACING COMMISSION**

2016 NOV 30 P 12: 25

IN RE APPEAL BY ) COMPLAINT NO. 16107  
CHRISTOPHER SHORT )

INDIANA  
HORSE RACING COMM

**Amended Proposed Findings of Facts,**  
**Conclusions of Law, and Recommended Order**

The Indiana Horse Racing Commission having filed its Motion for Summary Judgment with Supporting Memorandum, and the Respondent, Christopher Short, having chosen not to respond, the Administrative Law Judge now enters the following Proposed Findings of Fact, Conclusions of Law, and Recommended Order.

**Findings of Fact.**

1. Christopher Short was licensed as a trainer by the Indiana Horse Racing Commission in 2016 and was at all times subject to the jurisdiction of the Commission.
2. Short was the trainer of Shocking Image, a Standardbred racehorse that competed in the eleventh race at Hoosier Park, Indiana, on May 28, 2016.
3. Shocking Image placed second in the May 28<sup>th</sup> race and was awarded a purse of Five Thousand Dollars (\$5,000).
4. After the May 28<sup>th</sup> race, post-race blood and urine specimens were taken from Shocking Image.
5. Those specimens were sent to The Industrial Laboratories Company, a Commission approved laboratory, for analysis pursuant to Commission regulations.
6. On June 10, 2016, that laboratory reported to the Commission that the sample taken from Shocking Image tested positive for dexamethasone in its blood at a level of 176 picograms per milliliter.

7. Dexamethasone is a regulated substance that cannot be present in a competitive race horse in Indiana in levels in excess of 5 picograms per milliliter.
8. Upon being notified of the positive test results and advised of his rights to have the split sample sent to an independent laboratory approved by the Commission, the Respondent chose to have the split sample tested at Texas A & M.
9. Texas A & M notified the Commission that the split sample testing confirmed the original results of Industrial Laboratories Company.
10. The Respondent had one similar foreign substance violation within 365 days at the time the Commission received the results from Industrial Laboratories Company.
11. After taking all of these facts under consideration, on July 26, 2016, the Commission Judges recommended that the Respondent be suspended for 15 days, fined \$1,500 and the purse of \$5,000 for Shocking Image placing second on May 28, 2016 be forfeited: Ruling # 16107.

#### Conclusions of Law

1. By testing 176 picograms per millimeter of dexamethasone following the eleventh race at Hoosier Park, Indiana, on May 28, 2016, Shocking Image violated the prohibition of a blood level with an excess of 5 picograms per milliliter of such regulated substance at the time of the race. 71 IAC 8-1-4-2(8).
2. As trainer, the Respondent, Christopher Short, was responsible for the care and custody of the horse with the duty to prevent the administration of any drug or medication or other prohibited substance that may cause a violation of Indiana Horse Racing rules. 71 IAC 8-1-2(a) and 71 IAC 5-3-2(b).
3. The penalties of a fifteen (15) day suspension, a fine of one thousand five hundred dollars (\$1,500) and forfeiture of the awarded purse are the ARCI Uniform Guidelines' recommended minimum penalties and are therefore both reasonable and appropriate.
4. The law is with the Commission and against the Respondent.

#### Ultimate Finding of Fact

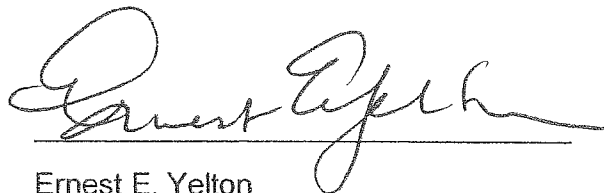
The findings by Industrial Laboratories and Texas A&M clearly established that Christopher Short violated Commission equine medication rule 71 IAC 8-1-2, and the Trainer Responsibility Rule 71 IAC 5-3-2.

Recommended Order

Upon the foregoing Findings of Fact and Conclusions of Law, the Court now determines there is no genuine issues of any material fact and the Commission is entitled to judgment as a matter of law. Motion for Summary Judgment is Granted pursuant to IC 4-21.5-3-23(b). Respondent, Christopher Short's appeal is hereby denied and the penalties imposed by the Commission Judges on May 28, 2016, Ruling #16107 are affirmed in their entirety.

Pursuant to IC 4-21.5-3-29(d), either party hereto has 15 days following receipt of this Recommended Order to file written exceptions with the Indiana Horse Racing Commission.

IT IS SO RECOMMENDED this 29th day of November, 2016.



Ernest E. Yelton

Administrative Law Judge

Notice to:

Holly Newell, Deputy General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian Suite 175  
Indianapolis IN 46202

Christopher Short  
445 South East Street Apt. H  
Lebanon OH 45036

# **AGENDA ITEM NO. 6\*:**

Consideration of the Administrative Law Judge's Recommended Findings of Fact, Conclusions of Law and Recommended Order Granting IHRC Staff's Motion of Summary Judgment in the matter of Thomas Harmer.

\*For complete documentation, please contact our office.

