



**TEXAS RACING COMMISSION**

**P. O. Box 12080  
Austin, TX 78711-2080  
(512) 833-6699  
Fax (512) 833-6907**

Texas Racing Commission  
Tuesday, September 10, 2019  
10:30 a.m.  
Texas Animal Health Commission  
2105 Kramer Lane  
Austin, TX 78758

**AGENDA**

**I. CALL TO ORDER**

Roll Call

**II. PUBLIC COMMENT**

**III. GENERAL BUSINESS**

- A. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
  - 1. Budget and finance
  - 2. Wagering statistics
  - 3. Enforcement
- B. Discussion and possible action to approve memorandum of understanding with Texas Veterinary Medical Diagnostic Lab (TVMDL) for fiscal year 2020

**IV. PROCEEDINGS ON OCCUPATIONAL LICENSES**

Discussion and possible action on the proposal for decision in SOAH No. 476-18-1010, Judd Kearn v. Texas Racing Commission; SOAH No. 476-18-1011, Jose Sanchez v. Texas Racing Commission; and SOAH No. 476-18-1012, Brian Stroud v. Texas Racing Commission

## **V. PROCEEDINGS ON RULES**

- A. Discussion and possible action to propose amendments to:
  - 1. 16 TAC § 309.8, Racetrack License Fees
  - 2. 16 TAC § 309.51, Designation of Active and Inactive Racetrack Licenses
  - 3. 16 TAC § 309.118, Regulatory Office Space and Equipment
  - 4. 16 TAC § 319.3, Medication Restricted
  - 5. 16 TAC § 319.102, Veterinarian's List
  - 6. 16 TAC § 319.333, Specimen Tags
  - 7. 16 TAC § 321.313, Select Three, Four, or Five
- B. Discussion and possible action to propose new 16 TAC Chapter 303, Subchapter G, Horse Industry Escrow Account, including:
  - 1. 16 TAC § 303.301, Definitions
  - 2. 16 TAC § 303.302, General Provisions
  - 3. 16 TAC § 303.311, Allocations to Horse Racetrack Associations
  - 4. 16 TAC § 303.312, Limitation on Use of Funds by Racetrack Associations
  - 5. 16 TAC § 303.321, Allocations to Breed Registries
  - 6. 16 TAC § 303.322, Limitations on Use of Funds by Breed Registries
  - 7. 16 TAC § 303.323, Modifications to Approved Events
  - 8. 16 TAC § 303.324, Recordkeeping and Audits
  - 9. 16 TAC § 303.325, Quarterly Reports
- C. Discussion and possible action to propose the repeal of 16 TAC § 321.509, Escrowed Purse Account

## **VI. PROCEEDINGS ON RACETRACKS**

Discussion and possible action on the following race date items:

- A. Allocation of live race dates for horse racetracks under 16 TAC § 33.41 for the period beginning January 1, 2020, and ending August 1, 2021
- B. Allocation of live race dates for greyhound racetracks under 16 TAC § 33.41 for the period beginning January 1, 2020, and ending August 1, 2021

## **VII. EXECUTIVE SESSION**

The following items may be discussed and considered in executive session or open meeting, with any action taken in the open meeting:

- A. Under Texas Government Code § 551.071(1), the Commission may enter an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Texas Government Code § 551.071(2), the Commission may enter an executive session to discuss all matters identified in this agenda where the commission seeks the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. This may include, but is not limited to, legal advice regarding the Open Meetings Act, the Administrative Procedures Act, and the Texas Racing Act.
- C. Under Tex. Occ. Code § 2025.005, the Commission may open an executive session to review security plans and management, concession, and totalisator contracts.

## **VIII. SCHEDULING OF NEXT COMMISSION MEETING**

## **IX. ADJOURN**

## **I. CALL TO ORDER**

Roll Call

## **II. PUBLIC COMMENT**

## **III. GENERAL BUSINESS**

- A. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
  - 1. Budget and finance
  - 2. Wagering statistics
  - 3. Enforcement
- B. Discussion and possible action to approve memorandum of understanding with Texas Veterinary Medical Diagnostic Lab (TVMDL) for fiscal year 2020

# Texas Racing Commission

FYE 08/31/2019  
Operating Budget Status  
by LBB Expenditure Object/Codes

OBS-1

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 7/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 91.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	(0.50) FTE's = 4.00 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	340,041.87	318,070.88	21,970.99	93.54%
\$ 385,941.00	1002 Other Personnel Cost	5,280.00	4,700.00	580.00	89.02%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 385,941.00	2005 Travel	2,000.00	1,906.53	93.47	95.33%
Budgeted =	2006 Rent Building	-	-	-	
\$ 354,422.50	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	7,100.63	7,827.11	(726.48)	110.23%
(31,518.50)	CB Computer Equipment	-	-	-	
-8.17%	Total Strategy A.1.1.	354,422.50	332,504.52	21,917.98	93.82%
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
	ATB Money Expended	3,130,000.00	2,528,245.87	601,754.13	80.77%
3,130,000.00	Total Strategy A.2.1.	3,130,000.00	2,528,245.87	601,754.13	80.77%
<i>Appropriated</i> A.3.1.	(1.87) FTE's = 5.53 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	372,033.13	324,148.94	47,884.19	87.13%
\$ 545,741.00	1002 Other Personnel Cost	15,280.28	24,278.42	(8,998.14)	158.89%
Sup Appr =	2001 Prof Fees and Services	9,900.00	17,580.38	(7,680.38)	177.58%
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 545,741.00	2005 Travel	62,300.00	52,139.09	10,160.91	83.69%
Budgeted =	2006 Rent Building	-	-	-	
\$ 465,349.20	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	5,835.79	4,648.01	1,187.78	79.65%
(80,391.80)	CB Computer Equipment	-	-	-	
-14.73%	Total Strategy A.3.1.	465,349.20	422,794.84	42,554.36	90.86%
<i>Appropriated</i> A.3.2.	(0.10) FTE's = 3.70 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	219,488.60	200,375.07	19,113.53	91.29%
\$ 235,247.00	1002 Other Personnel Cost	8,963.31	18,069.86	(9,106.55)	201.60%
Sup Appr =	2001 Prof Fees and Services	500.00	260.00	240.00	52.00%
\$ -	2003 Consumables	800.00	544.78	255.22	68.10%
Total Appr =	2004 Utilities	-	-	-	
\$ 235,247.00	2005 Travel	37,500.00	28,767.52	8,732.48	76.71%
Budgeted =	2006 Rent Building	-	-	-	
\$ 272,244.15	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	4,992.24	4,562.35	429.89	91.39%
\$ 36,997.15	CB Computer Equipment	-	-	-	
15.73%	Total Strategy A.3.2.	272,244.15	252,579.58	19,664.57	92.78%
<i>Appropriated</i> A.4.1.	(0.30) FTE's = 3.20 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	212,985.36	195,636.58	17,348.78	91.85%
\$ 364,152.00	1002 Other Personnel Cost	3,320.00	3,520.00	(200.00)	106.02%
Sup Appr =	2001 Prof Fees and Services	78,409.94	100,577.57	(22,167.63)	128.27%
\$ -	2003 Consumables	300.00	20.53	279.47	
Total Appr =	2004 Utilities	-	-	-	
\$ 364,152.00	2005 Travel	17,375.00	12,608.97	4,766.03	72.57%
Budgeted =	2006 Rent Building	-	-	-	
\$ 318,685.08	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,294.78	6,321.43	(26.65)	100.42%
\$ (45,466.92)	CB Computer Equipment	-	-	-	
-12.49%	Total Strategy A.4.1.	318,685.08	318,685.08	0.00	100.00%

# Texas Racing Commission

FYE 08/31/2019  
Operating Budget Status  
by LBB Expenditure Object/Codes

OBS-2

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 7/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 91.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	(1.73) FTE's = 2.57 <u>Administer Drug Testing</u>				
Base Appr = \$ 215,181.00	1001 Salaries and Wages	135,858.90	118,224.62	17,634.28	87.02%
	1002 Other Personnel Cost	2,420.00	2,380.00	40.00	98.35%
Sup Appr = \$ -	2001 Prof Fees and Services	500.00	-	500.00	0.00%
	2003 Consumables	200.00	30.24	169.76	15.12%
Total Appr = \$ 215,181.00	2004 Utilities	-	-	-	
	2005 Travel	23,709.00	19,565.17	4,143.83	82.52%
Budgeted = \$ 174,825.78	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
Difference \$ (40,355.22)	2009 Other Operating Cost	12,137.88	12,005.82	132.06	98.91%
	CB Computer Equipment	-	-	-	
-18.75%	<b>Total Strategy A.4.2.</b>	<b>174,825.78</b>	<b>152,205.85</b>	<b>22,619.93</b>	<b>87.06%</b>
<i>Appropriated</i> B.1.1.	(2.10) FTE's = 5.00 <u>Occupational Licensing</u>				
Base Appr = \$ 412,016.00	1001 Salaries and Wages	201,723.88	184,372.55	17,351.33	91.40%
	1002 Other Personnel Cost	9,093.60	7,749.65	1,343.95	85.22%
Sup Appr = \$ -	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	2,500.00	2,013.15	486.85	80.53%
Total Appr = \$ 412,016.00	2004 Utilities	-	-	-	
	2005 Travel	14,500.00	13,266.37	1,233.63	91.49%
Budgeted = \$ 336,799.53	2006 Rent Building	-	-	-	
	2007 Rent Machine	2,000.00	1,279.26	720.74	63.96%
Difference \$ (75,216.47)	2009 Other Operating Cost	106,982.06	66,968.30	40,013.76	62.60%
	CB Computer Equipment	-	-	-	
-18.26%	<b>Total Strategy B.1.1.</b>	<b>336,799.53</b>	<b>275,649.28</b>	<b>61,150.25</b>	<b>81.84%</b>
<i>Appropriated</i> B.1.2.	- FTE's = 0 <u>Texas OnLine</u>				
Base Appr = \$ 19,185.00	1001 Salaries and Wages	-	-	-	
	1002 Other Personnel Cost	-	-	-	
Sup Appr = \$ -	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
Total Appr = \$ 19,185.00	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
Budgeted = \$ 17,000.00	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
Difference \$ (2,185.00)	2009 Other Operating Cost	17,000.00	10,325.00	6,675.00	60.74%
	CB Computer Equipment	-	-	-	
-11.39%	<b>Total Strategy B.1.2.</b>	<b>17,000.00</b>	<b>10,325.00</b>	<b>6,675.00</b>	<b>60.74%</b>
<i>Appropriated</i> C.1.1.	- FTE's = 4.00 <u>Monitor Wagering and Audit</u>				
Base Appr = \$ 373,795.00	1001 Salaries and Wages	231,225.36	210,890.00	20,335.36	91.21%
	1002 Other Personnel Cost	7,820.00	7,300.00	520.00	93.35%
Sup Appr = \$ -	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
Total Appr = \$ 373,795.00	2004 Utilities	-	-	-	
	2005 Travel	4,500.00	3,644.42	855.58	80.99%
Budgeted = \$ 256,513.74	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
Difference \$ (117,281.26)	2009 Other Operating Cost	12,968.38	10,628.31	2,340.07	81.96%
	CB Computer Equipment	-	-	-	
-31.38%	<b>Total Strategy C.1.1.</b>	<b>256,513.74</b>	<b>232,462.73</b>	<b>24,051.01</b>	<b>90.62%</b>

# Texas Racing Commission

FYE 08/31/2019  
Operating Budget Status  
by LBB Expenditure Object/Codes

OBS-3

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 7/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 91.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> D.1.1.	(1.00) FTE's = 6.00 <u>Central Administration</u>				
Base Appr = \$ 753,512.00	1001 Salaries and Wages	362,931.18	324,948.50	37,982.68	89.53%
Sup Appr = \$ -	1002 Other Personnel Cost	18,029.60	16,146.69	1,882.91	89.56%
Total Appr = \$ 753,512.00	2001 Prof Fees and Services	25,500.00	20,055.55	5,444.45	78.65%
Budgeted = \$ 653,710.87	2003 Consumables	8,500.00	8,281.24	218.76	97.43%
Difference \$ (99,801.13)	2004 Utilities	51,000.00	44,360.96	6,639.04	86.98%
	2005 Travel	7,500.00	5,305.98	2,194.02	70.75%
	2006 Rent Building	104,470.00	104,498.28	(28.28)	100.03%
	2007 Rent Machine	3,200.00	3,160.23	39.77	98.76%
	2009 Other Operating Cost	72,580.09	66,523.92	6,056.17	91.66%
	CB Computer Equipment	-	-	-	0.00%
-13.24%	<b>Total Strategy D.1.1.</b>	<b>653,710.87</b>	<b>593,281.35</b>	<b>60,429.52</b>	<b>90.76%</b>
<i>Appropriated</i> D.1.2.	(1.00) FTE's = 3.80 <u>Information Resources</u>				
Base Appr = \$ 509,511.00	1001 Salaries and Wages	262,187.72	156,673.89	105,513.83	59.76%
Sup Appr = \$ -	1002 Other Personnel Cost	10,082.75	8,134.16	1,948.59	80.67%
Total Appr = \$ 509,511.00	2001 Prof Fees and Services	154,185.00	100,259.75	53,925.25	65.03%
Budgeted = \$ 515,428.15	2003 Consumables	1,500.00	181.64	1,318.36	12.11%
Difference \$ 5,917.15	2004 Utilities	-	-	-	
	2005 Travel	2,500.00	1,528.49	971.51	61.14%
	2006 Rent Building	500.00	440.00	60.00	88.00%
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	84,472.68	51,861.94	32,610.74	61.39%
	CB Computer Equipment	-	-	-	
1.16%	<b>Total Strategy D.1.2.</b>	<b>515,428.15</b>	<b>319,079.87</b>	<b>196,348.28</b>	<b>61.91%</b>
<i>Appropriated</i> D.1.3.	FTE's = 37.80 <u>Other Support Services</u>				
Base Appr = \$ 6,944,281.00	1001 Salaries and Wages	-	-	-	
Sup Appr = \$ -	1002 Other Personnel Cost	-	-	-	
Total Appr = \$ 6,944,281.00	2001 Prof Fees and Services	-	-	-	
Budgeted = \$ 6,494,979.01	2003 Consumables	-	-	-	
Difference \$ (449,301.99)	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
	2009 Other Operating Cost	-	-	-	
	CB Computer Equipment	-	-	-	
-6.47%	<b>Total Strategy D.1.3.</b>	<b>-</b>	<b>-</b>	<b>-</b>	
\$ 3,814,281	Regulatory Program Operating Budget	3,364,979.01	2,909,568.10	406,451.41	86.47%
\$ 3,130,000	TX Bred Program Operating Budget	3,130,000.00	2,528,245.87	601,754.13	80.77%
\$ 6,944,281	Total M.O.F. (TXRC Acct. 597 & GR) Total All Programs Operating Budget	6,494,979.01	5,437,813.97	1,008,205.54	83.72%

# Texas Racing Commission

FYE 08/31/2019  
Operating Budget Status  
by LBB Expenditure Object/Codes

OBS-4

Strategy	Program Description	FY 2019 Annual Budget	FY 2019 Expended Thru 7/31/2019	FY 2019 Unexpended Bal 8/31/2019	With 91.7% of Year Lapsed % of Budget Expended
\$ -	(8.60) FTE's = 37.80				
<i>Appropriated</i>	<u>Direct Expense of Regulatory Programs</u>				
	1001 Salaries and Wages	2,338,476.00	2,033,341.03	305,134.97	86.95%
	1002 Other Personnel Cost	80,289.53	92,278.78	(11,989.25)	114.93%
	2001 Prof Fees and Services	268,994.94	238,733.25	30,261.69	88.75%
	2003 Consumables	13,800.00	11,071.58	2,728.42	80.23%
	2004 Utilities	51,000.00	44,360.96	6,639.04	86.98%
	2005 Travel	171,884.00	138,732.54	33,151.46	80.71%
	2006 Rent Building	104,970.00	104,938.28	31.72	99.97%
	2007 Rent Machine	5,200.00	4,439.49	760.51	85.37%
	2009 Other Operating Cost	330,364.54	241,672.19	88,692.35	73.15%
	CB Computer Equipment	-	-	-	0.00%
\$ 3,814,281	<b>Total Direct Expense of Regulatory Program</b>	3,364,979.01	2,909,568.10	455,410.91	86.47%
\$ 3,130,000	FTE's = - Direct Expense of TX Bred Program	3,130,000.00	2,528,245.87	601,754.13	80.77%
\$ 6,944,281	(8.60) FTE's = 37.80 Total Direct Expense of All Programs	6,494,979.01	5,437,813.97	1,057,165.04	83.72%
\$ -	<i>Un-Appropriated</i> <u>Indirect Expense of All Programs</u>				
	OASI Match	180,582.15	154,420.02	26,162.13	85.51%
	Group Insurance	260,000.00	234,848.60	25,151.40	90.33%
	State Retirement	189,982.81	159,875.74	30,107.07	84.15%
	Benefit Replacement	2,053.72	2,053.72	-	100.00%
	ERS Retiree Insurance	409,000.00	378,391.61	30,608.39	92.52%
	SWCAP GR Reimburse	-	-	-	
	Unemployment Cost	-	-	-	
	Other	-	-	-	
\$ 1,041,619	<b>Total Indirect Expense of All Programs</b>	1,041,618.69	929,589.69	112,029.00	89.24%
\$ 7,985,900	<b>Total Direct and Indirect Expense of All Programs</b>	7,536,597.70	6,367,403.66	1,169,194.04	84.49%

Source Of Funds	Agency Method Of Finance	FY 2019 Projected Revenue	FY 2019 Actual Revenue Thru 7/31/2019	N/A	With 91.7% of Year Lapsed % of Revenue Collected
	<b>Regulatory Program MOF:</b>				
Acct. 597	Cash Balance Carry Forward	\$ 200,000.00	\$ 200,000.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ -	\$ -		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 3,681,855.00	\$ 3,270,793.34		88.84%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 665,000.00	\$ 535,632.00		80.55%
Acct. 597	Other Revenue	\$ 18,000.00	\$ 24,523.60		136.24%
Acct. 1	GR Funds	\$ -	\$ -		
	<b>Sub-Total Regulatory Prgm. MOF</b>	\$ 4,564,855.00	\$ 4,030,948.94		88.30%
	<b>Texas Bred Program MOF:</b>				
Acct. 597	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 597	Breakage and 1% Exotic	\$ 3,130,000.00	\$ 2,528,245.87		80.77%
Acct. 597	Other	\$ -	\$ -		
	<b>Sub-Total Texas Bred Prgm. MOF</b>	\$ 3,130,000.00	\$ 2,528,245.87		80.77%
All Sources	<b>Total MOF</b>	\$ 7,694,855.00	\$ 6,559,194.81		85.24%
<b>MOF Estimated to Exceed or (Fall-Short of Covering) Direct &amp; Indirect Expenses of Operating Budget</b>		\$ 158,257.30	\$ 191,791.15		



## Fiscal Year 2019 Operational Budget

Updated: August 23, 2019  
Thru: July 31, 2019

### Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
<b>Account 597 - Racing Commission - GRD</b>	\$ 7,694,855	\$ 6,559,195	\$ -	\$ 1,135,660	15%
<b>Account 1 - State of Texas - GR</b>	\$ -	\$ -	\$ -	\$ -	
<b>TOTAL - ALL REVENUES</b>	\$ 7,694,855	\$ 6,559,195	\$ -	\$ 1,135,660	15%