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

THOMAS HARMER,	)	
	)	
Petitioner	)	An Appeal of IHRC
	)	Ruling No. 16039
v.	)	
	)	
INDIANA HORSE RACING	)	
COMMISSION STAFF,	)	
	)	
Respondent	)	

AMENDED RECOMMENDED ORDER GRANTING INDIANA HORSE RACING  
COMMISSION STAFF'S MOTION FOR SUMMARY JUDGMENT

I. Procedural Timeline on Appeal

Comes now, James G. Lauck, the Administrative Law Judge in this matter, and represents to the Indiana Horse Racing Commission the following:

1. On March 11, 2016, the Petitioner, Thomas Harmer ("Harmer"), was licensed as an owner, trainer, and driver by the Indiana Horse Racing Commission.
2. On April 13, 2016, the Commission Judges were notified by Michael Polansky of an outstanding judgment against Harmer believed to be in the amount of \$300,269.50.
3. On May 10, 2016, the Commission Judges suspended Harmer's license, under Ruling No. 16039, for failing to satisfy said financial judgment.
4. On May 10, 2016, Harmer appealed the Commission Judges' ruling and filed a Request for Stay.
5. On May 12, 2016, James G. Lauck was appointed Administrative Law Judge to conduct hearings and rule upon the appeal of IHRC Ruling No. 16039 and the Request for Stay.
6. On May 25, 2016, Judge Lauck conducted a preliminary hearing upon Harmer's Request for Stay and issued an Order Granting a Temporary Stay on the same date.
7. On June 7, 2016, a Prehearing Order was issued, setting a full day hearing on July 19, 2106.

8. The Prehearing Order also included, among other conditions, that should the parties desire to file any dispositive motions, they must be filed by the close of business on July 13, 2016. The parties had until July 15, 2016 (extended to July 18, 2016) to file any response to such motions.

9. On June 17, 2016, the Commission Staff filed its Motion for Summary Judgment and Memorandum in Support Thereof, the Affidavit of Michael Smith, and the Affidavit of Mike Hall.

10. On July 18, 2016, Harmer filed his Response to Motion for Summary Judgment and Affidavit of Thomas G. Harmer via email after 5:00 PM to Judge Lauck and the Commission Staff.

11. On July 19, 2016, the Commission Staff filed its Reply in Further Support of its Motion for Summary Judgment.

## II. Discussion

Thomas Harmer was licensed as an owner, trainer, and driver by the Commission on March 11, 2016. On or about April 13, 2016, the Commission Judges received notice of an outstanding judgment against Harmer. The Judges notified Harmer of the judgment on or about April 23, 2016 and set the matter for a hearing, which occurred on April 29, 2016. At the hearing, Harmer acknowledged the debt, but it was not clear, during the course of the hearing before the Judges, exactly how much Harmer owed. Various figures have been presented as sums owing from Harmer to Polansky, ranging from \$262,000.00 to \$300,269.50. Harmer acknowledged that he owed at least \$38,000.00. On May 10, 2016, the Commission Judges issued Ruling No. 16039 suspending Harmer effective May 13, 2016 in violation of 71 IAC 5-1-11 for failing to satisfy a financial judgment against him. The financial judgment against Harmer resulted from an April 12, 2016, DuPage County, Illinois Circuit Court retrial judgment in which fellow horseman Polansky was awarded damages. Harmer appealed the Judges' ruling on May 10, 2016 and filed a Request for Stay on the same day. In the paperwork supporting the appeal and Request for Stay, Harmer's counsel acknowledged that a judgment of \$300,269.50 existed. The matter was subsequently assigned to Judge Lauck at the direction of the Commission by its Chairman, Thomas Weatherwax, on May 12, 2016.

## III. An Applicant or License Holder Who Demonstrates Financial Irresponsibility by Accumulating Unpaid Obligations May Have His License Suspended

The Commission is statutorily mandated to regulate pari-mutual wagering in Indiana ensuring that racing is conducted with the highest of standards and the greatest level of integrity. A key component of regulating the industry is overseeing licensing and disciplinary actions, including considering financial irresponsibility when making determinations about refusing, deny, revoking or suspending a license. An applicant or license holder may be required to



submit evidence of and maintain financial responsibility during the license period. 71 IAC 5-1-11. An applicant or license holder who demonstrates financial irresponsibility by accumulating unpaid obligations may have the license refused or suspended. 71 IAC 5-1-14(b)(6). On March 11, 2016, Harmer's license as an owner, trainer and driver in Indiana was approved by the Commission. On April 12, 2016, a financial judgment against Harmer was awarded by an Illinois Circuit Court in the amount of \$300,269.50 for fraudulent training charges and breach of contract against a fellow horseman. Harmer has not paid the judgment.

Harmer's judgment is within the purview of the Commission's financial responsibility and integrity rules. The Commission may suspend a licensee who engages in conduct that is against the best interest of the horse racing or compromises the integrity of operations at the track. 71 IAC 5-1-14(b)(10).

#### IV. Summary Judgment Standard in Administrative Proceedings

I.C. Section 4-21.5-3-23 provides that "[a] party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding." I.C. Section 4-21.5-3-23(a). The administrative law judge "shall consider a motion filed under subsection (a) as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure". I.C. Section 4-21.5-3-23(b).

Indiana Trial Rule 56(C) provides that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Parker v. Ind. State Fair Bd.*, 992 N.E.2d 969, 976 (Ind. Ct. App. 2013). Such is the case here as there is no genuine issue of material fact, and the Commission Staff is entitled to judgment as a matter of law.

The Commission Staff has shown that it is entitled to summary judgment in these proceedings because there can be no dispute that: (1) an applicant or license holder who does not demonstrate financial responsibility may have his or her license refused or suspended; (2) Harmer has an unpaid obligation by failing to satisfy a financial judgment against him; and (3) the Commission Judges properly suspended Harmer in light of the Commission's rules and policies.

#### V. The Commission Judges Properly Suspended Harmer

Indiana law makes clear that the Commission may issue orders to suspend permits and licenses as authorized by the Horse Racing Act or a regulation of the Commission. I.C. Section 4-31-13-1(a). One authorization in the Horse Racing Act and adopted as a regulation by the Commission is that a licensee shall not demonstrate financial irresponsibility in the form of unpaid obligations. I.C. Section 4-31-6-6(b)(6). The ruling issued by the Commission Judges suspended Harmer's license. In order to ensure the integrity of the sport and fulfill its

obligations set forth by the Indiana Legislature, the Commission Judges properly suspended Harmer.

As a licensee of the Commission, Harmer is responsible for violations of 71 IAC 5-1-11 which provides that a licensee shall demonstrate and maintain financial responsibility during the term of the license. Harmer's unpaid obligation to a fellow horseman from a court ruling on April 12, 2016 is in violation of the license he received on March 11, 2016. This demonstrates Harmer's financial irresponsibility. Therefore, Harmer has been appropriately suspended as provided in 71 IAC 5-1-14(b)(6).

#### VI. Findings of Fact

Any Finding of Fact more appropriately deemed a Conclusion of Law, or conversely, shall be so treated.

1. On March 11, 2016, Harmer's license as an owner, trainer and driver in Indiana was approved by the Commission.

2. On or about April 13, 2016, the Commission Judges received notice of an outstanding judgment against Harmer.

3. The Judges notified Harmer of the judgment on or about April 23, 2016 and set the matter for a hearing, which occurred on April 29, 2016.

4. At the hearing, Harmer acknowledged the debt, but it was not clear, during the course of the hearing before the Judges, exactly how much Harmer owed. Harmer acknowledged that he owed at least \$38,000.00.

5. The financial judgment against Harmer resulted from an April 12, 2016, DuPage County, Illinois Circuit Court retrial judgment in which fellow horseman Polansky was awarded damages.

6. On April 12, 2016, a financial judgment against Harmer was awarded by an Illinois Circuit Court in the amount of \$300,269.50 for fraudulent training charges and breach of contract against a fellow horseman. Harmer has not paid the judgment.

#### VII. Conclusions of Law

1. On May 10, 2016, the Commission Judges issued Ruling No. 16039 suspending Harmer effective May 13, 2016 in violation of 71 IAC 5-1-11 for failing to satisfy a financial judgment against him.

2. The Commission is statutorily mandated to regulate pari-mutual wagering in Indiana ensuring that racing is conducted with the highest of standards and the greatest level of integrity.

3. A key component of regulating the industry is overseeing licensing and disciplinary actions, including considering financial irresponsibility when making determinations about refusing, deny, revoking or suspending a license.

4. An applicant or license holder may be required to submit evidence of and maintain financial responsibility during the license period. 71 IAC 5-1-11.

5. An applicant or license holder who demonstrates financial irresponsibility by accumulating unpaid obligations may have the license refused or suspended. 71 IAC 5-1-14(b)(6).

6. Harmer's judgment is within the purview of the Commission's financial responsibility and integrity rules.

7. The Commission may suspend a licensee who engages in conduct that is against the best interest of the horse racing or compromises the integrity of operations at the track. 71 IAC 5-1-14(b)(10).

8. Indiana law makes clear that the Commission may issue orders to suspend permits and licenses as authorized by the Horse Racing Act or a regulation of the Commission. I.C. Section 4-31-13-1(a).

9. One authorization in the Horse Racing Act and adopted as a regulation by the Commission is that a licensee shall not demonstrate financial irresponsibility in the form of unpaid obligations. I.C. Section 4-31-6-6(b)(6).

10. The ruling issued by the Commission Judges suspended Harmer's license. In order to ensure the integrity of the sport and fulfill its obligations set forth by the Indiana Legislature, the Commission Judges properly suspended Harmer.

11. As a licensee of the Commission, Harmer is responsible for violations of 71 IAC 5-1-11 which provides that a licensee shall demonstrate and maintain financial responsibility during the term of the license.