### Summary of Appropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
<b>1001 - Salaries and Wages:</b>	\$ 2,338,476	\$ 2,033,341	\$ -	\$ 305,135	13%
<b>1002 - Other Personnel Cost:</b>	\$ 80,290	\$ 92,279	\$ -	\$ (11,989)	-15%
<b>2001 - Professional Fees and Services:</b>	\$ 268,995	\$ 238,733	\$ -	\$ 30,262	11%
<b>2003 - Consumable Supplies:</b>	\$ 13,800	\$ 11,072	\$ -	\$ 2,728	20%
<b>2004 - Utilities:</b>	\$ 51,000	\$ 44,361	\$ -	\$ 6,639	13%
<b>2005 - Travel:</b>	\$ 171,884	\$ 138,733	\$ -	\$ 33,151	19%
<b>2006 - Rent Building:</b>	\$ 104,970	\$ 104,938	\$ -	\$ 32	0%
<b>2007 - Rent Machine and Other:</b>	\$ 5,200	\$ 4,439	\$ -	\$ 761	15%
<b>2009 - Other Operating Expense:</b>	\$ 330,365	\$ 241,672	\$ -	\$ 88,692	27%
<b>4000 - Grants</b>	\$ 3,130,000	\$ 2,528,246	\$ -	\$ 601,754	19%
<b>5000 - Capital Expenditures:</b>	\$ -	\$ -	\$ -	\$ -	
<b>TOTAL - ALL APPROPRIATED EXPENDITURES</b>	\$ 6,494,979	\$ 5,437,814	\$ -	\$ 1,057,165	16%

### Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
<b>TOTAL - ALL UNAPPROPRIATED EXPENDITURES</b>	\$ 1,041,619	\$ 929,590	\$ -	\$ 112,029	11%
<b>TOTAL - ALL EXPENDITURES</b>	\$ 7,536,598	\$ 6,367,404	\$ -	\$ 1,169,194	16%
<b>OPERATING SURPLUS / (DEFICIT)</b>	\$ 158,257	\$ 191,791			

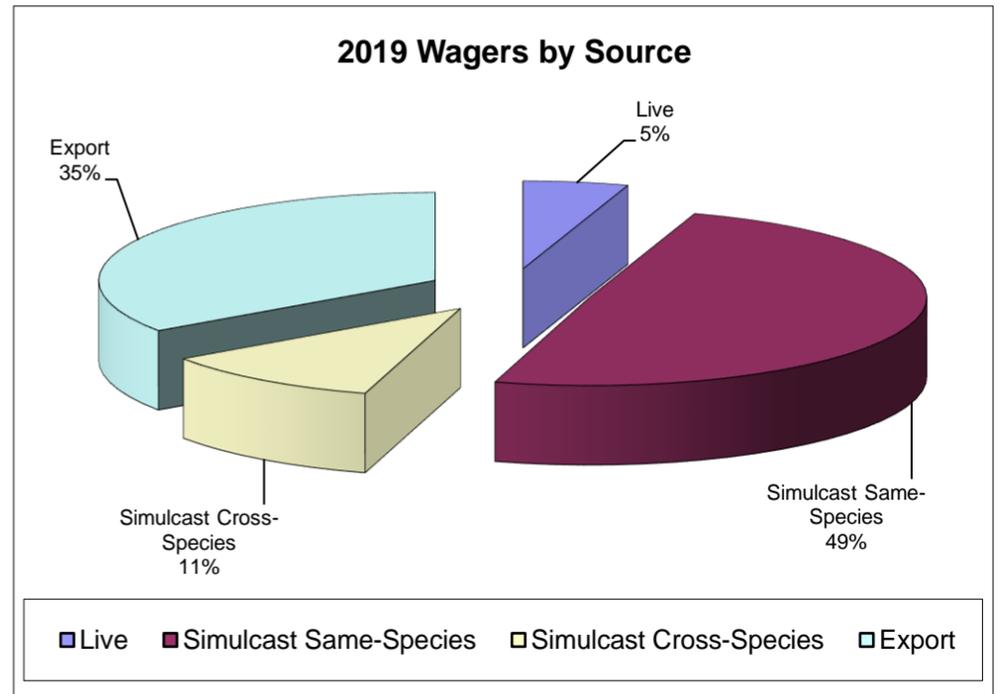
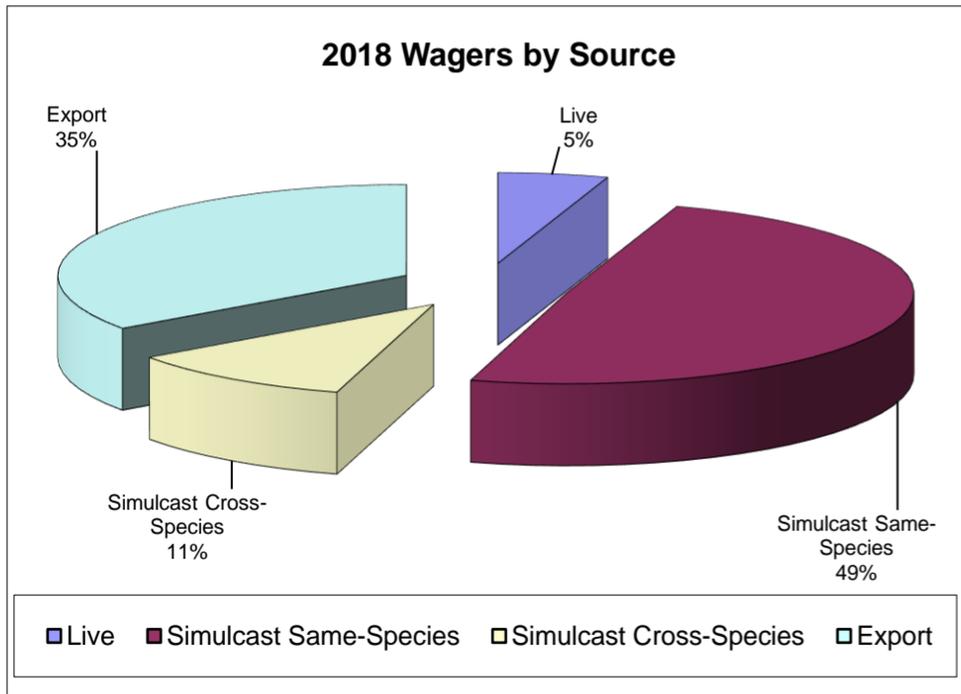
### Summary of FTE's

By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	46.40	46.40	46.40	46.40
Budgeted FTE's	37.80	37.80	37.80	37.80
Actual FTE's	<b>33.80</b>	<b>35.20</b>	<b>34.60</b>	0.00
<b>Actual FTE's Over / (Under) Budget</b>	n/a	n/a	n/a	n/a
<b>Actual FTE's Over / (Under) Authorization</b>	n/a	n/a	n/a	n/a



## Texas Pari-Mutuel Racetracks Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through May 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
<b>Greyhound Racetracks</b>								
Live	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	384	\$ 9,685,006	\$ 25,221	387	\$ 9,254,883	\$ 23,914	-4.44%	-5.18%
Simulcast Cross-Species	384	\$ 7,422,253	\$ 19,329	387	\$ 7,268,929	\$ 18,783	-2.07%	-2.82%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
<b>Total Wagers</b>		<b>\$ 18,774,863</b>			<b>\$ 19,012,519</b>		<b>1.27%</b>	
<b>Horse Racetracks</b>								
Live	73	\$ 9,394,236	\$ 128,688	71	\$ 8,766,512	\$ 123,472	-6.68%	-4.05%
Simulcast Same-Species	536	\$ 86,708,558	\$ 161,770	539	\$ 81,732,099	\$ 151,637	-5.74%	-6.26%
Simulcast Cross-Species	536	\$ 13,398,735	\$ 24,998	539	\$ 12,555,252	\$ 23,294	-6.30%	-6.82%
Export	73	\$ 67,074,388	\$ 918,827	71	\$ 61,742,322	\$ 869,610	-7.95%	-5.36%
<b>Total Wagers</b>		<b>\$ 176,575,917</b>			<b>\$ 164,796,185</b>		<b>-6.67%</b>	
<b>All Racetracks</b>								
Live	106	\$ 9,988,520	\$ 94,231	103	\$ 9,291,422	\$ 90,208	-6.98%	-4.27%
Simulcast Same-Species	920	\$ 96,393,565	\$ 104,776	926	\$ 90,986,982	\$ 98,258	-5.61%	-6.22%
Simulcast Cross-Species	920	\$ 20,820,988	\$ 22,632	926	\$ 19,824,181	\$ 21,408	-4.79%	-5.40%
Export	106	\$ 68,147,707	\$ 642,903	103	\$ 63,706,119	\$ 618,506	-6.52%	-3.79%
<b>Total Wagers</b>		<b>\$ 195,350,780</b>			<b>\$ 183,808,704</b>		<b>-5.91%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 127,203,073</b>			<b>\$ 120,102,585</b>		<b>-5.58%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 78,136,227</b>			<b>\$ 72,997,541</b>		<b>-6.58%</b>	



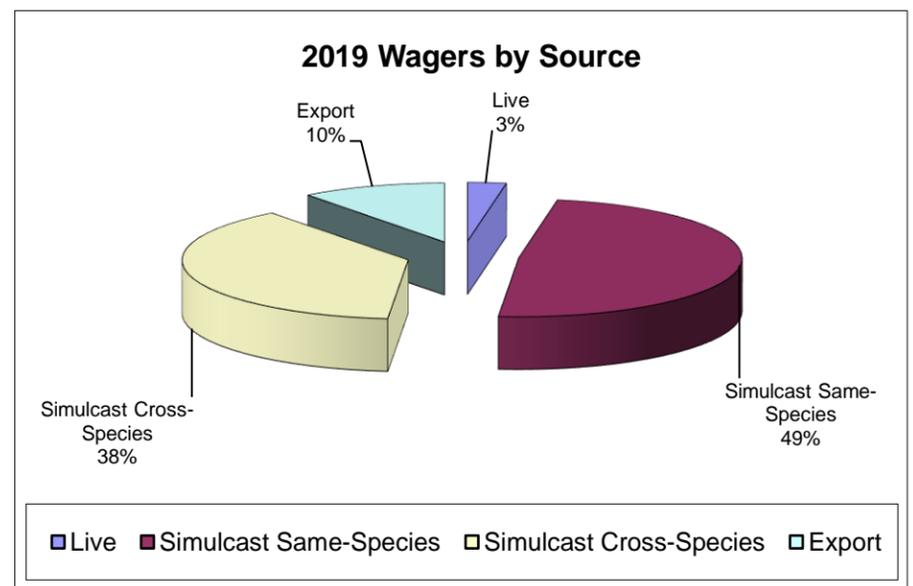
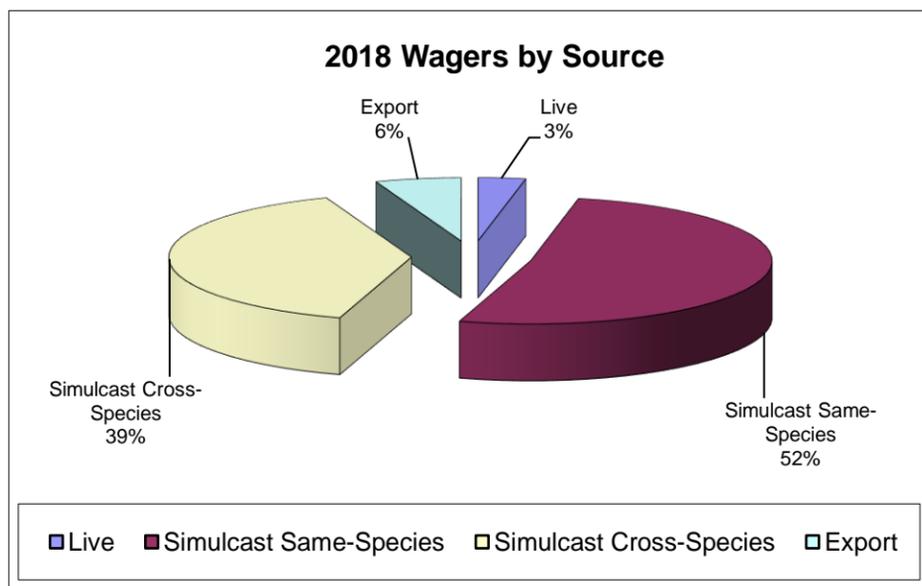
\*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



## Greyhound Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races

For the Period of January 1 through May 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
<b><u>Gulf Coast Racing</u></b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	107	\$ 3,003,529	\$ 28,070	108	\$ 3,208,231	\$ 29,706	6.82%	5.83%
Simulcast Cross-Species	107	\$ 1,584,813	\$ 14,811	108	\$ 1,756,934	\$ 16,268	10.86%	9.83%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 4,588,341</b>			<b>\$ 4,965,164</b>		<b>8.21%</b>	
<b><u>Gulf Greyhound Park</u></b>								
Live	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	148	\$ 4,318,289	\$ 29,178	150	\$ 3,768,542	\$ 25,124	-12.73%	-13.89%
Simulcast Cross-Species	148	\$ 3,693,244	\$ 24,954	150	\$ 3,208,224	\$ 21,388	-13.13%	-14.29%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
<b>Total Wagers</b>		<b>\$ 9,679,136</b>			<b>\$ 9,465,474</b>		<b>-2.21%</b>	
<b><u>Valley Race Park</u></b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	129	\$ 2,363,189	\$ 18,319	129	\$ 2,278,110	\$ 17,660	-3.60%	-3.60%
Simulcast Cross-Species	129	\$ 2,144,196	\$ 16,622	129	\$ 2,303,771	\$ 17,859	7.44%	7.44%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 4,507,385</b>			<b>\$ 4,581,881</b>		<b>1.65%</b>	
<b><u>All Greyhound Tracks</u></b>								
Live	33	\$ 594,284	\$ 18,009	32	\$ 524,910	\$ 16,403	-11.67%	-8.91%
Simulcast Same-Species	384	\$ 9,685,006	\$ 25,221	387	\$ 9,254,883	\$ 23,914	-4.44%	-5.18%
Simulcast Cross-Species	384	\$ 7,422,253	\$ 19,329	387	\$ 7,268,929	\$ 18,783	-2.07%	-2.82%
Export	33	\$ 1,073,319	\$ 32,525	32	\$ 1,963,797	\$ 61,369	82.96%	88.68%
<b>Total Wagers</b>		<b>\$ 18,774,863</b>			<b>\$ 19,012,519</b>		<b>1.27%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 17,701,543</b>			<b>\$ 17,048,722</b>		<b>-3.69%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 1,667,603</b>			<b>\$ 2,488,707</b>		<b>49.24%</b>	

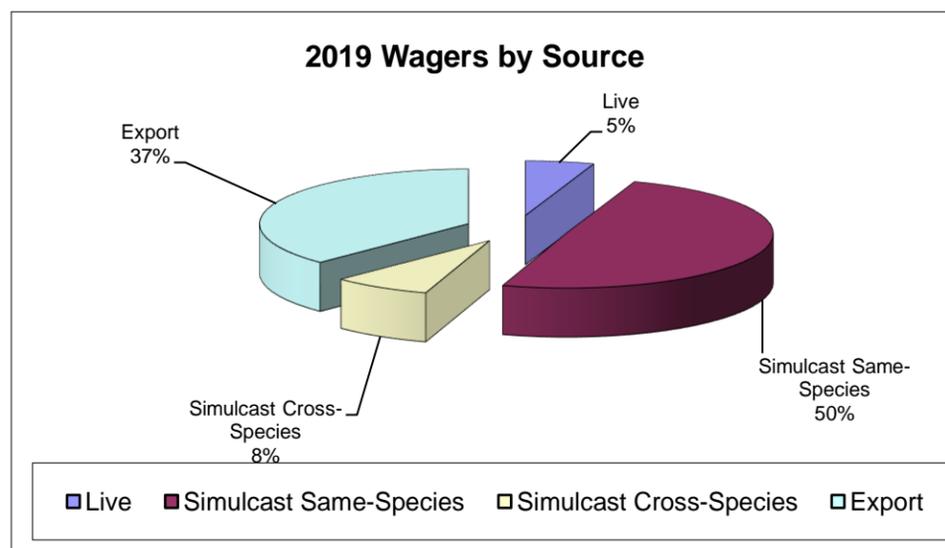
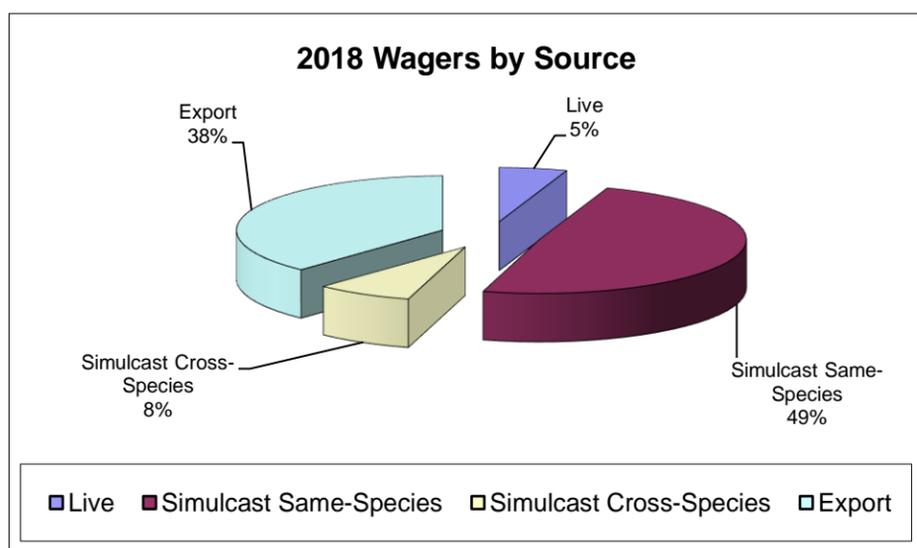


\*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.



## Horse Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through May 31

	Year 2018			Year 2019			Percentage Change	
	# Days	Wagers (Handle)*		# Days	Wagers (Handle)*		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
<b>Gillespie County Fair</b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	85	\$ 1,995,984	\$ 23,482	86	\$ 1,725,535	\$ 20,064	-13.55%	-14.55%
Simulcast Cross-Species	85	\$ 205,474	\$ 2,417	86	\$ 207,308	\$ 2,411	0.89%	-0.28%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 2,201,458</b>			<b>\$ 1,932,842</b>		<b>-12.20%</b>	
<b>Lone Star Park</b>								
Live	20	\$ 5,072,443	\$ 253,622	19	\$ 4,413,907	\$ 232,311	-12.98%	-8.40%
Simulcast Same-Species	151	\$ 44,023,880	\$ 291,549	151	\$ 41,589,635	\$ 275,428	-5.53%	-5.53%
Simulcast Cross-Species	151	\$ 3,139,138	\$ 20,789	151	\$ 3,251,434	\$ 21,533	3.58%	3.58%
Export	20	\$ 17,603,503	\$ 880,175	19	\$ 15,729,241	\$ 827,855	-10.65%	-5.94%
<b>Total Wagers</b>		<b>\$ 69,838,965</b>			<b>\$ 64,984,217</b>		<b>-6.95%</b>	
<b>Retama Park</b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	150	\$ 14,365,026	\$ 95,767	151	\$ 13,271,614	\$ 87,891	-7.61%	-8.22%
Simulcast Cross-Species	150	\$ 2,623,179	\$ 17,488	151	\$ 2,236,119	\$ 14,809	-14.76%	-15.32%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 16,988,205</b>			<b>\$ 15,507,733</b>		<b>-8.71%</b>	
<b>Sam Houston Race Park</b>								
Live	53	\$ 4,321,793	\$ 81,543	52	\$ 4,352,605	\$ 83,704	0.71%	2.65%
Simulcast Same-Species	150	\$ 26,323,668	\$ 175,491	151	\$ 25,145,316	\$ 166,525	-4.48%	-5.11%
Simulcast Cross-Species	150	\$ 7,430,945	\$ 49,540	151	\$ 6,860,392	\$ 45,433	-7.68%	-8.29%
Export	53	\$ 49,470,884	\$ 933,413	52	\$ 46,013,081	\$ 884,867	-6.99%	-5.20%
<b>Total Wagers</b>		<b>\$ 87,547,290</b>			<b>\$ 82,371,393</b>		<b>-5.91%</b>	
<b>All Horse Tracks</b>								
Live	73	\$ 9,394,236	\$ 128,688	71	\$ 8,766,512	\$ 123,472	-6.68%	-4.05%
Simulcast Same-Species	536	\$ 86,708,558	\$ 161,770	539	\$ 81,732,099	\$ 151,637	-5.74%	-6.26%
Simulcast Cross-Species	536	\$ 13,398,735	\$ 24,998	539	\$ 12,555,252	\$ 23,294	-6.30%	-6.82%
Export	73	\$ 67,074,388	\$ 918,827	71	\$ 61,742,322	\$ 869,610	-7.95%	-5.36%
<b>Total Wagers</b>		<b>\$ 176,575,917</b>			<b>\$ 164,796,185</b>		<b>-6.67%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 109,501,530</b>			<b>\$ 103,053,863</b>		<b>-5.89%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 76,468,624</b>			<b>\$ 70,508,834</b>		<b>-7.79%</b>	



\*NOTE: All figures are based on data available at the time the report was compiled and are subject to being audited and revised.