#### VIII. Ultimate Findings of Fact

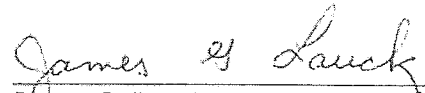
Harmer's unpaid obligation to a fellow horseman from a court ruling on April 12, 2016 is in violation of the license he received on March 11, 2016. This demonstrates Harmer's financial irresponsibility. Therefore, Harmer has been appropriately suspended as provided in 71 IAC 5-1-14(b)(6).

RECOMMENDED DECISION

Based upon the findings of fact and conclusions of law herein, Administrative Law Judge Lauck recommends the Commission Staff's Motion for Summary Judgment be granted pursuant to I.C. Section 4-21.5-3-29(d); and further recommends the Harmer appeal be denied, the stay of IHRC Ruling No. 16039 be terminated, and the suspension of Harmer's license be upheld.

Pursuant to I.C. Section 4-21.5-3-29(d), either party hereto has fifteen (15) days following the receipt of this Order to file written exceptions with the Indiana Horse Racing Commission.

IT IS SO RECOMMENDED THIS 12 DAY OF OCTOBER, 2016.

  
James G. Lauck,  
Administrative Law Judge

Distribution:

Holly Newell  
Deputy General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian, Suite 175  
Indianapolis, IN 46202

Thomas Harmer  
13719 Windage Drive  
Fishers, IN 46037

# **AGENDA ITEM NO. 7\*:**

IHRC's consideration of Settlement Agreement in IHRC Staff vs. Randy Smith.

\*For complete documentation, please contact our office.

INDIANA HORSE RACING COMMISSION  
ADMINISTRATIVE PENALTY COMPLAINT

76th AUG 24 A 10:17

RE: Randy Smith  
1049 County Road 1675 E  
Broughton, IL 62817

ADMINISTRATIVE COMPLAINT NO.: 216001

**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.

Additionally, if the person who is the subject of this Administrative Complaint, no later than ten (10) days after the issuance of this Administrative Complaint, delivers or has delivered to the Executive Director of the Commission materials that should be considered in mitigation of the proposed penalty, then the Executive Director may, in his discretion, either withdraw the Administrative Complaint 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 Complaint is to assume that the report will stand as originally issued.

## REVIEW OF INFORMATION

1. The Indiana Horse Racing Commission Pari-Mutuel Rules for Flat Racing (71 IAC et seq.) and any relevant provisions of the Indiana Pari-Mutuel Wagering on Horse Racing Act found at IC 4-31-1, et seq.;
2. The 2016 Indiana Horse Racing Commission ("IHRC") owner/trainer license application form signed and submitted by Randy Smith on April 4, 2016 (Attached and incorporated as Exhibit 1);
3. Association of Racing Commissioners International printout containing the past ruling record of Mr. Smith (Attached and incorporated as Exhibit 2);
4. Heritage Place 2016 Winter Mixed Sale catalog page (In re Hip No. 147 Azoomin) (Attached and incorporated as Exhibit 3);
5. Quarter Horse Mare Application for Foals of 2016 (In re Mare Azoomin signed by Randy Smith on January 26, 2016 and submitted by Randy Smith on January 27, 2016) (Attached and incorporated as Exhibit 4);
6. Quarter Horse 2016 Foal Application (In re Foal Coronado Prince signed by Randy Smith on February 16, 2016, and submitted by Randy Smith on March 21, 2016) (Attached and incorporated as Exhibit 5);
7. February 2, 2016 Email and Memorandum from IHRC to Randy Smith in re Incomplete Registration of Azoomin (Attached and incorporated as Exhibit 6);
8. February 18, 2016 Registration Confirmation in re Azoomin (Attached and incorporated as Exhibit 7);
9. April 16, 2016 IHRC Staff Record Request to Lazy E Ranch (Attached and incorporated as Exhibit 8);
10. Lazy E Records produced in response to IHRC Staff Request (Attached and incorporated as Exhibit 9);
11. Transcript of May 13, 2016 interview of Randy Smith (Attached and incorporated as Exhibit 10);
12. July 20, 2016 Hearing Notice issued to Randy Smith (Attached and incorporated as Exhibit 11);
13. Transcript of Stewards' July 27, 2016 hearing (Attached and incorporated as Exhibit 12);
14. Stewards' August 9, 2016 Ruling No. 16566 (Attached and incorporated as Exhibit 13);

15. Randy Smith's Appeal of Stewards' Ruling No. 16566 (Attached and incorporated as Exhibit 14);
16. Randy Smith's Request for Stay of Stewards' Ruling No. 16566 (Attached and incorporated as Exhibit 15);
17. Randy Smith's Amendment to Request for Stay (Attached and incorporated as Exhibit 16);
18. Appearances of counsel for Randy Smith (Tom Wheeler, Alex Will, Joel Turner) (Attached and incorporated as Exhibits 17, 18, and 19, respectively);
19. August 16, 2016 email from Holly Newell to Bennett Abbott (Attached and incorporated as Exhibit 20);
20. August 18, 2016 email from Jeff Hubbard to Holly Newell (Attached and incorporated as Exhibit 21);
21. Oklahoma Breed Development online database search results (Attached and incorporated as Exhibit 22);