## ENFORCEMENT ACTIVITY SUMMARY

Lone Star Park's Thoroughbred Meet began on April 18, 2019 and ended on July 21, 2019.

Gillespie County Fair & Festivals' Mixed Meet began on July 6, 2019 and ended on August 25, 2019.

Retama Park's Mixed Meet began on July 4, 2019 and runs through September 11, 2019.

Lone Star Park's Quarter Horse Meet will begin on September 20 and run through November 9, 2019.

All active status racetracks in Texas are conducting simulcast operations at this time.

### Lone Star Park

#### Thoroughbred Meet

Rulings Activity - 4/18/19 – 7/21/19

Contraband	4
Human Alcohol Violations	3
Human Drug Violations	1
Jockey – Riding Infraction	8
Licensing	1
Medication Violations* Class 4 Dimethylsulfoxide (1) Phenylbutazone (3)	4
Trainer Infractions	6
<b>TOTAL</b>	<b>27</b>

\*Does not include any rulings that have not been finalized through the appeals process\*

## Gillespie County Fair & Festivals

### Mixed Meet

Rulings Activity - 7/6/19 - 8/25/19

Medication Violations*	
Class 4	
Phenylbutazone (1)	
Class 3	
Albuterol (1)	2
Trainer Infractions	1
<b>TOTAL</b>	<b>3</b>

## Retama Park

### Mixed Meet

Rulings Activity from 7/4/19 - 8/27/19  
(meet ends 9/11/19)

Financial Obligations	3
Jockey – Riding Infractions	1
Jockey – Non Riding Infractions	1
Medication Violations*	
Class 3	
Clenbuterol (1)	
Flunixin & Phenylbutazone (1)	2
Miscellaneous	1
Reciprocity	1
Trainer Infractions	3
<b>TOTAL</b>	<b>12</b>

\*Does not include any rulings that have not been finalized through the appeals process\*

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
TEXAS RACING COMMISSION  
AND THE  
TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY**

Pursuant to Tex. Occ. Code § 2034.002, the Drug Testing Laboratory of the Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is to provide drug testing services on race animals for the Texas Racing Commission (TxRC). TxRC and TVMDL enter into this Memorandum of Understanding to delineate the responsibilities of the parties in administering TxRC's drug testing program for race animals.

**I.  
DEFINITIONS**

Association - A pari-mutuel racetrack licensed by TxRC under the Act to conduct horse or greyhound racing with pari-mutuel wagering

ELISA – Enzyme-linked immunosorbent assay ("immunoassay")

Equine sample – Blood and/or urine from the same horse collected during the same approximate time-frame (either pre-race or post-race)

Executive Director – the Executive Director for the TxRC or a designee of the Executive Director

GC/MS – Gas Chromatography-Mass Spectrometry

LC/MS – Liquid Chromatography-Mass Spectrometry

**II.  
LABORATORY COVENANTS**

TVMDL agrees to:

1. Provide sufficient security to control access to the TVMDL Drug Testing Lab and to ensure only authorized persons handle samples or gain access to TVMDL processes or to areas where records and samples are stored.
2. Provide, with approval of the Executive Director of the TxRC, all supplies for the collection and shipment of samples, including sample jars, blood tubes, seals, labels, vacutainer sleeves, collection needles, and shipping containers. TVMDL will bill the actual cost of supplies to the association the supplies are shipped to. On request by the TxRC, TVMDL shall provide documentation regarding the cost of supplies. TVMDL shall obtain approval from the Executive Director of the TxRC before changing supplies.

3. Inspect each shipment of samples on arrival at TVMDL for evidence of possible tampering. Any evidence of tampering shall be noted and reported to the Executive Director in writing.
4. Use chain-of-custody procedures to maintain control and accountability of samples at all stages, from receipt to final disposition.
5. Provide secured and appropriate storage conditions for samples while under custody at TVMDL.
6. Maintain and follow approved Standard Operating Procedures within the oversight of the TVMDL Quality Management System.
7. Provide testing for the presence of prohibited substances and controlled therapeutic medications on equine urine samples as follows:
  - a. Instrumental analysis, either LC/MS or GC/MS, on each equine urine sample.
  - b. Specific gravity determination on each equine urine sample.
  - c. Analyses for contemporary performance-enhancing (presumed or actual) drugs of notoriety by appropriate methods (LC/MS, GC/MS, or ELISA) as requested by TxRC.
  - d. Each sample with the presence of a controlled therapeutic medication, as published by TxRC, that exceeds the corresponding maximum permissible concentration shall be reported as positive and the quantitative level of the medication shall be reported to the TxRC.
8. Provide testing for the presence of prohibited substances and controlled therapeutic medications on equine blood samples as follows:
  - a. Furosemide LC/MS screening on each equine serum sample to ensure compliance with TxRC's Bleeders and Furosemide Program. Evidence of non-compliance will be reported to the TxRC. Report as positive for each sample in which the concentration of furosemide exceeded 100 ng/mL and a urine specific gravity of less than 1.010. Report as a letter of notification for each sample in which the concentration of furosemide exceeded 100 ng/mL of furosemide and a urine specific gravity of 1.010- 1.012 or no urine sample was submitted for testing. Report as a letter of notification for each sample in which the horse received furosemide treatment but furosemide was not detected in the sample. Report as a letter of notification for each sample in which the horse did not receive furosemide treatment but furosemide was detected in the sample.
  - b. Test for total carbon dioxide on samples of equine blood as requested by the TxRC. Each sample exceeding the maximum permissible level as published by TxRC shall be reported as positive to TxRC (to include reporting its quantitative level). Alternatively, TVMDL may recommend another laboratory to conduct testing for total carbon dioxide.
  - c. Instrumental analysis, either LC/MS or GC/MS, on each equine blood sample. Additionally, each equine blood sample will be extracted and screened independently by instrumental analysis for the presence of dimethyl sulfoxide (DMSO). Pooling of no more than 4 samples is permissible.

- d. Analyses for contemporary performance-enhancing (presumed or actual) drugs of notoriety by appropriate methods (LC/MS, GC/MS, or ELISA) as requested by TxRC.
  - e. Each sample with the presence of a controlled therapeutic medication, as published by TxRC, that exceeds the corresponding maximum permissible concentration shall be reported as positive and the quantitative level of the medication shall be reported to the TxRC.
9. Perform testing for beta-agonist drugs, including Clenbuterol, Albuterol, Ractopamine, Zilpaterol, and Bambuterol in equine hair samples by instrumental analysis as requested.
  10. Provide testing for the presence of prohibited substance(s) in canine urine samples. Testing shall be by instrumental analysis, LC/MS or GC/MS, on each canine urine sample, with an emphasis on drugs classified as Category I or II by the TxRC Greyhound Medication Classification.
  11. Perform confirmatory analysis on samples, whether equine or canine, blood or urine, when a suspicious finding is identified from screening. At least one definitive analytical technique should be employed for the confirmatory analysis (e.g., mass spectrometry).
  12. Perform tests as required by the Thoroughbred Owners and Breeders Association (TOBA) for substances in samples from horses that participated in graded stakes races and listed stakes races at the \$75,000 purse level or above.
  13. Expedite tests as requested for Quarter Horse trials with a goal of reporting test results to TxRC within five calendar days of receiving samples.
  14. Blood samples labeled as "Vet Work" will be screened by LC/MS for Non-steroidal anti-inflammatory drugs (NSAIDs), corticosteroids, or other drugs as requested. Results for Vet Work samples will be reported by Letter of Notification to the Director of Investigations within 120 hours of receipt.
  15. Biological samples other than blood and urine (e.g. ocular fluid) will be screened by LC/MS or GC/MS. Turn-around times will be dependent upon the extent of confirmatory testing in the event a sample is deemed suspect from initial screening, but will not exceed ten business days. These samples will be reported by Letter of Notification to the Director of Investigations.
  16. With prior approval, perform other testing as requested, utilizing the most effective or appropriate technology or platform.
  17. All tested samples shall be stored in secured and appropriate conditions before either disposal of or releasing to a third party (for various purposes). Minimum retention period for a negative sample is 5 calendar days after reporting. Minimum retention period for a positive sample is 1 year after reporting or until all legal proceedings concerning the sample are concluded (whichever is longer). Minimum retention period for all records is two years or until all legal proceedings concerning the sample are concluded (whichever is longer).
  18. Report negative result(s) to TxRC within 120 hours from sample receipt, if possible, by the method required by the Executive Director. Report positive result(s) to TxRC within three weeks of sample receipt. On request by the Executive Director, TVMDL shall make available

to TxRC a copy of the analytical results of any test conducted pursuant to this Memorandum of Understanding.

19. Provide qualified professional personnel to testify in an administrative hearing or other legal proceeding involving a test performed pursuant to this Memorandum of Understanding and participate in and assist with pretrial matters in those proceedings, such as interrogatories and depositions.
20. Notify the TxRC in writing at least 30 days before implementing any change in analytical procedures which in consequence alters the detection sensitivity for any substance classified as Category III, IV, or V in the TxRC Equine Medication Classification.
21. Participate in industry-recognized quality assurance programs.
22. Refrain from disclosing any information relating to a sample to any person other than one designated by TxRC to receive the information.
23. Maintain qualified staff with no financial interest in racehorses, racing greyhounds, or an association or any other conflict of interest within the racing industry. All laboratory personnel must be employees of the Texas A&M Veterinary Medical Diagnostic Laboratory, a member of the Texas A&M University System, and at all times be subject to the rules and policies of the A&M System, as promulgated by the Board of Regents of the A&M System or the TVMDL Director.
24. Consent to background investigation through the TxRC conducted by the Texas Department of Public Safety, including fingerprinting, of all TVMDL staff involved in drug testing.
25. Allow access by TxRC to all records of TVMDL that pertain to drug testing services performed pursuant to this Memorandum of Understanding.
26. Make reasonable efforts to collect payment from each association and notify the Executive Director of any charges that are unpaid 30 days after invoicing.
27. Notify the Executive Director, within 30 days of receipt, of all findings and recommendations made by the State Auditor, an internal auditor of the Texas A&M University System, or another auditor acting on behalf of or under contract with TVMDL or the Texas A&M University System regarding operations of the Drug Testing Laboratory of TVMDL, as they relate to this Memorandum of Understanding.

### III. **COMMISSION COVENANTS**

TxRC agrees to:

1. Supervise the sample collection site at each association to ensure the site has the necessary personnel, supplies, equipment, facilities, and supervision to provide for the identification of animals and humans and to collect, identify, secure, store, and ship each sample to TVMDL.
2. Submit urine and blood samples from approximately 2,600 horses per year. Submit approximately 360 canine urine samples per year. TxRC will make every effort to sample for

testing in the frequency of approximately 2.0 equine samples per horse race and 0.9 canine samples per greyhound race. If the number of racing performances changes during the calendar year, the number of specimens may be adjusted accordingly, and the TxRC Executive Director will notify the TVMDL Director as soon as practicable. If the number of equine urine and blood samples, canine urine samples, and/or racing performances decreases by more than 10% during the calendar year, TVMDL reserves the right to adjust test fees and will notify the TxRC Executive Director in writing at least 30 days before adjustments are made.

3. Require each association to deliver all samples to TVMDL in a secure manner, at the association's expense, in accordance with a delivery schedule approved by TVMDL.
4. Apprise and update TVMDL in a timely manner of all drugs on the permitted list and all changes in medication rules, practices, or procedures.
5. Participate in and fund an industry-recognized quality assurance program.
6. No later than 90 days before the anticipated opening of a racing facility, TxRC shall notify TVMDL in writing of the anticipated race dates for the facility and anticipated number of samples.
7. Employ enforcement measures necessary to ensure that the costs incurred by TVMDL for drug testing services pursuant to this Memorandum of Understanding are promptly paid by each association.

#### **IV. COST OF SERVICES**

Except as otherwise provided by this paragraph, TVMDL agrees to charge, and TxRC approves a per-animal charge of, \$215.00 for equine samples (for tests conducted pursuant to Article II, Sections 7 a, b, & d; 8 a, c, & e; 11 and 13, whether in blood, urine, or both) and \$45.00 for canine samples (pursuant to Article II, Sections 10 and 11). For tests conducted pursuant to Article II, Section 8b (total carbon dioxide), TVMDL agrees to charge and TxRC approves a per-sample charge of \$28.50, unless TVMDL recommends a different laboratory to conduct the testing for total carbon dioxide, in which case the charge shall be separately determined. For tests conducted pursuant to Article II, Sections 7c and 8d (contemporary performance-enhancing drugs of notoriety), TVMDL agrees to charge and TxRC approves a per-sample charge of \$13.50 (where an existing methodology exists) and a mutually agreed upon test development costs and subsequent per-sample charge (where a methodology must be developed). For tests conducted pursuant to Article II, Section 9 (beta-agonist drugs), TVMDL agrees to charge, and TxRC approves a per-sample charge of \$100.00. For tests conducted pursuant to Article II, Section 12 (TOBA tests), TVMDL agrees to charge, and TxRC approves a per-sample charge of \$444.00. For tests conducted pursuant to Article II, Section 14 (vet work), TVMDL agrees to charge, and TxRC approves a per-sample charge of \$70.00. For tests conducted pursuant to Article II, Section 15 (ocular fluid, etc.), TVMDL agrees to charge, and TxRC approves, a per-sample charge of \$55.00. For tests conducted pursuant to Article II, Section 16 (other testing as requested), TVMDL and TxRC will mutually agree on the per-sample charge depending on the methodology and platform employed for testing.

Pursuant to Tex. Occ. Code § 2034.003, the associations are responsible for payment of these charges.

**V.  
EXECUTION**

The Parties agree to use due diligence in the exercise of their responsibilities as outlined in this Memorandum of Understanding. The term of this Memorandum of Understanding is from the date of Commission approval through August 31, 2020. To ensure the continuity of the drug testing program in pari-mutuel racing, all terms of this Memorandum of Understanding continue in effect until a new Memorandum of Understanding is executed, with the understanding that TVMDL reserves the right to adjust fees prior to execution of the new Memorandum of Understanding and will notify the TxRC Executive Director in writing at least 30 days before adjustments are made. If either Party determines that events have changed and significantly affected a material term of the Memorandum of Understanding, including but not limited to, the closing of a race track, or a significant increase in the cost of drug testing or testing supplies, the Parties may renegotiate the terms of this Memorandum of Understanding.

For the faithful performance of this agreement, this agreement is executed by the undersigned persons in their capacities described below. This agreement takes effect on the date of approval by the Commissioners of the Texas Racing Commission.

TEXAS RACING COMMISSION

\_\_\_\_\_  
Chuck Trout  
Executive Director

\_\_\_\_\_  
Date

TEXAS A&M VETERINARY MEDICAL  
DIAGNOSTIC LABORATORY

\_\_\_\_\_  
Bruce L. Akey, MS DVM  
Director

\_\_\_\_\_  
Date

Approved as to form:

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Devon Bijansky  
TxRC General Counsel

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Date

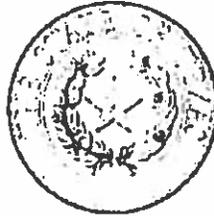
## **IV. PROCEEDINGS ON OCCUPATIONAL LICENSES**

Discussion and possible action on the proposal for decision in:

SOAH No. 476-18-1010, Judd Kearl v. Texas Racing Commission;

SOAH No. 476-18-1011, Jose Sanchez v. Texas Racing Commission; and

SOAH No. 476-18-1012, Brian Stroud v. Texas Racing Commission



# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

May 28, 2019

Chuck Trout  
Executive Director  
Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, Texas 78754-4594

INTER-AGENCY

**RE: Docket No. 476-18-1010, 476-18-1011, 476-18-1012 / Judd Kearl,  
Jose Sanchez, and Brian Stroud v. Texas Racing Commission**

Dear Mr. Trout:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

Steven M. Rivas  
Administrative Law Judge

SMR/sh

Enclosures (with 1 CD)

cc: Virginia Fields, Texas Racing Commission, P.O. Box 12080, Austin, TX 78711 – INTER-AGENCY  
Trent Rowell, Attorney at Law, P.O. Box 457, Stockdale, TX 78160- REGULAR MAIL  
Elcanor Ruffner, Attorney at Law, 1201 Spyglass Drive, Suite 100, Austin, TX 78746- REGULAR MAIL

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15<sup>th</sup> Street Austin, Texas 78701  
Phone: 512-475-4993 | Fax: 512-475-4994  
[www.soah.texas.gov](http://www.soah.texas.gov)

SOAH DOCKET NOS. 476-18-1010, 476-18-1011, and 476-18-1012

<b>JUDD KEARL, JOSE SANCHEZ, AND BRIAN STROUD</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Appellants</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>TEXAS RACING COMMISSION,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>	§	

**PROPOSAL FOR DECISION**

Judd Kearn, Jose Sanchez, and Brian Stroud (Appellants) are racehorse trainers licensed by the Texas Racing Commission (Commission). Appellants are appealing the Board of Stewards (Stewards) Rulings as clear error. The Stewards ruled that eight racehorses trained by Appellants tested positive for a prohibited substance. The Administrative Law Judge (ALJ) concludes there was no evidence that the Stewards' rulings were clearly erroneous. Therefore, the Stewards' rulings should be upheld.

**I. JURISDICTION AND NOTICE**

There were no contested issues of jurisdiction or notice, and those issues are set forth in the Findings of Fact and Conclusions of Law below. On January 16, 2019, ALJ Steven M. Rivas convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Appellants Judd Kearn and Jose Sanchez were represented by attorney Eleanor Ruffner. Appellant Brian Stroud was represented by attorney Trent Rowell. The hearing adjourned that day and the record closed on March 27, 2019, when the parties provided a copy of a court document related to this matter.<sup>1</sup>

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<sup>1</sup> Final Judgment in Cause No. D-1-GN-17-003711, *Kearn and Sanchez v. Texas Racing Commission*, in the 98th Judicial District Court of Travis County, Texas. During the pendency of this proceeding at SOAH, Appellants Kearn and Sanchez filed suit in District Court challenging the Stewards' rulings. Although the Court found that newly-implemented testing procedures were not valid as rules promulgated by the Commission, the Court pointed out that Appellants had not exhausted their administrative remedies as this matter was pending at SOAH.

## II. APPLICABLE LAW

Horseracing in Texas is governed by the Texas Racing Act (Act) and the rules promulgated by the Commission pursuant to the Act.<sup>2</sup> The Commission's Stewards have authority to conduct hearings, impose fines, and suspend licenses.<sup>3</sup>

The Commission's rules further provide that a horse participating in a race "may not carry in its body a prohibited drug, chemical, or other substance,"<sup>4</sup> and require a trainer to "guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance."<sup>5</sup> The Commission's rules also regard trainers as the "absolute insurer" for any horse entered into a race and require them to ensure that each horse in the care and custody of the trainer is "free from all prohibited drugs, chemicals, or other substances."<sup>6</sup>

After a race, a specimen must be collected from the horse that finished first and may be collected from the horse that finished second.<sup>7</sup> The specimens must be taken from inside a test barn at the racetrack, shielded away from the noise and excitement of the races.<sup>8</sup> The test barn must be clean, ventilated, and guarded at all times.<sup>9</sup> If the specimen is of sufficient quantity to be split, it is divided into two parts. One part of the specimen is delivered to a laboratory for testing, and the second part, or "split specimen," is stored pending possible further testing.<sup>10</sup>

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<sup>2</sup> Texas Racing Act, Tex. Rev. Civ. Stat. art. 179e; 16 Tex. Admin. Code, part 8.