#### PROCEDURAL HISTORY

22. On July 20, 2016, Mr. Smith received written notice of a hearing before the stewards (Hearing Notice attached and incorporated as Exhibit 11);
23. On July 27, 2016, the Stewards heard the matter.
24. Commission Staff recommended the following penalties:
  - a. A \$5,000.00 fine;
  - b. A one-year suspension of Mr. Smith's racing license;
  - c. A one-year suspension from the Indiana Breed Development program;
  - d. Denial of the mare application; and
  - e. Denial of the foal application.
25. On August 9, 2016, the Stewards issued a ruling (Exhibit 13) that:
  - a. Assessed a \$2,500.00 fine;
  - b. Suspended Mr. Smith's racing license for 120 racing days, with the option of applying for a stay of the final 60 days of suspension; and



- c. Suspending Mr. Smith from participation in the breed development program for one year, with a recommendation for an additional three year suspension from the breed development program<sup>1</sup>.
26. On August 12, 2016, Mr. Smith filed a request for stay and an appeal of the Stewards' ruling. Commission Staff did not object to the request for stay.
27. On August 12, 2016, the matter was assigned to be heard by the Honorable Bernard Pylitt.
28. On August 18, 2016, the parties conducted a telephonic prehearing conference to establish deadlines.
29. The parties have acknowledged that Mr. Smith's appeal and the Staff's Complaint will be consolidated for purposes of hearing;

#### FINDINGS OF FACT

30. Mr. Randy Smith was duly licensed in 2016 by the Indiana Horse Racing Commission as a trainer and was at all times relevant subject to the jurisdiction of the Indiana Horse Racing Commission.
31. Mr. Smith was at all times relevant a participant in the Indiana Quarter Horse Breed Development Program.
32. As a licensee, Mr. Smith is subject to IHRC rules and regulations.
33. Mr. Smith purchased the mare Azoomin on January 21, 2016 at the Heritage Place 2016 Winter Mixed Sale. Azoomin was in foal to "Coronado Cartel" and due to foal on January 23, 2016.
34. Mr. Smith transferred Azoomin to the Lazy E Ranch in Guthrie, Oklahoma, on January 21, 2016.
35. On January 22, 2016, while still at Lazy E, Azoomin dropped the foal Coronado Prince.
36. Mr. Smith arranged for Azoomin and Coronado Prince to be transported from Oklahoma to Illinois on January 25, 2016.

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<sup>1</sup> The Stewards' ruling is silent on the Staff's recommended denial of the applications. However, it is within the Staff's authority to deny the applications without a ruling from the Stewards. The IHRC Stewards do not participate in reviewing, approving, and/or denying breed development applications.

37. Mr. Smith himself transported Azoomin and Coronado Prince from Illinois to Indiana on or about January 26, 2016.
38. Mr. Smith completed a Quarter Horse Mare Application for Foals of 2016 for the mare Azoomin on January 26, 2016.
39. Mr. Smith submitted the aforementioned mare application on January 27, 2016.
40. On February 2, 2016, IHRC Thoroughbred and Breed Development Coordinator Sara Distler emailed Randy to memorialize a telephone call about the Azoomin mare application.
41. At some point after February 2, 2016, Distler spoke to Randy Smith to clarify the Estimated Foaling Date on the Mare Application, at which time Distler struck through the "1-19-16" estimated foaling date written by Randy Smith, and replaced it with "1-26-16," as instructed by Randy over the telephone.
42. Mr. Smith completed a Quarter Horse 2016 Foal Application for the foal Coronado Prince, on February 16, 2016.
43. Mr. Smith submitted the aforementioned foal application on March 21, 2016.
44. On or about March 1, 2016, Mr. Smith registered the Coronado Prince with the American Quarter Horse Association, indicating that the foal was born in Indiana, and later changed the colt's birthplace to Oklahoma.
45. Mr. Smith has not registered Coronado Prince with the Oklahoma Racing Commission.
46. Pursuant to 71 IAC 3.5-2-3(j), a ruling from the stewards shall not prevent the commission from imposing a more severe penalty;
47. Pursuant to 71 IAC 3.5-2-3(k), the stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter.
48. Pursuant to 71 IAC 7.5-7-3(b), if a person is guilty of any corrupt or fraudulent practices, in this or any other jurisdiction, then such person shall be suspended and referred to the commission.
49. Randy Smith violated 71 IAC 14.5-1-1, by attempting to register the foal Coronado Prince as an Indiana bred, even though the foal was foaled in Oklahoma.
50. Randy Smith violated 71 IAC 14.5-1-1, by falsely claiming that Coronado Prince was born in Indiana.