<sup>3</sup> 16 Tex. Admin. Code § 307.61.

<sup>4</sup> 16 Tex. Admin. Code § 319.3(a).

<sup>5</sup> 16 Tex. Admin. Code § 319.302.

<sup>6</sup> 16 Tex. Admin. Code § 311.104(b)(2).

<sup>7</sup> 16 Tex. Admin. Code § 319.361(b), (c)(1).

<sup>8</sup> 16 Tex. Admin. Code § 309.250(b).

<sup>9</sup> 16 Tex. Admin. Code § 309.250(c), (f).

<sup>10</sup> 16 Tex. Admin. Code §§ 319.338, .362(a)-(b).

An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer.<sup>11</sup> If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen.<sup>12</sup> If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the Act.<sup>13</sup>

Although the Commission has adopted the Equine Medication Classification Policy and Penalty Guidelines (Guidelines), which identify prohibited substances, the parties agree that Nomifensine is not listed in the Guidelines as a prohibited substance. However, Commission rules further define a prohibited substance as any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”<sup>14</sup>

Following an initial return of a test showing the presence of a prohibited substance, a Steward may summarily suspend a person who has used or administered the prohibited substance until a hearing before the Stewards and judges.<sup>15</sup> If racing Stewards find that a test specimen from a race animal contained a prohibited drug, chemical, or substance, the stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal’s trainer, and impose a full suspension of the trainer’s license for up to five years.<sup>16</sup>

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<sup>11</sup> 16 Tex. Admin. Code § 319.362(c).

<sup>12</sup> 16 Tex. Admin. Code § 319.362(d).

<sup>13</sup> 16 Tex. Admin. Code § 319.362(e).

<sup>14</sup> 16 Tex. Admin. Code § 319.1(b)(1).

<sup>15</sup> 16 Tex. Admin. Code § 307.62(i).

<sup>16</sup> 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).

A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing.<sup>17</sup> In an appeal, the appellant has the burden of proving that the Stewards' decisions were clearly in error.<sup>18</sup>

### III. DISCUSSION

#### A. Background Facts and Procedural History

Appellants' owner/trainer licenses were in effect at all times relevant. Appellant Kearl holds license number 91094, Appellant Sanchez holds license number 163028, and Appellant Stroud holds license number 157702. In May and June of 2017, seven racehorses trained by Appellants won or placed<sup>19</sup> in eight races at Texas racetracks. The following blood samples were provided:

- On May 22, 2017, Zoomin N Celebrating, trained by Appellant Kearl, placed in the tenth race at Sam Houston Race Park<sup>20</sup> and provided blood sample #SH064401;
- On June 9, 2017, Million Dollar Kiss, trained by Appellant Kearl, placed in the ninth race at Retama Park<sup>21</sup> and provided blood sample #RP043194;
- On June 9, 2017, Chivalri, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043195;
- On June 10, 2017, Contentious Strike, trained by Appellant Sanchez, won the sixth race at Retama Park and provided blood sample #RP043208;
- On June 10, 2017, Tellem Honeys Here, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043216;
- On June 16, 2017, Dancers Toast, trained by Appellant Sanchez, placed in the tenth race at Retama Park and provided blood sample #RP043237;

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<sup>17</sup> 16 Tex. Admin. Code § 307.67.

<sup>18</sup> 16 Tex. Admin. Code § 307.67(c).

<sup>19</sup> 16 Tex. Admin. Code § 301.1(55) defines "place" as finishing second in a race.

<sup>20</sup> Sam Houston Race Park is located in Houston, Texas.

<sup>21</sup> Retama Park is located in Selma, Texas, near San Antonio.

- On June 17, 2017, Zoomin N Celebrating, trained by Appellant Kearn, won the sixth race at Retama Park and provided blood sample #RP043248; and
- On June 17, 2017, Desdemona Rambler, trained by Appellant Stroud, won the eighth race at Retama Park and provided blood sample #RP043252.

Each blood sample was divided into two specimens. The first specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine.<sup>22</sup> At the request of each Appellant, a split sample was sent to Pennsylvania Toxicology and Research Laboratory, where the first positive test was confirmed. Each horse was disqualified from its race and had its purse (winnings) redistributed.

The Stewards conducted hearings to consider the facts and circumstances surrounding the positive test results. Following the hearings, the Stewards ruled that each owner/trainer license held by each Appellant be summarily suspended. Each Appellant appealed the summary suspensions, and each was upheld.

On September 25, 2017, Appellants appeared before the Retama Park Board of Stewards for a hearing to determine whether Appellants were subject to a final suspension over the positive test results. The Stewards found in each instance that Appellants violated the Commission's rules at 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302. The Stewards issued the following rulings with regard to each Appellant:

- On October 18, 2017, in Ruling No. RETA2682, Appellant Stroud was fined \$10,000 and received a one-year license suspension;
- On October 20, 2017, in Ruling No. RETA2686, Appellant Sanchez was fined \$10,000 and received a one-year license suspension;
- On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension;
- On October 21, 2017, in Ruling No. SHRP5093, Appellant Kearn was fined \$10,000 and received a one-year license suspension;

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<sup>22</sup> In the 1970s, Nomifensine was a drug used as an antidepressant. In 1992, the Federal Drug Administration withdrew its approval for this drug.

- On October 21, 2017, in Ruling No. RETA2688, Appellant Kearn was fined \$25,000 and received a 3-year license suspension;
- On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a 3-year license suspension;
- On October 21, 2017, in Ruling No. RETA2690, Appellant Kearn was fined \$25,000 and received a 5-year license suspension; and
- On October 21, 2017, in Ruling No. RETA2691, Appellant Kearn was fined \$25,000 and received a 5-year license suspension.

Appellants appealed these rulings to the Commission, and these matters were referred to SOAH for contested case hearings. At SOAH, these matters were joined for one hearing.

## **B. Appellants' Position**

Appellants presented three arguments as to why the Commission should not consider the positive test results. First, the test barn employees who collected and stored the blood samples deviated from the Commission's written procedures on how to conduct such tests. Second, Appellants argued that Nomifensine did not meet the definition of a "prohibited substance." Third, Appellants argued in the alternative, that they personally did not commit any violations and, as such, should not be sanctioned by the Commission.

### **1. Testing Procedure**

Appellants pointed out that the Commission's Horse Racetrack Drug Testing Procedures<sup>23</sup> govern the testing procedure at issue in this case. However, Appellants testified the test barn employees who performed the blood tests deviated from the Commission's blood test procedure. In support of this argument, Appellants offered testimony of test barn supervisors Gina Griswold and Laura Hoffman.

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<sup>23</sup> Staff Ex. 23. The Commission's Horse Racetrack Drug Testing Procedures were effective on November 6, 2014, and were revised on January 20, 2017, in the document titled Policies and Procedures for Test Barn Employees (Staff Ex. 24). The revised document primarily addressed urine testing procedures. No changes were made regarding blood testing procedures.

**a. Edna Griswold**

At the hearing before the Retama Park Board of Stewards on September 25, 2017, Ms. Griswold appeared as a witness and testified she was the test barn supervisor at Sam Houston Race Park when Zoomin N Celebrating provided blood sample #SH064401.<sup>24</sup> She acknowledged that although the Commission had developed a drug testing procedure, the test barn employees under her supervision deviated from the Commission's drug testing procedure as follows:

<b>Provision</b>	<b>Procedure</b>	<b>Deviation</b>
6.5.12	Collect four tubes of blood from each horse	Collected three tubes
6.5.21	Harvest the serum from the blood	Did not harvest the serum
6.5.22	Use evidence tape to tape the blood tubes	Used rubber bands
6.6.12	Store split samples in lockable freezer	Stored samples in refrigerator
6.6.13	Only test barn supervisors shall have keys to locked freezer where samples are stored.	Samples stored in a refrigerator. No need to secure a key to a freezer.

Ms. Griswold testified the Commission's Executive Director, Chuck Trout, trained her on how to carry out the above-noted blood testing procedures. She further explained it made sense to collect only three tubes because the tubes provided to her in 2017 were larger and could retain more blood than the tubes that were used in 2014—when the Commission's procedure was originally implemented. In addition, she stated that using rubber bands to hold the tubes together made it easier and cleaner to separate the tubes than having to contend with evidence tape. She also did not store the samples in a freezer to prevent any possibility that the blood may expand when frozen and damage the tube or become contaminated.

**b. Laura Hoffman**

The remaining blood samples were taken from horses at Retama Park, where Ms. Hoffman was the test barn supervisor. At the same hearing on October 20, 2017, Ms. Hoffman stated that she deviated from the Commission's drug testing procedure as follows:

<sup>24</sup> Staff Ex. 56.

Provision	Procedure	Deviation
6.5.12	Collect four tubes of blood from each horse	Collected three tubes
6.5.21	Harvest the serum from the blood	Did not harvest the serum
6.6.13	Only test barn supervisors shall have keys to locked freezer where samples are stored.	Two security officers had keys to the freezer where samples were stored.

Ms. Hoffman testified that in 2015, she was directed by Chief Medical Examiner “Dr. Crowe” to not harvest the serum from the blood sample. She also testified that she began collecting three instead of four tubes of blood for same reason as Ms. Griswold—the size of the tubes changed.<sup>25</sup>

**c. Stipulated Facts**

On September 27, 2018, the following stipulated facts were read into the record:

- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors of modifications to the Commission’s Horse Racetrack Drug Testing Procedures;
- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors to disregard Section 6.5.12 requiring the collection of four tubes of blood from each horse and reducing the number of tubes to be collected from four to three;
- At some point before the testing of samples at issue in this hearing, the Commission, or someone acting with the authority of the Commission, informed then-acting test barn supervisors to disregard Section 6.5.21 requiring them to harvest the serum from the blood sample and instructing them not to harvest the serum from the blood sample; and
- The Commission has undertaken an investigation and cannot at this time determine the identity of the individual who made the changes.<sup>26</sup>

<sup>25</sup> Staff Ex. 60.

<sup>26</sup> Staff Ex. 59.

## 2. Nomifensine

The Commission rules define a prohibited substance as any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”<sup>27</sup> Appellants argued that even if the blood samples tested positive for Nomifensine, the drug does not meet the Commission’s definition of a prohibited substance.

Appellants contend the testimony of Commission’s expert witness Scott Stanley, DVM, supports their position. Dr. Stanley testified at the September 25, 2017 Board of Stewards hearing that Nomifensine is considered an antidepressant due to its dopamine reuptake inhibitor aspect.<sup>28</sup> He further testified that because a horse and a human share the same dopamine receptor mechanism, both in theory, would react similarly to Nomifensine. Moreover, in his opinion, the presence of Nomifensine could affect the health of a horse, and in doing so, could affect the outcome of a horse race.

Dr. Stanley noted that in 1992, the Food and Drug Administration (FDA) withdrew its approval for Nomifensine because the drug was shown to have a detrimental effect on people who used the drug. On that basis, Dr. Stanley asserted the presence of Nomifensine is reasonably capable of having an adverse effect on a horse.

On cross-examination, Dr. Stanley acknowledged that although Nomifensine “resided in our analytical database,” he had never encountered an instance where a horse tested positive for the presence of this drug. Dr. Stanley also stated he is unaware of any study on the effects, if any, of Nomifensine on a horse. There is simply no empirical data, Dr. Stanley testified, that establishes the manner and extent Nomifensine may have on a horse.

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<sup>27</sup> 16 Tex. Admin. Code § 319.1(b)(1).

<sup>28</sup> Staff Ex. 63.

### 3. No wrongdoing

Appellants argued, in the alternative, that despite the positive blood test results, and in light of the Commission's "absolute insurer" rule,<sup>29</sup> they took no part in any wrongdoing. Each Appellant testified they were surprised to hear about the positive test results and immediately denied doing anything that would cause the positive test results.

Appellants testified that upon finding out about the positive test results, each contacted the horses' veterinarian to discuss this matter. The record reflects that each Appellant shared the same veterinarian, Justin Robinson, DVM. It is also known that when Appellants confronted Dr. Robinson about the positive test results, he fled the state and has been unresponsive to the Appellants and the Commission. Appellants argue that based on Dr. Robinson's actions, it is clear that Dr. Robinson was solely responsible for injecting the horses with Nomifensine. On that basis, despite the absolute insurer rule, Appellants contend they should not be sanctioned for the actions of Dr. Robinson.

## IV. ANALYSIS

Appellants first contend that none of the test results should be considered by the Commission because the test barn employees who withdrew and stored the blood samples deviated from the Commission's blood testing procedure. Appellants are correct. However, some of the deviations from the Commission's blood testing procedure can be explained. As noted, an individual acting on behalf of the Commission instructed the test barn supervisors to reduce the number of tubes of blood to withdraw from each horse and to not harvest the serum from the blood sample. Although it is unclear who communicated these modifications, it is reasonable that a test barn supervisor would follow a directive from someone acting on behalf of the Commission.

Appellants also pointed out the test barn employees deviated from procedure by storing blood samples in a refrigerator instead of a freezer and failing to limit access to the samples

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<sup>29</sup> 16 Tex. Admin. Code § 311.104(b)(2).

stored in a locked freezer. Appellants are correct on both accounts. However, no evidence was presented on the likelihood that these actions could have caused the positive test results for Nomifensine. For these reasons, the ALJ finds that the noted deviations from the Commission's blood testing procedure fail to demonstrate the Stewards' rulings were clearly erroneous.

Appellants also argued that Nomifensine did not meet the definition of a prohibited substance because no study has ever established the effects that Nomifensine may have on a horse, if any. While true, the ALJ found Dr. Stanley's testimony credible that the drug is an antidepressant and that a human and a horse would react similarly to Nomifensine because both humans and horses share the same dopamine receptor mechanism. Dr. Stanley's testimony on the FDA's withdrawal of approval for Nomifensine was also persuasive. It is reasonable that a drug lacking FDA approval would be harmful to a person or animal that ingests it. The ALJ finds merit in Dr. Stanley's opinion that the presence of Nomifensine could affect the health of a horse, and in doing so, could affect the outcome of a horse race. Hence, it meets the definition of a prohibited substance. As such, Appellants' argument on this point fails to demonstrate the Stewards' rulings were clearly erroneous.

Appellant's final argument was a challenge to the Commission's absolute insurer rule. The ALJ finds Dr. Robinson's actions highly questionable. However, the rule as written makes no exception even under the extenuating circumstances Appellants now find themselves. Therefore, the Stewards' decisions were supported by the evidence presented, and Appellants have not met their burden of establishing that the decisions were clearly erroneous.

## V. FINDINGS OF FACT

1. Judd Kearn (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 91094.
2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 963028.
3. Brian Stroud (Appellant) is licensed by the Commission as an owner-trainer with license number 157702.

4. On May 22, 2017, Zoomin N Celebrating, trained by Appellant Kearl, placed in the tenth race at Sam Houston Race Park and provided blood sample #SH064401.
5. On June 9, 2017, Million Dollar Kiss, trained by Appellant Kearl, placed in the ninth race at Retama Park and provided blood sample #RP043194.
6. On June 9, 2017, Chivalri, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043195.
7. On June 10, 2017, Contentious Strike, trained by Appellant Sanchez, won the sixth race at Retama Park and provided blood sample #RP043208.
8. On June 10, 2017, Tellem Honeys Here, trained by Appellant Kearl, won the tenth race at Retama Park and provided blood sample #RP043216.
9. On June 16, 2017, Dancers Toast, trained by Appellant Sanchez, placed in the tenth race at Retama Park and provided blood sample #RP043237.
10. On June 17, 2017, Zoomin N Celebrating, trained by Appellant Kearl, won the sixth race at Retama Park and provided blood sample #RP043248.
11. On June 17, 2017, Desdemona Rambler, trained by Appellant Stroud, won the eighth race at Retama Park and provided blood sample #RP043252.
12. Each blood sample was divided into two specimens. The first specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine.
13. At the request of each Appellant, a split sample was sent to Pennsylvania Toxicology and Research Laboratory, where the first positive test was confirmed.
14. Each horse was disqualified from its race and had its purse redistributed.
15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) conducted a hearing.
16. The Stewards found in each instance that Appellants violated the Commission's rules at 16 Texas Administrative Code §§ 311.104(b), 319.1(b)1, 319.3(a), and 319.302.
17. On October 18, 2017, in Ruling No. RETA2682, Appellant Stroud was fined \$10,000 and received a one-year license suspension.
18. On October 20, 2017, in Ruling No. RETA2686, Appellant Sanchez was fined \$10,000 and received a one-year license suspension.
19. On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension.

20. On October 21, 2017, in Ruling No. SHRP5093, Appellant Kearn was fined \$10,000 and received a one-year license suspension.
21. On October 21, 2017, in Ruling No. RETA2688, Appellant Kearn was fined \$25,000 and received a three-year license suspension.
22. On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a three-year license suspension.
23. On October 21, 2017, in Ruling No. RETA2690, Appellant Kearn was fined \$25,000 and received a five-year license suspension.
24. On October 21, 2017, in Ruling No. RETA2691, Appellant Kearn was fined \$25,000 and received a five-year license suspension.
25. Appellants filed a timely appeal of the Stewards' decisions, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.
26. At SOAH, these matters were joined for one hearing.
27. On December 10, 2018, Staff issued notices of hearing to each Appellant. Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed at SOAH.
28. On January 16, 2019, ALJ Steven M. Rivas convened the hearing on the merits at SOAH in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Appellants Judd Kearn and Jose Sanchez were represented by attorney Eleanor Ruffner. Appellant Brian Stroud was represented by attorney Trent Rowell. The hearing adjourned that day and the record closed on March 27, 2019, when the parties provided a copy of a court document related to this matter.
29. The test barn employees at Sam Houston Race Park and Retama Park were instructed to deviate from the Commission's blood testing procedure.
30. Other deviations from the Commission's blood testing procedure by the test barn employees did not impact the test results.
31. Nomifensine is an antidepressant drug, which may have the same effect on humans and horses.
32. No study has been done to determine the effect of Nomifensine on horses.
33. The Federal Drug Administration withdrew its approval of Nomifensine in 1992 after people reported adverse effects from taking the drug.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art. 179e §§ 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code § 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 Tex. Admin. Code § 307.61.
4. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code § 307.67.
5. Appellants have the burden of proof in this matter to show the Stewards' rulings were clearly erroneous. 16 Tex. Admin. Code § 307.67(c).
6. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code § 319.3(a).
7. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code § 319.302.
8. As trainer of Zoomin N Celebrating, Million Dollar Kiss, Chivalri, and Tellem Honeys Here, Appellant Kearl was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
9. As trainer of Dancer's Toast and Contentious Strike, Appellant Sanchez was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
10. As trainer of Desdemona Rambler, Appellant Stroud was the absolute insurer that the horse would be free of prohibited substances when it raced. Tex. Rev. Civ. Stat. art. 179e § 3.16(h); 16 Tex. Admin. Code § 311.104(b).
11. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code §§ 319.3(e), 319.362(c), (e).
12. Stewards' Ruling No. RETA2682 was not clearly erroneous in finding that Appellant Stroud violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Desdemona Rambler with Nomifensine in its system.

13. Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.
14. Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.
15. Stewards' Ruling No. SHRP5093 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.
16. Stewards' Ruling No. RETA2688 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Million Dollar Kiss with Nomifensine in its system.
17. Stewards' Ruling No. RETA2689 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Chivalri with Nomifensine in its system.
18. Stewards' Ruling No. RETA2690 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Tellem Honeys Here with Nomifensine in its system.
19. Stewards' Ruling No. RETA2691 was not clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.
20. Nomifensine is not listed on the Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines). 16 Tex. Admin. Code § 319.304(b).
21. Nomifensine is a prohibited substance. 16 Tex. Admin. Code § 319.1(b)(1).
22. Under the Guidelines, the Stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and impose a full suspension of the trainer's license for up to five years as penalty for a prohibited drug, chemical, or substance. 16 Tex. Admin. Code §§ 307.64(a), 319.304(a).
23. The Commission should adopt the Stewards' Ruling Nos. SHRP5093, RETA2688, RETA2689, RETA2690, RETA2691, RETA2686, RETA2687, and RETA2682 in their entirety, including the fines, suspensions, and redistribution of purses outlined therein.