51. Randy Smith violated 71 IAC 14.5-2-1, by attempting to register the mare Azoomin as an Indiana mare, even though the mare foaled in Oklahoma.
52. Randy Smith violated 71 IAC 14.5-2-1, by falsely claiming that the mare Azoomin foaled in Indiana.
53. Randy Smith is in violation of 71 IAC 5.5-1-14(b)(4) for his violation Indiana Horse Racing Commission rules.
54. Randy Smith violated 71 IAC 5.5-1-14(b)(5) by his perpetration of a fraud or misrepresentation when he registered Azoomin and Coronado Prince with the Indiana Breed Development Program.
55. Randy Smith violated 71 IAC 5.5-1-14(b)(10) by engaging in conduct that is against the best interest of horse racing.
56. Randy Smith violated 71 IAC 5.5-1-14(b)(16) by engaging in actions that obstructed commission employees (specifically breed development employees) while performing official duties.
57. Randy Smith violated 71 IAC 5.5-1-14(b)(21) by making a material misrepresentations in the registration applications for Azoomin and Coronado Prince.

**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 findings of fact clearly demonstrate that additional penalties should be imposed.

**IT IS HEREBY RECOMMENDED** that pursuant to the provisions of 71 IAC 10-3-20, Mr. Smith:

- a. Be fined the sum of \$5,000.00 (\$2,500.00 as assessed by the Indiana Grand Stewards on August 9, 2016, plus an additional \$2,500.00 as requested by the Commission Staff in the hearing before the Stewards);
- b. Be suspended from participation in racing for a period of 120 days without the option of seeking a stay of any portion of total days;
- c. Be suspended from participation in the Indiana Breed Development Programs, directly or indirectly, for any and all breeds, for a total of four years (one year as assessed by the Indiana Grand Stewards on August 9, 2016, plus an additional three years pursuant to the Stewards' recommendation);
- d. Denial of the 2016 mare application for Azoomin; and
- e. Denial of the foal application for Coronado Prince.

  
\_\_\_\_\_  
Mike Smith, Executive Director  
Indiana Horse Racing Commission

Date: 8-24-16

cc: The Honorable Bernard Pylitt  
Alex Will, Tom Wheeler, Joel Turner (counsel for Smith)  
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



## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the Indiana Horse Racing Commission ("Commission"), by Mike Smith, Executive Director of the Indiana Horse Racing Commission Staff ("Commission Staff") and Randy Smith ("Smith"), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and Smith shall be referred to herein as "the Parties." This Agreement is subject to the review and approval of the Commission. 2016 AUG 28 P 3:25

### RECITALS

1. The Indiana Horse Racing Commission ("IHRC") is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. At all times relevant to this Settlement Agreement, Randy Smith was licensed as an owner and a trainer with the IHRC.
3. As an IHRC licensee, Smith was subject to IHRC rules and regulations.
4. As a licensee, Smith (both individually and as an agent, owner and/or representative of Smith Racing) was required to be knowledgeable of all IHRC rules and regulations.
5. Title 71 of the Indiana Administrative Code regulates trainers and owners participating in pari-mutuel racing in Indiana.
6. On August 9, 2016, the Indiana Grand Stewards issued Ruling No. 16566 against Randy Smith relating to violations of various provisions of 71 IAC 5.5 and 71 IAC 14.5.
7. Smith appealed the Stewards' ruling on August 12, 2016.
8. On August 24, 2016, the Commission Staff, through its Executive Director Mike Smith, issued Administrative Complaint 216001, charging Smith with violations of certain provisions of 71 IAC 5.5 *et. seq.* and 71 IAC 14.5 *et. seq.* The case was subsequently assigned to Administrative Law Judge Bernard Pylitt at the request of the Commission. The matter was scheduled for a two-day hearing from November 15-16, 2016.
9. The Administrative Complaint specifically alleged the following violations:
  - a. Smith violated 71 IAC 14.5-1-1 "Indiana bred quarter horse" (proper registration of a foal and mare);
  - b. Smith violated 71 IAC 14.5-2-1 "Indiana foaled quarter horse" (proper registration of a foal);

- c. Smith violated 71 IAC 5.5-1-14(b)(4) "Grounds for sanctions" (violation or attempted violation of rules with respect to horse racing);
- d. Smith violated 71 IAC 5.5-1-14(b)(5) "Grounds for sanctions" (perpetration or attempted perpetration of a fraud or misrepresentation in connection with racing or breeding of horses or pari-mutuel racing);
- e. Smith violated 71 IAC 5.5-1-14(b)(10) "Grounds for sanctions" (engaging in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility);
- f. Smith violated 71 IAC 5.5-1-14(b)(16) "Grounds for sanctions" (interfering with or obstructing a member of the commission, a commission employee, or a racing official while performing official duties); and
- g. Smith violated 71 IAC 5.5-1-14(b)(21) "Grounds for sanctions" (making a material misrepresentation in the process or registering, nominating, entering, or racing a horse as an Indiana owned, Indiana bred, or Indiana sired).

10. The Commission's Executive Director, given Smith's willingness to enter into this Agreement, is executing this Agreement in lieu of litigating Smith's appeal of the Stewards' ruling No. 16566.

11. The Commission's Executive Director, given Smith's willingness to enter into this Agreement, is executing this Agreement in lieu of litigating Administrative Complaint No. 216001.