SIGNED May 28, 2019.



STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

July 11, 2019

Virginia Fields  
Texas Racing Commission  
Post Office Box 12080  
Austin, Texas 78711

VIA EMAIL

Elenor Ruffner  
Attorney for Judd Kearn and Jose Sanchez  
1603 West 6<sup>th</sup> Street  
Austin, Texas 78703

VIA FACSIMILE 512/ 681-0800

Trent C. Rowell  
Attorney for Brian Stoud  
Post Office Box 457  
Stockdale, Texas 78160

VIA FACSIMILE 830/ 996-1644

**Re: Exceptions Letter; 476-18-1010, 476-18-1011, and 476-18-1012; Judd Kearn,  
Jose Sanchez, and Brian Stroud v Texas Racing Commission**

On May 28, 2019, the undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter. On June 7, 2019, Petitioners, Judd Kearn, Jose Sanchez, and Brian Stroud filed Petitioner's Exceptions to the PFD. On that same day, Staff for Texas Racing Commission filed Respondent's Exceptions to the PFD. On June 21, 2019, Staff filed Respondent's Reply to Appellants Kearn and Sanchez's Exceptions.

Petitioners asserted that Findings of Fact Nos. 15 and 28 were incomplete. The ALJ notes these two findings address procedural matters that did not pertain to the merits of the case. Regardless, the ALJ recommends that Finding of Fact No. 15 be amended, accordingly. Petitioners asserted Finding of Fact No. 16 was not supported by the evidence, but provided no further explanation. Petitioners took exception to Findings of Fact Nos. 12, 13, 29, and 30 because, when taken together, they suggest that the method described in these findings was permissible. However, the ALJ has determined these findings merely describe a method that was used in this case. These findings do not suggest they were permissible—taken together or otherwise. Petitioners asserted findings of Fact Nos. 31 and 33 were unsupported by the evidence. However, the ALJ notes these findings only describe the current status of a drug that was at issue in this matter.

Petitioners objected to the entire Conclusions of Law section. These objections amounted to a restatement of Petitioners' case. Because these matters were outlined in the PFD, the ALJ will not separately readdress these matters at this time.

Staff suggested the ALJ amend Findings of Fact Nos. 2, 12, 19, and 22. Staff also proposed the ALJ amend Conclusions of Law Nos. 13 and 14. Staff further pointed out a scrivener error on page 6 of the PFD. The ALJ adopts all of Staff's proposals.

Accordingly, the ALJ recommends the PFD be amended as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA2687, Appellant Kearl was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. RETA2689, Appellant Kearl was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 19.1(b)(1), 319.3(a), and 3191302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 19.1(b)(1), 319.3(a), and 3191302 by racing Dancers Toast with Nomifensine in its system.

The ALJ further notes a scrivener error occurred on page 6 of the PFD when the ALJ identified a witness incorrectly as Edna Griswold. The witness's name is Gina Griswold. No other changes to the PFD are recommended at this time.

Sincerely,



Steven M. Rivas  
Administrative Law Judge

IN RE: THE APPEAL OF	§	
	§	BEFORE THE
JUDD KEARL FROM	§	
	§	
STEWARDS RULINGS	§	
SHRP 5093; RETA 2688; RETA 2689;	§	TEXAS RACING COMMISSION
RETA 2690 AND RETA 2691	§	

ORDER OF THE COMMISSION

On September 10, 2019, the Texas Racing Commission (“Commission”) considered in an open meeting the appeal of Judd Kearl (“Petitioner”), trainer/owner license number 91094, from Stewards’ Rulings SHRP 5093, RETA 2688, RETA 2689, RETA 2690 and RETA 2691 (“the rulings”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling SHRP 5093, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Zoomin N Celebrating” participating and placing in the tenth race at Sam Houston Race Park on May 22, 2017, with the prohibited substance Nomifensine.

(b) In the ruling, Petitioner was fined \$10,000 and suspended for one (1) year from July 31, 2017 until July 30, 2018, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2688, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ.

Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Million Dollar Kiss” participating and placing in the ninth race at Retama Park on June 9, 2017, with the prohibited substance Nomifensine.

(d) In the ruling, Petitioner was fined \$25,000 and suspended for three (3) years from July 31, 2018 until July 30, 2021, the horse was disqualified and declared unplaced, and the purse was redistributed.

(e) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2689, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Chivalri” participating and winning in the tenth race at Retama Park on June 9, 2017, with the prohibited substance Nomifensine.

(f) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2021 until July 30, 2026, the horse was disqualified and declared unplaced, and the purse was redistributed.

(g) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2690, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Tellem Honeys Here” participating and winning in the tenth race at Retama Park on June 10, 2017, with the prohibited substance Nomifensine.

(h) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2026 until July 30, 2031, the horse was disqualified and declared unplaced, and the purse was redistributed.

(i) On or about October 21, 2017, the Retama Park Board of Stewards issued Ruling RETA 2691, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Zoomin N Celebrating” participating and winning in the sixth race at Retama Park on June 17, 2017, with the prohibited substance Nomifensine.

(j) In the ruling, Petitioner was fined \$25,000 and suspended for five (5) years from July 31, 2031 until July 30, 2036, the horse was disqualified and declared unplaced, and the purse was redistributed.

(k) On or about October 27, 2017, Petitioner filed an appeal of the rulings with the Commission and requested a stay of the suspensions while the appeals were pending.

(l) Petitioner timely requested a stay of the suspensions which the Commission’s Executive Director denied.

(m) On or about May 28, 2019, the administrative law judge issued a proposal for decision, incorporated by reference and attached to this order, finding no clear error in the rulings. The proposal for decision included the matters of *Jose Sanchez v TxRC 476-18-1011* and *Brian Stroud v TxRC 476-18-1012*.

IT IS HEREBY ORDERED the proposal for decision upholding the Stewards’ rulings is adopted incorporating the ALJ’s exceptions dated July 11, 2019, as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA 2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. 2689 Appellant Kearl was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA 2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA 2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

If enforcement of this order is restrained by an order of a court, this order takes effect on a final determination by that court or an appellate court in favor of the Texas Racing Commission.

ISSUED AND ENTERED the \_\_\_\_\_ day of September 2019.

\_\_\_\_\_  
John T. Steen III, Chair

\_\_\_\_\_  
Ronald F. Ederer, Vice Chair

\_\_\_\_\_  
Steven Mach

\_\_\_\_\_  
Margaret Martin

\_\_\_\_\_  
Connie McNabb, DVM

\_\_\_\_\_  
Sid Miller

\_\_\_\_\_  
Michael Moore

\_\_\_\_\_  
Robert C. Pate

\_\_\_\_\_  
Arvel Waight, Jr.

IN RE: THE APPEAL OF  
  
JOSE SANCHEZ FROM  
  
STEWARDS RULINGS  
RETA 2686 and RETA 2687

§  
§  
§  
§  
§  
§  
§

BEFORE THE  
  
  
  
TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On September 10, 2019, the Texas Racing Commission (“Commission”) considered in an open meeting the appeal of Jose Sanchez (“Petitioner”), trainer/owner license number 163028, from Stewards’ Rulings RETA 2686 and RETA 2687 (“the rulings”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about October 20, 2017, the Retama Park Board of Stewards issued Ruling RETA 2686, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Contentious Strike” participating and winning the sixth race at Retama Park on June 10, 2017, with the prohibited substance Nomifensine.

(b) In the ruling, Petitioner was fined \$10,000 and suspended for one (1) year from July 31, 2017 until July 30, 2018, the horse was disqualified and declared unplaced, and the purse was redistributed.

(c) On or about October 20, 2017, the Retama Park Board of Stewards issued Ruling RETA 2687, finding Petitioner in violation of Texas Racing Act § 3.16, Tex. Rev. Civ. Stat. art. 179e (Texas Racing Act), Texas Racing Rules 16 TAC §§ 311.104, Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Dancers Toast” participating and placing the tenth race at Retama Park on June 16, 2017, with the prohibited substance Nomifensine.

(d) In the ruling, Petitioner was fined \$25,000 and suspended for three (3) years from July 31, 2018 until July 30, 2021, the horse was disqualified and declared unplaced, and the purse was redistributed.

(e) On or about October 27, 2017, Petitioner filed an appeal of the rulings with the Commission and requested a stay of the suspensions while the appeals were pending.

(f) Petitioner timely requested a stay of the suspensions which the Commission’s Executive Director denied.

(g) On or about May 28, 2019, the administrative law judge issued a proposal for decision, incorporated by reference and attached to this order, finding no clear error in the rulings. The proposal for decision included the matters of *Judd Kearn v TxRC 476-18-1010* and *Brian Stroud v TxRC 476-18-1012*.

IT IS HEREBY ORDERED the proposal for decision upholding the Stewards’ rulings is adopted incorporating the ALJ’s exceptions dated July 11, 2019, as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA 2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. 2689 Appellant Kearl was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA 2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA 2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

If enforcement of this order is restrained by an order of a court, this order takes effect on a final determination by that court or an appellate court in favor of the Texas Racing Commission.

ISSUED AND ENTERED the \_\_\_\_\_ day of September 2019.

\_\_\_\_\_  
John T. Steen III, Chair

\_\_\_\_\_  
Ronald F. Ederer, Vice Chair

\_\_\_\_\_  
Steven Mach

\_\_\_\_\_  
Margaret Martin

\_\_\_\_\_  
Connie McNabb, DVM

\_\_\_\_\_  
Sid Miller

\_\_\_\_\_  
Michael Moore

\_\_\_\_\_  
Robert C. Pate

\_\_\_\_\_  
Arvel Waight, Jr.

IN RE: THE APPEAL OF	§	
	§	BEFORE THE
BRIAN STROUD FROM	§	
	§	TEXAS RACING COMMISSION
STEWARDS RULING RETA 2682	§	

ORDER OF THE COMMISSION

On September 10, 2019, the Texas Racing Commission (“Commission”) considered in an open meeting the appeal of Brian Stroud (“Petitioner”), trainer/owner license number 157702, from Stewards’ Ruling RETA 2682 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

- (a) On or about February 19, 2019, the Sam Houston Race Park Board of Stewards issued Ruling LSP 3513, finding Petitioner in violation of 16 TAC §§ 311.104(b)(2), Trainers; 319.3(f), Medication Restricted; and 319.302, Reasonable Diligence Required; resulting from the horse “Desdemona Rambler” participating and winning the eighth race at Retama Park on June 17, 2017, with the prohibited substance Nomifensine.
- (b) In the ruling, Petitioner was fined \$10,000 and suspended for one (1) year from July 31, 2017 until July 30, 2018, the horse was disqualified and declared unplaced, and the purse was redistributed.
- (c) On or about October 27, 2017, Petitioner filed an appeal of the rulings with the Commission and requested a stay of the suspensions while the appeals were pending.
- (d) Petitioner timely requested a stay of the suspensions which the Commission’s Executive Director denied.

(e) On or about May 28, 2019, the administrative law judge issued a proposal for decision, incorporated by reference and attached to this order, finding no clear error in the rulings. The proposal for decision included the matters of *Judd Kearn v TxRC 476-18-1010* and *Jose Sanchez v TxRC 476-18-1011*.

IT IS HEREBY ORDERED the proposal for decision upholding the Stewards' rulings is adopted incorporating the ALJ's exceptions dated July 11, 2019, as follows:

Finding of Fact No. 2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 163028.

Finding of Fact No. 12. Each blood sample was collected into three tubes. Two of the tubes were sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine. The third sample was retained for split specimen testing.

Finding of Fact No. 15. On September 25, 2017, the Retama Park Board of Stewards (Stewards) began a hearing, which concluded on September 27, 2017.

Finding of Fact No. 19. On October 20, 2017, in Ruling No. RETA 2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension.

Finding of Fact No. 22. On October 21, 2017, in Ruling No. 2689 Appellant Kearn was fined \$25,000 and received a five-year license suspension.

Conclusion of Law No. 13. Stewards' Ruling No. RETA 2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

Conclusion of Law No. 14. Stewards' Ruling No. RETA 2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

If enforcement of this order is restrained by an order of a court, this order takes effect on a final determination by that court or an appellate court in favor of the Texas Racing Commission.

ISSUED AND ENTERED the \_\_\_\_\_ day of September 2019.

\_\_\_\_\_  
John T. Steen III, Chair

\_\_\_\_\_  
Ronald F. Ederer, Vice Chair

\_\_\_\_\_  
Steven Mach

\_\_\_\_\_  
Margaret Martin

\_\_\_\_\_  
Connie McNabb, DVM

\_\_\_\_\_  
Sid Miller

\_\_\_\_\_  
Michael Moore

\_\_\_\_\_  
Robert C. Pate

\_\_\_\_\_  
Arvel Waight, Jr.

**SOAH DOCKET NO. 476-18-1010**

JUDD KEARL, Appellant	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION, Respondent	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 476-18-1011**

JOSE SANCHEZ, Appellant	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION, Respondent	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 476-18-1012**

BRIAN STROUD, Appellant	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION, Respondent	§	ADMINISTRATIVE HEARINGS

**RESPONDENT'S EXCEPTIONS**

COMES NOW the Respondent, Texas Racing Commission ("the Commission"), and files its exceptions to the Proposal for Decision (PFD) dated May 28, 2019 and in support would show:

**I. FINDINGS OF FACT**

1. **Finding of Fact No. 2 states:** "Jose Sanchez (Appellant) is licensed by the Texas Racing Commission as an owner-trainer with license number 963028".

**Response:** As noted in the Background Facts and Procedural History section on page 4 of the PFD, Mr. Sanchez's license number is 163028. *See also* the license number noted on the Sanchez Rulings RETA2686 and RETA2687 attached as Exhibit A and Exhibit B, respectively.

**Proposed modification:** “Jose Sanchez (Appellant) is licensed by the Texas Racing Commission as an owner-trainer with license number 163028.”

2. **Finding of Fact No. 12:** “Each blood sample was divided into two specimens. The first specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine”.

**Response:** Rather than being divided into two specimens, as the PDF stated, each horse’s blood sample was collected in three separate tubes. The Commission’s Horse Racetrack Drug Testing Procedures and testimony of test barn supervisors, Edna Griswold and Laura Hoffman, specify two different processes for collection of blood and urine specimens. At issue here is the race horse blood specimen collection and witness procedure. The Proposal for Decision cites 16 TEX. ADMIN. CODE § 319.362(a) which refers to the collection of the urine specimen(s) not at issue in this case.<sup>1</sup> There was testimony regarding the collection of three blood specimen test tubes by both Commission test barn supervisors<sup>2</sup>, and Al Kind, the Lead Chemist with the Texas Veterinary Medical Diagnostic Laboratory (TVMDL)<sup>3</sup> and was also noted in the Proposal for Decision.<sup>4</sup> There was no evidence that either the chain of

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<sup>1</sup> 16 TEX. ADMIN. CODE § 319.362(a) states, in relevant part: “If the specimen is of insufficient quantity to be split, the commission veterinarian may require the horse to be detained until an adequate amount of urine can be obtained”. Urine samples are collected in a larger 16 oz. container from the horse in a test barn stall then, during the witnessing procedure, divided into two smaller 4 oz. containers to obtain the urine split sample. *See* the Commission’s Race Horse Drug Testing Procedures dated November 6, 2014, for urine collection, Page 6 of 11, Section 6.5.11, attached as Exhibit Q to Respondent’s Response to Appellants’ Motion for Summary Disposition, and Policies and Procedures for Test Barn Employees, attached as Exhibit R to Respondent’s Response to Appellants’ Motion for Summary Disposition, for procedures in urine collection by Commission licensed Test Barn Technicians, pages 4-9 of 12, attached hereto as Exhibit C and D, respectively.

<sup>2</sup> Both Edna Griswold and Laura Hoffman testified to the chain of custody, blood collection process and integrity of the specimens, specifically, the Commission veterinarian collection of three blood test tubes instead of the four test tubes stated in the written instructions. They also testified to the past extraction of the serum, i.e., harvesting of serum, which was no longer required by the testing laboratories to insure greater integrity of the specimen(s). *See* Edna Griswold testimony, Exhibit 55, Exhibit E-1, Third Recording, 11:04:45 to 00:27:15 and Laura Hoffman testimony, Exhibit 61, Exhibit H-1, Sixth Recording, 00:03:20 to 00:31:00. *See also* the Proposal for Decision, pages 7 and 8. Of the three tubes collected, two tubes are sent to TVMDL and one tube is retained for split testing, if any.

<sup>3</sup> The Lead Chemist testified to the TVMDL screening process that all samples were received intact with no evidence of tampering and the eight samples tested positive for Nomifensine. *See* Exhibit 63, Exhibit I-1/Seventh Recording, 01:04:55 to 01:24:40. *See also* 16 TEX. ADMIN. CODE §§319.1(a), 319.3(a) and (e), 319.362(b)-(f).

<sup>4</sup> The Proposal for Decision notes on Page 3 an owner may request, in writing, that the retained serum or urine, whichever provided the positive result be submitted for split testing. The PFD on Page 6, describes the Appellants’ position where “test barn employees who collected and stored the blood samples deviated from the Commission’s written procedures on how to conduct such tests”. *See also* PFD noted Stipulations of Fact on number of blood

custody, modified blood specimen collection procedures or the integrity of the specimens in question were compromised. *See* 16 TEX. ADMIN. CODE §§ 319.1(a), 319.303, 319.334, 319.338(a), 319.362(b), 319.362(d). *See also* Exhibits C and D.

**Proposed Modification:** “Race horse blood specimens were collected into three test tubes by a Commission veterinarian in the test barn. Two blood test tube specimens were sent to the Texas Veterinary Medical Diagnostic Laboratory, where the specimens were received intact, without evidence of tampering, and testing of the specimen samples were positive for Nomifensine. The third blood specimen test tube was retained for split specimen testing.”

3. **Finding of Fact No. 19:** “On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension”.

**Response:** Ruling RETA2687 states the appellant received a three-year suspension. *See* Exhibit B, Ruling RETA2687.

**Proposed Modification:** “On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a three-year license suspension”.

4. **Finding of Fact No. 22:** “On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a three-year license suspension”.

**Response:** The Ruling RETA2689 states the appellant received a five-year suspension. *See* Exhibit E, Ruling RETA2689.

**Proposed Modification:** “On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a five-year license suspension”.

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collection test tubes, Section 6.5.12 of instructions, and harvesting of serum, Section 6.5.21 of the test barn instructions. The PFD, page 11, notes the ALJ findings “no evidence was presented on the likelihood that these actions could have caused the positive test results for Nomifensine. For these reasons, the ALJ finds that the noted deviations from the Commission’s blood *testing* procedures fail to demonstrate the Stewards’ rulings were clearly erroneous”. Staff agrees there was no evidence presented that the integrity of the samples was compromised or tampered in such a way to result in the positive tests for Nomifensine. In fact, there was testimony some of the Appellants or their veterinarian, by their statements against interest, knew the substance was carried in the animal while participating in the respective races.

## **II. CONCLUSIONS OF LAW**

5. **Conclusion of Law No. 13:** "Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system".

**Response:** The Ruling RETA2686 states the horse's name as Contentious Strike. *See* Exhibit A Ruling RETA2686.

**Proposed Modification:** "Stewards' Ruling No. RETA2686 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system".

6. **Conclusion of Law No. 14:** "Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system".

**Response:** The Ruling RETA2687 states the horse's name as Dancers Toast. *See* Exhibit B Ruling RETA2687.

**Proposed Modification:** "Stewards' Ruling No. RETA2687 was not clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code §§ 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system".