12. The parties now have reached a resolution of the claims at issue in this dispute.

13. Now, in full and complete resolution of any and all further administrative proceedings, sanctions, penalties and discipline involving Smith relative to Stewards' Ruling No. 16566 and his appeal thereof, the Commission Staff and Smith agree to the terms and conditions set forth in this Agreement.

14. Now, in full and complete resolution of any and all further administrative proceedings, sanctions, penalties, and discipline involving Smith relative to Administrative Complaint No. 216001, the Commission Staff and Smith agree to the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

15. Smith has acknowledged violations of various provisions of 71 IAC 5.5 and 14.5.

16. This agreement does not cover any violations that may be discovered that are not referenced in Administrative Complaint No. 216001.

17. Smith agrees to withdraw his appeal of Stewards' Ruling No. 16566.

18. Smith agrees to release all claims and potential claims against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees relating to the Commission action that is the subject of this Settlement Agreement. Smith specifically agrees to release and forever discharge any claims and/or complaints against the Commission, the Commission Staff and/or its current or former representatives agents and/or employers and/or the Stewards arising from, relating to, or in any way connected with or in any way related to the issues associated with the Commission Staff's initiation and/or pursuit of the underlying disciplinary action against Smith.

19. As a result of the disciplinary matter that was the subject of the underlying proceeding, Smith agrees to a ninety (90) calendar-day suspension from participating in pari-mutuel racing in Indiana, with 45 calendar days stayed pending no findings of violations of 71 IAC 14.5 or IHRC integrity rules during the 2017 Indiana Grand race meet. Any request to transfer horses trained by Smith immediately before or during this period shall be governed by IHRC regulations, including but not limited to, 71 IAC 5.5-1-30 and 71 IAC 5.5-1-31 and shall be treated in a manner equal to other trainers and consistent with the Stewards' normal practices.

20. Smith's 45 calendar-day suspension during the Indiana Grand race meet shall commence with the first Race Day of the 2017 Indiana Grand Race Meet<sup>1</sup>.

21. Smith agrees to a ninety (90) calendar-day suspension from participation as a trainer in the Indiana Breed Development Programs, directly or indirectly, for any and all breeds, effective from the commencement of the 2017 Indiana Grand Race Meet, with 45 Racing Days stayed pending no findings of violations of 71 IAC 14.5 during the 2017 Indiana Grand race meet.

- a. Participation in the Indiana Breed Development Programs as a trainer shall include: training or assistant training any Indiana bred horses;
- b. Transfer of Smith's horses both before and after this period shall be governed by IHRC regulations, including but not limited to, 71 IAC 5.5-1-30, and 71 IAC 5.5-1-31; and
- c. Pursuant to 71 IAC 5.5-1-31 IHRC Stewards may refuse to license any trainer of horses formerly trained by Smith.

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<sup>1</sup> The Indiana Horse Racing Commission has not yet approved Race Days for 2017. This agreement shall incorporate by reference the 2017 racing calendar expected to be approved by the Indiana Horse Racing Commission at its December 2016 meeting.



22. Smith agrees to a four (4) year suspension from participation solely as an owner in the Indiana Breed Development Programs, directly or indirectly, for any and all breeds, effective from January 1, 2017 through and including December 31, 2020.

- a. Participation in the Indiana Breed Development Programs as an owner shall include: owning any Indiana bred foals; registering any foals as Indiana bred; registering any mares or stallions with the Indiana bred program;
- b. Any transfer of Indiana bred horses currently owned by Smith shall be approved by the IHRC Stewards in accordance with existing regulations;
- c. Smith may not transfer ownership of any Indiana bred horse he currently owns to: a spouse, a member of his immediate family, an assistant, an employee, or member of his household; and
- d. Smith remains eligible to receive all breeder's awards relating to any foal properly registered prior to January 1, 2016.

23. Smith acknowledges that this Agreement is not a guarantee of future licensure.

24. Smith agrees to pay a \$15,000.00 fine pursuant to Commission regulations

25. The Parties specifically agree that the suspension shall be governed by applicable Indiana regulations, including but not limited to 71 IAC 10-2-8 and 71 IAC 10-2-8.1, and any failure to comply with those rules is subject to enforcement by the Stewards and/or the Commission.

26. Smith and Commission Staff acknowledge that this Agreement is subject to the approval of the Indiana Horse Racing Commission.

27. The Commission will enter a ruling consistent with this Agreement which will make clear that the sanctions set forth in Paragraphs 19, 20, 21, 22, and 24 are the total sanctions assessed for the violation referenced in this Settlement Agreement.

28. Any waiver of any provision of this Agreement must be in writing and must be approved by the Commission or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any provision hereof (whether or not similar) or a continuing waiver.

29. The Parties agree that this Agreement shall be interpreted, enforced, and governed by the laws of the State of Indiana.

30. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.