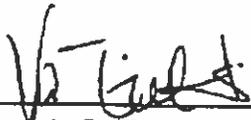
## **III. SCRIVENER ERROR**

7. A scrivener's error is noted on page 6 of the Proposal for Decision which refers to the test barn supervisor as Gina Griswold where the supervisor's name is Edna Griswold.

## **IV. PRAYER**

WHEREFORE PREMISES CONSIDERED, Staff for the Commission prays that the changes noted on Findings of Fact Nos. 2, 12, 19, 22 and Conclusions of Law Nos. 13 and 14 be incorporated into the PFD.

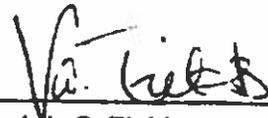
Respectfully submitted,

  
\_\_\_\_\_

Virginia S. Fields  
Texas Racing Commission  
PO Box 12080  
Austin, Texas 78711  
(512) 490-4009 telephone  
(512) 833-6907 facsimile  
[virginia.fields@txrc.texas.gov](mailto:virginia.fields@txrc.texas.gov)

**CERTIFICATE OF SERVICE**

I certify that true and correct copies of the foregoing Respondent's Exceptions have been sent by certified mail, return receipt requested 70041350 0003 5202 9166 to Stephanie Odom, Eleanor Ruffner and Tanya Robinson, Ruffner Schoenbaum, PLLC, Attorneys for Appellants, Judd Kearn and Jose Sanchez, 1603 West 6<sup>th</sup> Street, Austin, Texas 78703, and by certified mail, return receipt requested 70041350 0003 5202 9173 to Trent C. Rowell, Attorney at Law, Attorney for Appellant, Brian Stroud, at PO Box 457, Stockdale, Texas 78160, and filed with the State Office of Administrative Hearings via e filing, on this the 7 day of June, 2019.

  
\_\_\_\_\_

Virginia S. Fields

Texas Racing Commission  
Ruling Report for Licensee

Ruling Date 10/20/2017 Violation Date 06/10/2017 Ruling # RETA2686  
Licensee JOSE SANCHEZ Status: CLSD

License # 163028 Type TRAINER Status SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	07/30/2018

Ruling Type 4 MEDICATION VIOLATION Redistribute Purse Y

Rules Cited

3.16	UNLAWFUL INFLUENCES ON RACING
311.104	TRAINER/ABSOLUTE INSURER
319.3	DRUG POSITIVE OR PERMITTED MEDICATION VIOLATION
319.302	REASONABLE OVERSIGHT OF ANIMAL

Fine \$ 10,000 Fine Due Date 10/23/2017 Fine Paid Date

**FAILURE TO PAY THE ASSESSED FINE BY THE DUE DATE INDICATED ABOVE  
MAY RESULT IN THE SUSPENSION OF THE SUBJECT'S OCCUPATIONAL LICENSE(S).**

Narrative

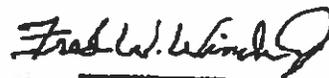
Trainer Jose Sanchez was duly noticed and appeared through counsel, for a formal hearing on 9/25/17 before the Relama Park Board of Stewards because a post-race blood serum sample #RP043208, taken from his horse, "Contentious Strike," that won the 6th race at Relama Park on 6/10/17 contained the Class 1 prohibited substance, Nomifensine

This positive test was one of eight positives for Nomifensine that occurred within a time period of a few weeks, by three different trainers at two tracks. This substance was identified and confirmed by the Texas Veterinary Medical Diagnostic Lab. In each case, split samples were sent to the Pennsylvania Toxicology and Research Laboratory, and each positive test was confirmed. Before the hearing took place, counsel for each of the three respondent trainers, along with Deputy General Counsel for the Texas Racing Commission agreed to combine all of the cases and hold a single hearing. Present at the hearing were: Respondent Trainer Brian Stroud (1 positive test) with his attorney, Trent Rowell; Attorney Eleanor Ruffner, and Co-counsel Darrel Vienna, representing Respondent Trainers Judd Kearn (5 positive tests) and Trainer Jose Sanchez (2 positive tests). Also present was Deputy General Counsel for the Texas Racing Commission, Devon Bijansky, and the Board of Stewards, Anne Alley, Fred Winch and Michael Pelletier. The hearing was to determine the facts and circumstances surrounding all eight positives. The hearing concluded on the afternoon of 9/27/17, with additional transcripts of testimony submitted by stipulation on 10/6/17, and written closing arguments submitted on 10/10/17.

The Board of Stewards considered all of the testimony and evidence presented. The Board of Stewards finds that the Petitioner, Texas Racing Commission proved by a preponderance of the

  
ANNE ALLEY

  
MIKE PELLETIER

  
FRED WINCH JR



Texas Racing Commission  
Ruling Report for Licensee

Ruling # RETA2686

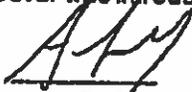
evidence (1) that each of the horses in question had Nomifensine in their systems on the day of their races, (2) that Nomifensine is a prohibited substance under the Racing Act and Commission Rules, and (3) that Respondents were the trainers for these horses in the manner and for the time necessary to prevent the administration of Nomifensine, and therefore, Respondents are responsible for the violations alleged against them.

The Texas Racing Act defines "prohibited substance" as "a drug, chemical, or other substance that: (A) in its use or intended use, is reasonably capable of influencing or affecting the outcome of a race in a manner contrary to this Act or a commission rule; and (B) is prohibited by a commission rule regulating the unlawful influence of a race." Tex. Rev. Civ. Stat Ann. art. 179e, Section 1.03(72). Texas Racing Commission Rule 319.1(b)(1) defines "prohibited drugs, chemicals, or other substances" as "any stimulants, depressants, tranquilizers, local anesthetics, drugs, other drug metabolites which could affect the health or performance of a race animal." These drugs and substances are reasonably capable of influencing or affecting the outcome of a race in a manner contrary to the Texas Racing Act and Commission rules. Texas Racing Commission Rule 319.3(e) Medication Restricted, provides that "[a] positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race." This evidentiary presumption was not successfully rebutted by Respondents during the hearing.

**Each Horse in Question Raced With Nomifensine in Their System**

During the hearing, Respondents raised several issues regarding the Commission's investigative process, specimen handling, and storage procedures. Respondents emphasized areas where procedures had departed from the written policies. Some procedures have been improved, while the written policy is currently in the process of being updated. Fewer tubes of blood are drawn from the horse after the race, because of the larger size of the storage tubes. Also, the process of storing the blood serum was improved, thereby lessening the chance of contamination. Respondents pointed out that some samples were refrigerated rather than frozen.

According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, freezing samples is the industry standard. However, the only effect refrigeration might have is that refrigeration of samples might reduce concentrations of substances in the blood being stored. Respondents also demonstrated that the security offices at the different tracks had keys to the test barns and freezers or refrigerators where the samples were stored. This too appears to be a departure from the written policy. However, none of these issues compromised the sufficiency of the chain of custody of these specimens, and no evidence whatsoever was introduced that the specimens were tampered with or that the results are not

  
ANNE ALLEY

  
MIKE PELLETIER

  
FRED WINCH JR

**Texas Racing Commission  
Ruling Report for Licensee**

Ruling # RETA2686

reliable

While Nomifensine is not currently classified by the Association of Racing Commissioners International (ARCI). Texas Racing Commission Equine Medication Classification Policy and Penalty Guidelines, pursuant to ARCI recommendations, state that "Any substances or drugs found that are not included in these guidelines should be treated as Class 1 violations warranting a Class A penalty unless otherwise advised by the Executive Director." Nomifensine is therefore a Class 1 Prohibited Substance.

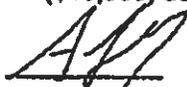
Nomifensine is a human antidepressant drug that was withdrawn from the market by manufacturers in the 1980s and had its FDA approval revoked in 1992. According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, Nomifensine is reasonably capable of influencing or affecting the outcome of a race and it could affect the health and performance of a racehorse.

**Respondent Trainers Are Responsible for the Violations**

All three Respondents employed veterinarian Dr. Justin Robinson, and the logical inference from the totality of the evidence is that he was responsible for the administration of Nomifensine to all of the horses in question. All three Respondents claim that the administration of the Nomifensine was done without their knowledge and consent. However, ignorance does not relieve the Respondents of responsibility. Section 311.104 (b) of the Texas Racing Commission Rules of Racing, the Absolute Insurer Rule states: "(1) The trainer shall ensure the health and safety of each horse...that is in the care and custody of the trainer. (2) A trainer shall ensure that a horse...that runs in a race while in the care and custody of the trainer...is free from all prohibited drug, chemicals, or other substances." Furthermore, Texas Racing Commission Rule Section 319.302 states: "The owner, trainer, groom, or other person who has care and custody of a race animal shall guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance." Although a trainer may not be present at all times, a trainer has control over who has access to the horses in his or her care, and is the only person with opportunity to secure his or her stable in an appropriate manner. If a trainer is not diligent in overseeing what substances are administered to horses in his or her care, it is the trainer that is remiss in fulfilling their obligations. To allow a trainer to excuse any positive by claiming ignorance regarding what a veterinarian administered, is to allow a trainer to abdicate a responsibility that is theirs by rule. Therefore, this Board of Stewards will not endorse a trainer's active ignorance as an excuse for a positive test for a prohibited substance in a race horse.

**Conclusion**

Trainer Jose Sanchez is hereby suspended for one year (7/31/17 through 7/30/18) and fined ten thousand (\$10,000) dollars and referred to the Executive Director. This suspension reflects credit

  
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**Texas Racing Commission  
Ruling Report for Licensee**

Ruling # RETA2686

for time served under the summary suspension order imposed on 7/31/17. First violation in this category.

During the term of this suspension, Mr. Sanchez is denied access to all areas under the jurisdiction of the Texas Racing Commission. Horses trained by Mr. Sanchez are denied entry pending transfer to a party approved by a Board of Stewards

The horse, "Contentious Strike," is hereby disqualified from the 6th race at Retama Park on 6/10/17 and declared unplaced. The purse is ordered redistributed as follows:

1. (5) M Y M Simba
  2. (1) Kuhl Cajun Two
  3. (7) Dashin Game
  4. (4) Andy Be Movin
  5. (3) Silver N Shine
  6. (2) TFCImasweetheart
  7. (9) Miss Cash Cat
- Unplaced: (6) Contentious Strike.

  
ANNE ALLEY

  
MIKE PELLETIER

  
FRED WINCH JR

Texas Racing Commission  
Ruling Report for Licensee

Ruling Date 10/20/2017 Violation Date 06/16/2017 Ruling #: RETA2687  
Licensee JOSE SANCHEZ Status: CLSD

License # 163028 Type TRAINER Status SUSPENDED

Actions Begin Date End Date  
SUSPENDED 07/31/2018 07/30/2021

Ruling Type 4 MEDICATION VIOLATION Redistribute Purse: Y

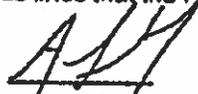
Rules Cited 3.16 UNLAWFUL INFLUENCES ON RACING  
311.104 TRAINER/ABSOLUTE INSURER  
319.3 DRUG POSITIVE OR PERMITTED MEDICATION VIOLATION  
319.302 REASONABLE OVERSIGHT OF ANIMAL

Fine \$ 25,000 Fine Due Date 10/23/2017 Fine Paid Date

**FAILURE TO PAY THE ASSESSED FINE BY THE DUE DATE INDICATED ABOVE  
MAY RESULT IN THE SUSPENSION OF THE SUBJECT'S OCCUPATIONAL LICENSE(S).**

Narrative

Trainer Jose Sanchez was duly noticed and appeared through counsel, for a formal hearing on 9/25/17 before the Retama Park Board of Stewards because a post-race blood serum sample #RP043237, taken from his horse, "Dancers Toast," that finished second in the 10th race at Retama Park on 6/16/17 contained the Class 1 prohibited substance, Nomifensine. This positive test was one of eight positives for Nomifensine that occurred within a time period of a few weeks, by three different trainers at two tracks. This substance was identified and confirmed by the Texas Veterinary Medical Diagnostic Lab. In each case, split samples were sent to the Pennsylvania Toxicology and Research Laboratory, and each positive test was confirmed. Before the hearing took place, counsel for each of the three respondent trainers, along with Deputy General Counsel for the Texas Racing Commission agreed to combine all of the cases and hold a single hearing. Present at the hearing were Respondent Trainer Brian Stroud (1 positive test) with his attorney, Trent Rowell; Attorney Eleanor Ruffner, and Co-counsel Darrel Venna, representing Respondent Trainers Judd Keart (5 positive tests) and Trainer Jose Sanchez (2 positive tests). Also present was Deputy General Counsel for the Texas Racing Commission, Devon Bjansky, and the Board of Stewards, Anne Alley, Fred Winch and Michael Pelletier. The hearing was to determine the facts and circumstances surrounding all eight positives. The hearing concluded on the afternoon of 9/27/17, with additional transcripts of testimony submitted by stipulation on 10/6/17, and written closing arguments submitted on 10/10/17. The Board of Stewards considered all of the testimony and evidence presented. The Board of Stewards finds that the Petitioner, Texas Racing Commission proved by a preponderance of the

  
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MIKE PELLETIER

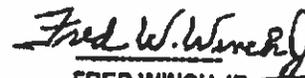
  
FRED WINCH JR

EXHIBIT  
B  
Page 61 of 257

Texas Racing Commission  
Ruling Report for Licensee

Ruling #: RETA2887

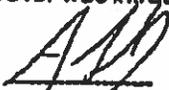
evidence (1) that each of the horses in question had Nomifensine in their systems on the day of their races, (2) that Nomifensine is a prohibited substance under the Racing Act and Commission Rules, and (3) that Respondents were the trainers for these horses in the manner and for the time necessary to prevent the administration of Nomifensine, and therefore, Respondents are responsible for the violations alleged against them.

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Texas Racing Commission  
Ruling Report for Licensee

Ruling # RETA2687

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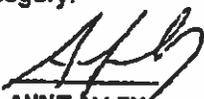
Nomifensine is a human antidepressant drug that was withdrawn from the market by manufacturers in the 1980s and had its FDA approval revoked in 1992. According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, Nomifensine is reasonably capable of influencing or affecting the outcome of a race and it could affect the health and performance of a racehorse.

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**Conclusion**

Trainer Jose Sanchez is hereby suspended for three years (7/31/18 through 7/30/21) and fined twenty five thousand (\$25,000) dollars and referred to the Executive Director. Second violation in this category.

  
ANNE ALLEY

  
MIKE PELLETIER

  
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Texas Racing Commission  
Ruling Report for Licensee

Ruling #. RETA2687

During the term of this suspension, Mr. Sanchez is denied access to all areas under the jurisdiction of the Texas Racing Commission. Horses trained by Mr. Sanchez are denied entry pending transfer to a party approved by a Board of Stewards

The horse, "Dancers Toast," is hereby disqualified from the 10th race at Relama Park on 6/16/17 and declared unplaced. The purse is ordered redistributed as follows:

1. (4) Corona Kidd Kat
  2. (2) Pink Dynamite
  3. (8) Shoot For Glory Dash
  4. (9) SS Soulman
  5. (1) Jake James
  6. (6) TLC Titan
  7. (10) Redbeard Barbarossa
  8. (5) T Gurl
  9. (7) An Executive Command
- Unplaced: (3) Dancers Toast



ANNE ALLEY



MIKE PELLETIER



FRED WINCH JR

STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

### CERTIFICATION OF PUBLIC RECORDS

"My name is Renee Slaughter. I am the custodian of records for the Texas Racing Commission.

Attached hereto are 12 page(s) of records that were with, and maintained by, the Texas Racing Commission. These said 12 pages are official records, reports, or entries that are authorized by law to be recorded or filed, and recorded or filed, with the Texas Racing Commission, including data compilations. These certified records attached hereto are the original(s) or exact duplicates of the original(s).

IN TESTIMONY, THEREOF, I have hereunto signed my name officially and caused to be impressed hereto the Seal of the Texas Racing Commission for the State of Texas, at my office in the City of Austin, Texas, on this the 22<sup>nd</sup> day of October, 2018."

  
Renee Slaughter  
Custodian of Records  
Texas Racing Commission



EXHIBIT Q



**EXHIBIT Q**  
**ATTACHED PAGES NOS. 615 - 625**  
**TEXAS RACING COMMISSION**  
**HORSE RACETRACK TESTING PROCEDURES**



## Horse Racetrack Drug Testing Procedures

### 1.0 PURPOSE

To provide standardized procedures for collecting, processing, storing, and shipping blood and urine samples at horse racetracks for the purpose of drug testing. Strict laboratory procedures and an irreproachable Chain of Custody are necessary to maintain the integrity of drug testing results for use as evidence in legal proceedings.

### 2.0 SCOPE

The provisions of this Standard Operating Procedure apply to all personnel assigned to drug testing duties at horse pari-mutuel racetracks in the state of Texas.

### 3.0 REFERENCE

- 3.1 The Texas Racing Act and the Texas Racing Commission Rules of Racing  
Texas Racing Act and Rules of Racing Section: 319.1
- 3.2 V-801 Disaster Recovery Plan for Veterinarians
- 3.3 V-800 Policies and Procedures for Test Barn Employees

### 4.0 DEFINITIONS

- 4.1 **Chain of Custody:** A monitoring process to prevent tampering with drug testing samples or results. This process begins with collection of the samples and continues through the final reporting of test results.
- 4.2 **Daily Packet:** A manila envelope containing those race day documents required to support the Chain of Custody process as specified by the Director of Investigations.
- 4.3 **Partial or Partial Sample:** A horse urine sample of less than 100 ml.
- 4.4 **Split Sample:** That portion of urine and blood serum samples that is retained at racetracks. The purpose of the Split Sample is to provide the owner/trainer of a race animal with a positive test result the opportunity to challenge the original finding.

### 5.0 CHAIN OF CUSTODY

- 5.1 **Legal challenges to drug testing results often focus on the handling and the accountability of specimen custody rather than on the accuracy of the laboratory testing. If the Chain of Custody is found to be lacking, testing results can be ruled inadmissible in legal proceedings.**



## Horse Racetrack Drug Testing Procedures

- 5.2 The number of people involved in the Chain of Custody of samples shall be held to the minimum number possible.
- 5.3 Documentation of the Chain of Custody process shall include the date each time a specimen is handled or transferred, and identification of each individual in the Chain of Custody.
- 5.4 Samples shall be split, labeled, and sealed as soon as possible after collection.
- 5.5 The test technicians and witnesses must initial all sample containers
- 5.6 All samples collected must be maintained under secure conditions at all times.
- 5.7 A sample is in custody if
- it is in the possession of a TxRC testing facility employee;
  - it is in view of a TxRC testing facility employee;
  - it is in a secure area where access is limited to TxRC testing facility employees; or
  - it has been transferred to an authorized person for transporting to the laboratory.
- 5.8 Transfer of sample custodianship shall be accomplished using the TxRC Chain of Custody Record. The original portion of the Chain of Custody Record shall remain in the Daily Packet at the TxRC testing facility in accordance with the TxRC retention schedule.
- 5.9 Any documentation generated by shipping samples (e.g. UPS Airbills) shall be retained as part of the sample documentation.

### 6.0 PROCEDURES

#### 6.1 Equipment

- Personal Computer
- Printer



## Horse Racetrack Drug Testing Procedures

- Centrifuges
- Refrigerator (lockable)
- Freezer (lockable)
- Urine collection sticks
- Metal, lockable sample shipment containers

### 6.2 Supplies

- Sealed urine collection cups (200 ml min.)
- Sealed urine shipment cups (100 ml min.)
- Blood collection tubes
- Needles
- Pipettes
- Evidence tape
- Disposable gloves
- Sequentially numbered metal seals
- Manila envelopes

### 6.3 Forms

- Sample Cards
- Laboratory Sample Receipt
- Chain of Custody Record
- Daily Initials Log
- Daily Sample Report
- Test Barn Security Log



## Horse Racetrack Drug Testing Procedures

- Conflict of interest forms

### 6.4 General

- 6.4.1 Except in cases of injured or dead horses, collect blood and urine samples only in Test Barns. At the discretion of a Commission Veterinarian, blood and/or ocular fluid may be obtained from horses injured or killed on the track.
- 6.4.2 Test Barn Supervisors shall document the arrival time and sample collection completion time for all horses.
- 6.4.3 Assign each horse a water bucket that is clearly marked with a unique number. Hang a tag bearing this number from the horse's halter until testing is complete. Monitor horses to ensure they drink only from their assigned water buckets. In the event a horse drinks from the wrong bucket empty, rinse out, and refill the bucket.
- 6.4.4 Retain all horses in the Test Barn until a minimum of 100 ml of urine has been collected or 1.5 hours has elapsed, whichever occurs first. The only exception is if a Commission Veterinarian diagnoses a horse to be sick or injured and in his/her judgment retaining the horse would be detrimental to its health. In general, regardless of the amount of urine collected, release horses after 1.5 hours. However, you may, after evaluating the situation, exercise the Commission's right to retain the horse longer. Factors that may be considered include, but are not limited to, the likelihood of the horse urinating shortly thereafter and whether the horse was designated for cause by the Stewards or a Commission Veterinarian in accordance with the Texas Racing Commission Rules of Racing, Sec. 119.361, paragraph (c)(5).
- 6.4.5 Do not place food, drink, or tobacco products on the counter where samples are processed.
- *Food and drink should be isolated to the back office.*
- 6.4.6 Do not eat, drink (other than water), or use tobacco products from the beginning of the collection process until the samples are placed in the refrigeration units.



## Horse Racetrack Drug Testing Procedures

- 6.4.7 Wash hands after eating, drinking (other than water), using tobacco products, and after completing each collection process.
- 6.4.8 Licensees shall not bring food, drink, or any type of medication into the Test Barn.
- 6.4.9 Licensees may be allowed in the testing facility to conduct business while samples are being processed, except in the sample processing area, as long as they are monitored.
- 6.4.10 Store used needles in Sharps containers and release to disposal companies contracted by the racing association.

### 6.5 Sample Collection

- 6.5.1 Each Test Technician shall collect and process samples from only one animal at a time.
- 6.5.2 Wear gloves at all times while handling open urine containers.
- 6.5.3 Use a new pair of gloves for each animal.
- 6.5.4 Test Barn personnel should avoid touching the horse's nose and mouth. Always ask the horse's attendant to lift the horse's lip to check the tattoo. If a Test Barn employee touches a horse's nose or mouth they shall wash their hands or change gloves before touching another horse.
- 6.5.5 Identify animals by tattoo number prior to each collection of urine and blood. In the event a tattoo is illegible identify the horse using its registration papers. Any discrepancies with tattoos shall be immediately brought to the attention of the Test Barn Supervisor.
- 6.5.6 The trainers of animals designated for testing or their representatives shall have the opportunity to observe the opening of the sealed urine collection container, the collection of the urine and/or blood samples, and the sealing of all sample containers. They must also be given the opportunity to compare the sample number on the sample card bearing their animal's name and the numbers on the sample containers. Finally, they must be given the opportunity to initial the seals on sample containers and to sign the sample card. If a witness refuses to do any of the above, document this on the back of the sample card.



## Horse Racetrack Drug Testing Procedures

- 6.5.7 Break sample container seals in the presence of witnesses, if they are present. Once the seals are broken, ensure that the containers remain in full view of the witnesses until sealed and initialed by them, unless the witnesses choose otherwise. If you take a container out of the view of a witness, throw it away and get a new one.
- 6.5.8 In the event a Technician has collected a Partial Sample and decides to have the horse walked, the Technician shall ensure the Partial Sample remains in full view of the witness.
- 6.5.9 Unless there is sufficient counter space to provide for more than one processing station, process only one sample in the testing facility at a time.
- 6.5.10 Allow only one witness per sample in the processing area during sample processing
- 6.5.11 Split urine samples into two 120 ml containers using the following guidelines:
- If less than 70 ml are collected send the entire amount to the lab.
  - If 70 ml to 100 ml are collected send 50 ml to the lab and retain the rest as a split
  - If 100 ml to 150 ml are collected send all but 50 ml to the lab and retain the remaining 50 ml as a split
  - If more than 150 ml are collected send a minimum of 100 ml to the lab and retain a minimum of 50 ml as a split
- 6.5.12 Collect four tubes of blood from each horse. Send three tubes to the laboratory and retained one as the split sample. In the event there are less than four tubes, send one to the laboratory and retain the other as the split sample.
- 6.5.13 Seal containers as follows:
- First, apply the sample sticker to the sample container. On blood tubes apply the sticker with the furosemide block at the bottom of the tube



## Horse Racetrack Drug Testing Procedures

- Next, apply evidence tape over the top of the container lid, overlapping the sample sticker. For urine samples overlap both ends of the sticker. Do not cover any part of the bar code, sample number, or the furosemide block.
  - Write your initials on the sticker.
- 6.5.14 Leave all unused sample stickers attached to the sample card.
- 6.5.15 Instruct the *valid* witness to write their initials on the sealing tape and sign the sample card.
- 6.5.16 If there is no witness or the witness fails to observe any part of the collection or processing, make a note of this on the back of the sample card.
- 6.5.17 If the witness is not a valid witness note this on the back of the card. Do not have the witness sign the card but write the witness's name and license number on the back of the card.
- 6.5.18 Document all deviations from procedure and any unusual events on the back of Sample Cards. If there is insufficient room on the card, complete a Memo For Record and attach it to the Sample Card.
- 6.5.19 The Test Technician shall initial the Sample Card and fill in the time at which the sealing process is complete.
- 6.5.20 Handle and centrifuge blood in accordance with the collection tube manufacturer's instructions. Adjust the time between collection and centrifugation to ensure sufficient serum for testing.
- 6.5.21 After centrifugation harvest the serum from the blood Split Sample using a pipette. Place the pipette back into the collection tube and replace the stopper. Reseal the tube with evidence tape and initial the tape.
- Pipettes are to be placed in a ZipLock bag to eliminate contamination.
  - Gloves should be worn when handling the bulb of the pipet.
  - Scissors used to clip the stem of the pipet need to be cleaned between samples. Use a new 16 oz



## Horse Racetrack Drug Testing Procedures

sample cup with warm water and "swish" the end of the scissors in cup.

6.5.22 Using evidence tape, tape the three blood tubes destined for the laboratory together with the bar codes facing in the same direction so they can be easily read.

6.5.23 Rinse urine collection sticks in chlorine wash bucket provided by stalls after each sample is collected.

### 6.6 Packing and Storing Samples

6.6.1 Test Barn Supervisors are the sole custodians of samples and may not delegate the tasks of inventorying, packing, and securing sample containers.

6.6.2 Print two copies of the Laboratory Sample Receipt

6.6.3 Inventory the samples as follows. Remove all blood and urine samples from the shipping container. Place each sample back into the shipping container while checking it off on one copy of the Laboratory Sample Receipt. Place this copy of the Laboratory Sample Receipt in the Daily Packet.

6.6.4 Annotate the second Laboratory Sample Receipt with information required for special testing. Put this copy of the Laboratory Sample Receipt in the shipping container. Do not include any information that could be used to identify a test animal, trainer, or owner.

6.6.5 Pack shipping containers with packing material and ice packs to keep the contents secure and cool.

6.6.6 Secure the shipping container with a padlock and numbered seal.

6.6.7 Secure the Chain of Custody Record to the outside of the container.

6.6.8 Only Test Barn Supervisors shall have access to sample box keys.

6.6.9 In the event a shipping container must be opened at the track after the seal has been applied, cut the seal off, place it in the Daily Packet, and replace it with a new one. Make all changes to documentation regarding the seal number and the date and time the container was resealed.



## Horse Racetrack Drug Testing Procedures

- 6.6.10 Store shipping containers with samples in lockable refrigeration units.
  - 6.6.11 Only Test Barn Supervisors and those individuals approved for transporting samples by the Director of Investigations shall have access to keys to refrigeration units containing sealed shipping containers.
  - 6.6.12 Store split samples in lockable freezer units.
  - 6.6.13 Only Test Barn Supervisors shall have access to keys to freezer units containing split samples.
  - 6.6.14 Keep refrigeration and freezer units containing samples locked except when necessary to handle samples; keep testing facilities and sample storage rooms locked when unattended, limit unescorted access to sample storage areas to Commission Veterinarians, Test Barn Supervisors, Test Technicians, Commission Investigators, the Deputy Director for Racing Oversight, the Executive Director, and those bonded individuals approved by the Director of Investigations for transporting samples to the laboratory. Either a Commission Veterinarian or Test Barn Supervisor shall escort all others, including Commission employees not listed above. To the maximum extent possible keep refrigeration units containing samples locked when visitors are present.
- 6.7 Shipping and Disposing of Samples
- 6.7.1 Sample Custodians shall transfer custodianship of samples for shipment only to those individuals approved by the Director of Investigations.
  - 6.7.2 When a split sample is to be shipped to a laboratory the sample custodian shall transfer custodianship to a Commission Investigator.
  - 6.7.3 Only Test Barn Supervisors may discard split samples and then only after directed to do so by the Commission staff in Austin using the Stewards' Clearing Report. **CAUTION: make sure the date on samples being discarded falls within the date range on the report. Maintain a file for all Stewards' Clearing Reports. Retain Stewards' Clearing Reports for one year beyond the end of the meet.**



## Horse Racetrack Drug Testing Procedures

- 6.7.4 Discard blood split samples in approved Bio-Hazardous Materials containers and turn over to disposal companies contracted by the racing association.
- 6.7.5 Discard urine split samples in garbage receptacles. No special handling is required.
- 6.8 Documentation
- 6.8.1 Every individual involved in the sample process, from collection to shipment, shall be identified by his or her initials or signature on the appropriate documentation.
- 6.8.2 A daily Initials Log shall be accomplished to identify all employees' initials.
- 6.8.3 Do not use whiteout or correction tape on any documentation pertaining to drug testing samples. Make corrections by drawing one line through mistakes and then writing the correct information. *Initial and date* all corrections.
- 6.8.4 If an incorrect animal name is entered on a sample card, void the card and use a new one.
- 6.8.5 When voiding a sample card write the word "VOID" prominently across the front of the card and place it in the Daily Packet. Do not destroy or throw away sample cards.
- 6.8.6 The sample custodian shall certify that all sample processing steps and documentation have been completed by signing the Sample Card for each animal.
- 6.8.7 Document all deviations from procedures and all unusual events that may call into question the security of samples.
- 6.8.8 Daily Packets shall, as a minimum, include:
- the Horses Raced by Track and Date Report
  - the official program
  - the Test Barn Security Log
  - the Laboratory Sample Receipt
  - the Chain of Custody Record
  - the Daily Furosemide Reports
  - the Daily Initials Log



## Horse Racetrack Drug Testing Procedures

- the Test Technician Disclosure Forms (as needed)
- a separate envelope containing:
  - o the Sample Cards
  - o the Daily Sample Report
- applicable Memos For Record

6.8.9 Seal the Daily Packets and the envelopes containing the Sample Cards with evidence tape. Write the date and your initials on the tape. Whenever these envelopes are opened, reseal, initial, and date them again. Write an explanation for the reason the envelope was opened on the envelope. Initial and date this statement.

6.8.10 Store Daily Packets in secured area.

6.8.11 Document the transfer of sample custodianship for shipment using the Texas Racing Commission Chain of Custody Record.

6.8.12 The disposition of documentation shall be in accordance with the State of Texas Records Retention Schedule.

Revision	Originator	Change	Reviewed By:	Approved By	Effective Date
B	Chuck Trout	Complete rewrite	Chuck Trout	Chuck Trout	11/04/14
C	Carol Olewin	Changed from "three" to "four" & "two" to "three" for blood tubes, added "less than four tubes in 6.5.12. Changed from "two" to "three" in 6.5.22, added "chlorine wash bucket provided by stalls" in 6.5.23, added "as needed" for disclosure forms in 6.8.8, and changed "locked filing cabinet" to "secured area" in 6.8.10.	Chuck Trout	Chuck Trout	11/06/14

STATE OF TEXAS  
COUNTY OF TRAVIS

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### CERTIFICATION OF PUBLIC RECORDS

"My name is Renee Slaughter. I am the custodian of records for the Texas Racing Commission.

Attached hereto are 13 page(s) of records that were with, and maintained by, the Texas Racing Commission. These said 13 pages are official records, reports, or entries that are authorized by law to be recorded or filed, and recorded or filed, with the Texas Racing Commission, including data compilations. These certified records attached hereto are the original(s) or exact duplicates of the original(s).

IN TESTIMONY, THEREOF, I have hereunto signed my name officially and caused to be impressed hereto the Seal of the Texas Racing Commission for the State of Texas, at my office in the City of Austin, Texas, on this the 22<sup>nd</sup> day of October, 2018."



Renee Slaughter  
Custodian of Records  
Texas Racing Commission

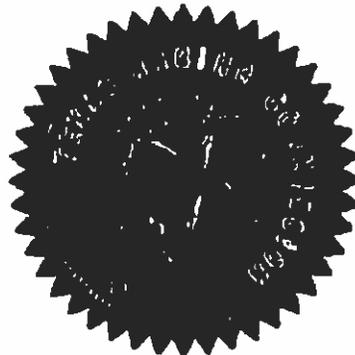


EXHIBIT R



**EXHIBIT R**  
**ATTACHED PAGES NOS. 626 - 637**  
**TEXAS RACING COMMISSION**  
**POLICIES AND PROCEDURES FOR TEST BARN EMPLOYEES**



**Document: Policies and Procedures for Test Barn Employees**

Document No.: V-800

Rev. B

Effective Date:  
01/20/2017

**1.0 PURPOSE**

The purpose of the standard operating procedure is to provide written documentation that all race track test techs can use to fulfill their job responsibilities to the best of their ability.

**2.0 SCOPE**

Test barn technicians are required by Commission Rule 313.60 to perform any duty required by the test barn supervisor and to assist in the collection of urine specimens for testing and in the maintenance of the test barn facilities."

You play one of the most important roles in ensuring the integrity of pari-mutuel racing. The job that you perform is critical to the Texas Racing Commission drug-testing program for racehorses that ensures animals are raced drug-free. This assurance enables the betting public to have confidence in the racing industry, and also protects the health and welfare of both horse and rider.

Your job requires that you pay close attention to everything you do in the process of collecting a sample. Should a positive sample result be challenged, we must be able to testify in a court of law that the sample was collected in a certain manner because we ALWAYS follow standard procedures.

**3.0 ASSOCIATED DOCUMENTS**

- 3.1 V-801 Disaster Recovery Plan for Veterinarians
- 3.2 V-802 Horse Track Drug Testing Procedures
- 3.3 V-803 Racetrack Total Carbon Dioxide Testing Procedures

**4.0 SECURITY**

Security of the Test Barn and all samples collected, are the responsibility of ALL Test Barn employees. No one besides the Test Barn employees may enter the sample storage room without a Test Barn employee escorting them. DO NOT ALLOW unauthorized access to sample refrigeration units, desks, supply storage, or file cabinets. No personal items may be placed into the sample storage refrigeration units at any time.

**5.0 COMPUTERS**

Test Barn Techs will not use Texas Racing Commission computers.



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**6.0 TELEPHONES**

The use of the Test Barn Telephones for personal calls is restricted to matters of an urgent nature and only with the approval of the Test Barn Supervisor.

**7.0 PERSONAL CELLULAR TELEPHONES**

Test Barn Techs may bring cell phones to the Test Barn, however, the ringer must be set to silent/vibrate. Use of cell phones will not be allowed while in the test barn, in the stall area, while at the track to bring back horses, or anytime in the process of collecting samples. Use of these phones will not be allowed to interfere with the performance of your duties and you should restrict the length of calls to the absolute minimum while working.

**8.0 SAFETY**

- 8.1** Safety is everyone's responsibility. If you discover a situation you believe is unsafe, notify the Test Barn Supervisor immediately. Safety takes precedence over sample collection **AT ALL TIMES**.
- 8.2** Avoid standing within kicking range of all horses – this includes standing too close to the stall door as the horse enters.
- 8.3** If you feel the need, keep the horse on a lead, have the attendant hold the horse, tie the horse to the wall, or stand outside the stall until the horse has set up to urinate. If you feel as though you can NOT collect urine safely, notify the Test Barn Supervisor.
- 8.4** Always monitor the Test Barn for unauthorized entrance. Everyone who enters the test barn area must be signed in by the security guard. Children under the age of 18 are not allowed into the test barn at any time. If you have any question regarding the age of someone entering, let the Test Barn supervisor know.

**9.0 DUTIES**

Test Barn Techs must arrive ready for work no later than 30 minutes prior to the first post time of the day. Clothes must be clean and in good repair (no jeans with large tears or holes even if they are designed that way) – and must not be suggestive or revealing. Halter tops and any other clothing that is revealing will not be worn. Clothing displaying obscene language or art will not be worn. Shorts are permissible as long as they are not short-shorts. Footwear – preferably boots – or any other close toed shoes appropriate for working with horses will be worn. Please keep in mind that all race horses wear horse shoes and if they step on a foot, there can be extreme consequences.



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**10.0 TESTING RULES AND PROCEDURES**

**10.1** The rules of the Texas Racing Commission require that the first place horse ALWAYS be tested. In addition, a horse that finishes second; a beaten favorite; for a race with a gross purse of \$50,000 or more, the horse that finishes third; a horse selected at random by the stewards (this is known as a "Steward's Special") and any other horse designated for cause by the Stewards or any Commission Veterinarian may be tested.

**10.2** A television monitor in the test barn may be used to keep track of the progress of the racing program. Ten (10) minutes prior to post time for the next race, at least two (2) test barn techs will go to the winner's circle. The Test Barn supervisor will let you know which horse and how many horses to bring back to the Test Barn. The Test Tech must be very diligent to make sure the correct horses are brought back to the Test Barn for testing. Sometimes, the placing of the horses in a race takes a while. All horses must be held on the track until you are certain which ones to take to the Test Barn. Alternatively, if the Test Tech is certain which horses are involved in a photo finish, inquiry, or claim of foul, all of the horses that could possibly be selected can be brought to the Test Barn. The horses that are not needed will then be released at the Test Barn. After the race is run and the horses return to the winner's circle area to be unsaddled, clip the Test Barn Tag labeled with a "T" to the bridle of each horse selected for testing except the 1<sup>st</sup> place horse. If there is an objection or inquiry during the race, place a "T" tag on the 3<sup>rd</sup> or 4<sup>th</sup> place horse (depending on if pulling 2 or 3 horses.) Ask all handlers to circle until the winner has taken photos. One of the Techs will follow the 1<sup>st</sup> place horse to the winner's circle and attach the Test Barn Tag labeled with a "T" to the bridle after the picture is taken. One Test Tech is responsible for escorting the 1<sup>st</sup> place horse to the Test Barn, while the other Test Tech is responsible for escorting all other horses selected for testing. Occasionally there may be a claimed horse. If so, the Clerk of Scales will hand you an additional tag (a "C" tag) to be placed on the horse and will tell the Test Tech which one has been claimed. If the claimed horse finishes in one of the testing positions, it should be walked to the Test Barn for testing. Claiming will take place in the Holding Barn after all tests are completed on the claimed horse. If the horse did not finish in a testing position, the horse is taken directly to the Holding Barn to allow the claiming process to be executed.

**10.3** Test Techs should make a point to observe all of the horses in a race as they leave the track. Any horses showing blood at the nostrils should be brought to the attention of the Commission Veterinarian on the track. If the Commission Veterinarian working the track is not available, have the handler bring the horse to

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the Test Barn so that the Commission Veterinarian at the Test Barn can look at the horse.