31. Smith represents that he has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has had the right to consult with his own counsel, and Smith to be

bound by its terms. Smith acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

10/21/16                      Randy M Smith  
Date                                      Randy Smith

Witnessed and Approved:  
  
\_\_\_\_\_

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

10-7-16                      [Signature]  
Date                                      Mike Smith, Executive Director

Approved as to form:  
[Signature]  
Holly Newell, Deputy General Counsel

bound by its terms. Smith acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

10/21/16  
Date

Randy M Smith  
Randy Smith

Witnessed and Approved:

[Signature]

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Smith, Executive Director

Approved as to form:

\_\_\_\_\_  
Holly Newell, Deputy General Counsel

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# **AGENDA ITEM NO. 8:**

Review of Hoosier Park's permit renewal application and consideration of pari-mutuel permits for 2017 in accordance with 71 IAC 11-1-21 and consideration of Hoosier Park's request for live racing dates for 2016 pursuant to IC 4-31-5-9, IC 4-31-5-10 and 71 IAC 11-1-7.

# —Centaur Gaming®

October 26, 2016

2016 OCT 27 A 11:02

VIA FEDERAL EXPRESS

INDIANA  
HORSE RACING COMMISSION

The Honorable Mike Smith, Executive Director  
Indiana Horse Racing Commission  
1302 North Meridian Street, Suite 175  
Indianapolis, IN 46202

RE: Hoosier Park, LLC – Verified Application for Annual Permit Renewal  
and Request for Approval of 2017 Race Dates

Dear Mike:

Please consider this letter as Hoosier Park, LLC's (Hoosier Park) Application for Annual Permit Renewal and for approval of 2017 Race Dates.

This application is made pursuant to IC 4-31-5-2(a) and IC 4-31-5-9 as well as the following administrative rules: 71 IAC 11-1-3(b); 71 IAC 11-1-7; 71 IAC 11-1-21 and 71 IAC 2-9-1. In support thereof, Hoosier Park states that:

- 1) Hoosier Park is an Indiana limited liability company;
- 2) Hoosier Park is the holder of a recognized meeting permit to conduct pari-mutuel horse racing at Hoosier Park, 4500 Dan Patch Circle, Anderson, Indiana 46013 and that the Indiana Horse Commission (Commission) has previously approved Hoosier Park for the exclusive racing of Standardbred horses;
- 3) Hoosier Park is the owner of its racing plant with a physically connected clubhouse that displays for public inspection trophies, memorabilia and instructional materials depicting the history of horse racing and is available as a repository for the collections of the Indiana Harness Horse Hall of Fame;
- 4) Hoosier Park proposes to conduct a total of 163 days of Standardbred racing, commencing on Saturday, April 1, 2017, and concluding on Friday, November 17, 2017. Racing will take place on Tuesdays through Saturdays with a post time of

Hon. Mike Smith  
October \_\_, 2016  
Page 2


5:45 p.m. A calendar of race dates is attached hereto as Exhibit A and by reference made a part hereof.

Also enclosed are ten (10) copies of this letter along with Hoosier Park's check in the amount of \$5,000.00 made payable to the Commission in payment of the annual non-refundable renewal fee. The Commission's past practice has been not to require a cashier's check.

The undersigned verifies under the penalties of perjury that the foregoing representations are true and that Hoosier Park has satisfied all requirements for the renewal permit.

Please return a file stamped copy of this letter in the enclosed post paid, self-addressed envelope.

Respectfully submitted,

By:   
\_\_\_\_\_  
John S. Keeler  
Vice President & General Counsel of  
New Centaur, LLC, its Manager

cc: Jim Brown (w/enclosures)  
Lea Ellingwood, Esq. (w/enclosures)  
Rick Moore (w/enclosures)

Enclosures

Exhibit A page 2



2017

163 Standardbred Days  
5:45 p.m. Post Time

2016 OCT 27 A 11:03

HOOSIER PARK RACING & CASINO

April

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

August

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

May

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

September

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

June

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

July

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Exhibit A

**2017 Race Dates**

**Standardbred April 1 through November 17 - 163 Days**

2016 OCT 27 A 11:01

Post Time: 5:45 p.m. Tuesday, Wednesday, Thursday, Friday & Saturday

April – 1,6,7,8,11,12,13,14,15,18,19,20,21,22,25,26,27,28,29 – 19 days

May – 2,3,4,5,6,9,10,11,12,13,16,17,18,19,20,23,24,25,26,27,30,31 – 22 days

June – 1,2,3,6,7,8,9,10,13,14,15,16,17,20,21,22,23,24,27,28,29,30 - 22 days

July – 1, 4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,25,26,27,28,29 – 21 days

August – 1,2,3,4,5,8,9,10,11,12,15,16,17,18,19,22,23,24,25,26,29,30,31– 23 days

September – 1,2,5,6,7,8,9,12,13,14,15,16,19,20,21,22,23,26,27,28,29,30 - 22 days

October – 3,4,5,6,7,10,11,12,13,14,17,18,19,20,21,24,25,26,27,28,31 - 21 days

November – 1,2,3,4,7,8,9,10,11, 14,15,16,17– 13 days

**TOTAL DAYS            163 days**