- 10.4** Test Techs that are escorting more than one horse, will stay next to the handler of or behind the last horse that is being escorted. This will allow the Test Tech to always keep the escorted horses in view. Stop the horses at the entrance of the Test Barn so their tattoo numbers can be checked by a Test Tech that did NOT go to the track to escort the horses back. Test Techs will ask the handler to lip the horse so that the tattoo number can be read. Test Techs will NEVER lip a horse with their own hands. Please be aware that horses should NOT be allowed to enter the Test Barn area if the tattoo's given by the Test Barn Supervisor do not match the tattoos of the horses brought to the Test Barn. If the Test Tech cannot verify the tattoo of a horse brought for testing, the Test Barn Supervisor must verify the tattoo. Once the tattoo has been verified, the Test Tech checking the tattoos will assign each horse to a water bucket by removing the "T" Test Tag and replacing it with a numbered Test Tag corresponding to the numbers on the water buckets. Make sure the handler moves the numbered tag to the halter from the bridle after the bridle is removed. Handlers are NOT allowed to put the numbered tags in their pockets or to hand them from their belt loops.
- 10.5** Once the horses are in the Test Barn, the handlers will hose them off and walk them until they are cooled out. If a Test Tech is not busy, the Test Tech may help the handler by holding their horses while they cut the wraps off and/or wash the horse. **TEST TECHS ARE NOT ALLOWED TO CUT THE WRAPS OFF OF ANY HORSE FOR ANY REASON.** As the Test Tech observes, the horses as they cool out, make sure each horse is using the proper water buckets as assigned. If a horse uses a water bucket that is not assigned to them, notify the handler and empty and refill the bucket that was used by mistake. During this cooling out period, it is very important for the Test Tech to pay close attention to the horses in the Test Barn. The amount of time it takes for a horse to be ready to be collected varies greatly from horse to horse. Some horses will be ready in as little as 15 minutes while others may take 1 ½ hours. Watch for signals from the handlers as to when the horse might be ready. Because the handler is more familiar with the horse than the Test Tech, always take into consideration when they advise that a horse is ready.
- 10.6** Test Techs that did not walk up to the winner's circle will check with the Test Barn Supervisor for a post it note with the pulled horses tattoo numbers on it. Water bucket tags should be pulled so that they can be placed on the horses entering the test barn. Tell the security guard which bucket number will go on each horse. When horses arrive at the gate, ask in what place each horse finished.



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**MAKE SURE THE TATTOO NUMBERS ON THE POST IT NOTE MUST MATCH THE TATTOO ON THE HORSE IN THE PLACES NOTED. IF the numbers do not match, DO NOT ALLOW THE HORSE TO ENTER THE TEST BARN AND NOTIFY THE TEST BARN SUPERVISOR IMMEDIATELY.** Remember that if claimed, the horse will have a "C" tag as well as a number tag attached to their halter. "T" tags shall be hung back on the appropriate hook so that they are available to the next Test Techs that go up to the next race. The "C" tag shall be taken back up to the Clerk of Scales after the claiming process has been fulfilled.

- 10.7** Each horse will be kept a maximum of 1-1/2 hours to collect urine unless otherwise instructed. Let the horse cool down for approximately 20 minutes before any sample is taken. When the Test Tech believes that the horse is ready to give a sample, the proper sample card for that horse, gloves, a collection stick, and a 16 oz. cup should be collected. Use of gloves is mandatory. The sample card **WILL NOT BE KEPT IN POCKETS. ATTACH THE SAMPLE CARD BEHIND THE TEST TECHS LICENSE SO IT IS NOT IN YOUR WAY.** The Test Tech will ask the handler to bring the horse to a testing stall. Before the Test Tech allows the horse to enter the stall, the handler will lip the horse so that the Test Tech can verify that the correct horse is being collected. The tattoo number on the card **MUST** match the tattoo on the horse the Test Tech will be collecting. **IF THERE IS ANY DISAGREEMENT BETWEEN THESE TWO NUMBERS, ASK THE HANDLER TO TAKE THE HORSE AWAY FROM THE STALL AND CONTINUE WALKING THE HORSE UNTIL THE TEST BARN SUPERVISOR HAS BEEN ADVISED. DO NOT TEST THE HORSE UNTIL THIS ISSUE IS RESOLED.** Please note that Test Techs are not to stand so close to the stall door that a horse could "cow kick" as it passes. Do not follow the horse into the stall until it has been turned around, to avoid being kicked.
- 10.8** Ask the handler to take the halter off the horse and to leave the stall. The stall door will latch from the inside. **Do not allow the handler to lock the door from the outside.** Instruct the handler that they may witness the collection of urine through the viewing portal. Witnessing the collection of the blood and urine by the handler is a **RIGHT**, not a requirement. If the handler does not witness the collection of the urine, make a note of this on the back of the sample card.
- 10.9** Break the seal of the collection cup in the presence of the witness. Should the Test Tech not collect any urine and request that the handler walk the horse some more, the opened collection cup should be thrown away and a new one used at the next collection attempt; Do this so that the seal is once again broken in the presence of the handler.

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- 10.10** Pay close attention to the horse's body language. Many horses will be excited when initially turned loose in a stall, but most will calm down within a few minutes if the Test Tech remains calm. It is often best to stand very quietly in the center of the stall until the horse has investigated its surroundings. Most horses that have been at a racetrack are somewhat accustomed to the testing procedure and will relax and urinate. As the horse begins to stretch to urinate, the stick should be held down and hidden as much as possible, and then eased into place, avoiding any quick motions. It is best if Test Techs keep their legs closed so that the stick is not easily seen by the horse. **DO NOT TOUCH THE HORSE WITH THE STICK AT ANY TIME.** Make sure to know the sex of the horse you are collecting **BEFORE** entering the stall. It is embarrassing and ineffectual to expect urine to appear in one place only to have it appear in another! The sample card will have the sex of the horse on it; Colt, Stallion, Ridgeling, Gelding = Male; Fillie, Mare = Female.
- 10.11** Extremely nervous horses may sometimes calm down if kept on a lead rope. If the horse that is being collected appears to want to continue to walk, run the stall, dig, weave, or appears to want to kick, you may request the halter from the handler or ask the handler to hold the horse still by coming into the stall and holding the lead rope. The Test Tech should always be aware of the location of the horse within the stall. All warnings given by the handlers should be heeded; they know and work with the horses daily. If a Test Tech is advised to keep a horse on a lead rope or shank, that information should be followed.
- 10.12** If a horse appears to be shy of the collection stick and is familiar with blinkers being worn, sometimes blinkers will help keep the horse's mind off of the Test Tech and the collection stick. Horses that would rather eat than cooperate may be muzzled. Most horses will nibble at the ground, but horses are sometimes kept off feed for a period of time before they race and are hungry when they get to the Test Barn. Horses that eat more than a few nibbles should be discouraged and then muzzled if they persist. **DO NOT LEAVE THE STALL TO GET A MUZZLE.** Ask someone that is free to bring it to the stall.
- 10.13** **DO NOT HIT, KICK, OR OTHERWISE SEVERELY DISCIPLINE A HORSE.** If you are having problems with a horse, notify the handler to make necessary adjustments such as putting the horse on a shank or muzzle. Have the horse taken out of the stall and notify the Test Barn Supervisor if there is a concern of safety.
- 10.14** When your efforts are rewarded, and the horse appears to want to urinate, quietly unscrew the lid on the sample jar. If the horse urinates but doesn't give up enough urine, close the jar until the horse is ready to urinate again. Horses may be kept in the stalls for 10 to 15 minutes at a time or until they are too hot, too

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nervous, or too uninterested to persist in trying to collect. If this amount of time has elapsed and only a partial sample is obtained, close the jar securely and instruct the handler to continue walking the horse and offering water. **THE TEST TECH WILL THEN WALK TO A SPOT IN THE BARN WHERE THE SAMPLE WILL CONTINUE TO BE IN FULL VIEW OF THE HANDLER. REMAIN THERE UNTIL THE HORSE IS READY TO BE TRIED AGAIN. AT NO POINT CAN THE TEST TECH WALK AWAY WITH A PARTIAL SAMPLE.** When a partial sample is obtained, the Test Tech who collected the partial sample must remain with that horse, sample card, and sample until the horse gives more urine, or time runs out, whichever comes first. That horse may NOT be given to another Test Tech. The only exception to this is if that Test Tech must go to the restroom. In that case, another Test Tech may hold the sample in full view of the handler until the original Test Tech returns. The second Test Tech CANNOT collect additional urine.

- 10.15** As the horse enters the stall for additional attempts, the Test Tech must make sure **EACH TIME** to ask the handler to lip the horse and then the Test Tech must recheck the tattoo. **THIS IS EXTREMELY IMPORTANT** as two horses can appear very similar and the Test Tech must ensure that the same horse is collected each time it enters the stall. In some cases, handlers will switch horses so you can't rely on remembering the handler. **FAILURE TO DO THIS WILL INVALIDATE ANY TEST RESULTS. FOLLOW THIS PROCEDURE EVEN IF YOU ARE ABSOLUTELY SURE OF THE HORSE'S IDENTITY.**
- 10.16** Once the Test Tech has collected enough urine, securely close the jar and ask the handler to put the halter on the horse if it is not haltered. Remove the "T" tag and notify the Commission Veterinarian or the Test Barn Supervisor that the horse is ready to be bled. Return the collection stick to the bucket they are held in. If neither the Commission Veterinarian nor the Test Barn Supervisor will not be available shortly, the horse should continue to be walked while the collected urine sample remains in full view of the handler.
- 10.17** When the Commission Veterinarian or the Test Barn Supervisor comes to take blood from the horse, the Test Tech will produce the card or read the tattoo number so that the horse can be verified before blood is collected. Three vials of blood will be collected at this time. The Test Tech should stand a few steps behind whoever is collecting the blood and pay close attention to what is happening. Sometimes horses do not appreciate needles and they may strike, rear, or maneuver in the Test Tech's direction. The blood tubes will be handed to the Test Tech as they are filled. After the Test Tech has all three tubes, GENTLY



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- invert the tubes 8 – 10 times. **DO NOT SHAKE THE TUBES OR PUT THEM IN YOUR POCKET. KEEP THEM UPRIGHT AS BEST YOU CAN.**
- 10.18** If the Commission Veterinarian or Test Barn Supervisor needs more blood collection supplies, call for another Test Tech to get what's needed. **THE SAMPLES COLLECTED MAY NOT LEAVE THE AREA WHERE THE HANDLER IS AT.**
- 10.19** Open the stall door slowly, looking both ways for nearby horses before it is swung wide open. The horse can either remain in the stall or be walked by a different handler while the samples and witness are taken inside the office to sign for the samples.
- 10.19.1** Have the witness/handler follow the Test Tech into the scaling area keeping the samples in the witness/handlers view at all times. Make sure the witness/handler has his license and the number tag for the water bucket assigned. If the Test Tech and witness/handler have already entered the office and those items are not present, **HAVE A DIFFERENT TECHNICIAN RETRIEVE THE ITEMS.** If there is another Test Tech processing samples, wait with the witness/handler and samples outside of the office.
- 10.19.2** When it is time to process the samples, the Test Tech will go behind the counter and the witness/handler will stand in front. Place the large urine container on the counter and the tubes of blood in the tube holder so that both hands are free to continue. **THE FIRST THING THAT THE TEST TECH WILL DO IS CHECK TO MAKE SURE THE WITNESS/HANDLER HAS A VALID LICENSE AND IS A VALID WITNESS.** This should have been checked upon entry to the test barn, but mistakes happen. The Test Tech will then write their initials on the corner of each of the sample labels that will be used and the current time on the labels that will be put onto the blood tubes. Pour a minimum of 10 mLs\* and a maximum of 50 mLs into two 8 oz. jars. One of those jars will go to the lab, and the second will be the split sample and put into the lockable sample freezer until it has been cleared. Screw the lids onto the containers. After the lids are in place, the gloves worn by the Test Tech may be removed for the remainder of the sample process. If there are less than 10 mLs, there will be no split, the entire 10 mLs will be sent to the lab, and the Test Tech will stamp, "Not enough urine collected for a split" onto the back of the sample card along with the Test Tech's and the witness's/handler's initials. A sample bar code tag labeled "URINE" will be placed on top of the label of each 8 oz. jar used. A piece of Red

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Evidence Tape will be placed over the lid of each jar in such a way that it overlaps both ends of the bar code tag, being careful not to cover the sample number, the bar code, or the furosemide box. Place a sample bar code tag labeled "BLOOD" onto each of the blood tubes, covering the stickers already on the tubes with the furosemide block toward the bottom of the tube. Place a piece of Red Evidence Tape over the top of each blood tube in a way that it covers the entire top and overlaps the tag, but does not cover the sample number or any part of the bar code. No part of the rubber top of the tube should show after the evidence tape has been placed. If it does, more tape should be added. Have the witness/handler initial the evidence tape on all blood and urine samples. Any urine left in the 16 oz. collection jar may now be discarded.

- 10.19.3** Ask the witness/handler to sign in the appropriate blank if they are a valid witness\*\* and the Test Tech should fill in the witness/handlers license number on the Sample Card. **NEVER LEAVE THE SAMPLES ALONE WITH THE WITNESS/HANDLER AT ANY TIME.** Once this is done, the witness/handler is free to go. The test tech will write their initials on the space where the blank for "Urine" is at. The current time should then be added by the Test Tech to the appropriate blank. The sample card should then be given to the Test Barn Supervisor, the blood tubes should be placed in the holder by the centrifuges, and the urine should be placed in the sample box and freezer, respectively.
- 10.19.4** During the entire process of sealing and storing the samples, the Test Tech should refrain from getting involved in conversations with other individuals. This will prevent the Test Tech from being distracted from the task at hand. **TEST TECHS WHO ARE NOT PROCESSING SAMPLES SHOULD AVOID THE SEALING AREA WHILE SAMPLES ARE BEING PROCESSED.** If the Test Tech needs anything that is not physically available to them, ask another Test Tech to get it for you so that the samples are never left by the Test Tech processing them.
- 10.19.5** The Test Tech will then clean the counter, wash their hands, and check to see if another horse is ready to be tested.
- 10.20** Following these procedures each and every time will ensure the integrity and effectiveness of the drug-testing program. Diligence and attention to detail with **EVERY** sample collected is **CRITICAL**. If there are **ANY** deviations from these procedures, the Test Barn Supervisor will be made aware and those deviations shall be noted on the back of the sample card at the time they



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occur along with the initials of anyone involved. This documentation is EXTREMELY important.

- 10.21 Food and drink may be brought into the Test Barn, however, it must be kept in the back room where the refrigerators are located. Once the horses from the first race have arrived, no food or drinks may be brought into the area where the samples are processed. Test Techs will ALWAYS wash their hands before returning to work after eating and/or drinking.
- 10.22 Test Techs who use tobacco products of any kind (e-cig, cigarettes, cigars, or chewing tobacco) **MUST WASH THEIR HANDS AFTERWARDS AND BEFORE ANY COLLECTION PROCESS.** TEST TECHS MAY NOT HAVE ANY TYPE OF TOBACCO ON THEM (OR IN THEIR MOUTH) WHILE IN THE TEST BARN, IN THE PROCESSING AREA, OR IN ANY OF THE STALLS. Use of tobacco products must be kept to a minimum and may only be used OUTSIDE of the Test Barn fencing.
- 10.23 Test Techs may bring guests to the Test Barn, however, they must leave before the horses in the first race arrive for testing. Guests are NOT ALLOWED to "hang out" and the Test Barn, and Test Techs are not allowed to visit with them until after you are cleared to leave for the day/night.
- 10.24 At the end of the shift, all supplies are to be cleaned and put away. The office area of the Test Barn should be cleaned and all trash cans should be emptied. Test Techs are not allowed to leave until the Test Barn Supervisor has given permission.
- 10.25 Test Techs will always keep in mind that unnecessary noise and distraction should be kept away from the Test Barn Supervisor. While the Test Barn Supervisor is collecting data, Test Techs should not engage in conversation or be a distraction. Questions and or comments should be held until the Test Barn Supervisor is not busy.
- 10.26 If at any time the Test Tech has nothing to do, he/she should be outside of the office area. Congregating inside is discouraged.

11.0 \*GUIDE FOR SPLITTING URINE SAMPLES

AMOUNT COLLECTED	SEND TO LAB	SAVE FOR SPLIT
10 mLs or less	All	None

	<b>Document: Policies and Procedures for Test Barn Employees</b>		
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10 mLs to 30 mLs	10 mLs	All in excess of 10 mLs
30 mLs to 50 mLs	20 mLs	All in excess of 20 mLs
50 mLs to 100 mLs	30 mLs	50 Ls max

**12.0 USE OF STAMPS ON SAMPLE CARDS**

- **Invalid Witness** – A person becomes an invalid witness if they are **NOT** one of the following: Groom, Stable Foreman, Assistant Trainer, or Owner/Trainer **TO THE HORSE BEING TESTED**. Another Trainer may be designated if a “Trainer Responsibility” had been signed. If they are **NOT** one of the above, the back of the sample card will be stamped, “INVALID WITNESS” and that person’s name and license number will be filled in by the Test Tech.
- **No urine collected after 1.5 hours** – This will be stamped on the back of the sample card as needed and the Test Tech will initial the stamp. The “URINE” stickers will be left on the card.
- **Not enough urine collected for Split Sample after 1.5 hours** – The Test Tech will stamp the back of the card and initial the stamp as well as initialing the “Urine Line” on the front of the sample card. One (1) urine sticker will be left on the card.
- **No/Insufficient urine collected and horse released due to injury/illness** – The Commission Veterinarian will make this determination. The Test Tech will stamp the back of the card and initial the stamp. The Commission Veterinarian will usually add a comment to the back of the card and initial.
- **WITNESS DID NOT OBSERVE URINE COLLECTION** – to be used as needed and initialed by Test Tech and witness/handler. This stamp is rarely if ever used.

Revision	Originator:	Change:	Reviewed by:	Approved by:	Effective Date:
A	Chuck Trout	New Creation	Chuck Trout	Chuck Trout	11/04/14
B	Edna Griswold	Changes to reflect current practices	Dr. Trey James	Chuck Trout	1/20/17

**ACKNOWLEDGEMENT**

	<b>Document: Policies and Procedures for Test Barn Employees</b>		
	Document No.: V-800	Rev. B	Effective Date: 01/20/2017

By my signature I acknowledge the contents, requirements, and responsibilities outlined in this Standard Operating Procedure (SOP). I also acknowledge that I have been given a copy of the SOP to take home and review as needed.

NAME (PRINT)	LICENSE NO.	SIGNATURE	DATE

Texas Racing Commission  
Ruling Report for Licensee

Ruling Date: 10/21/2017 Violation Date 06/09/2017 Ruling #: RETA2689  
 Licensee JUDD STEVEN KEARL Status: CLSD  
 License # 91094 Type OWNER-TRAINER Status SUSPENDED  
 Actions Begin Date End Date  
 SUSPENDED 07/31/2021 07/30/2026  
 Ruling Type: 4 MEDICATION VIOLATION Redistribute Purse: Y

Rules Cited: 3.16 UNLAWFUL INFLUENCES ON RACING  
 311.104 TRAINER/ABSOLUTE INSURER  
 319.3 DRUG POSITIVE OR PERMITTED MEDICATION VIOLATION  
 319.302 REASONABLE OVERSIGHT OF ANIMAL

Fine \$ 25,000 Fine Due Date 10/24/2017 Fine Paid Date

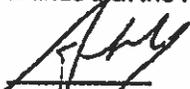
**FAILURE TO PAY THE ASSESSED FINE BY THE DUE DATE INDICATED ABOVE  
 MAY RESULT IN THE SUSPENSION OF THE SUBJECT'S OCCUPATIONAL LICENSE(S).**

Narrative

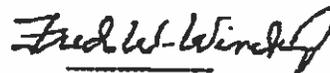
Owner-Trainer Judd Kearl was duly noticed and appeared through counsel, for a formal hearing on 9/25/17 before the Retama Park Board of Stewards because a post-race blood serum sample #RP043195, taken from his horse, "Chivalri," that won the 10th race at Retama Park on 6/9/17 contained the Class 1 prohibited substance, Nomifensine.

This positive test was one of eight positives for Nomifensine that occurred within a time period of a few weeks, by three different trainers at two tracks. This substance was identified and confirmed by the Texas Veterinary Medical Diagnostic Lab. In each case, spit samples were sent to the Pennsylvania Toxicology and Research Laboratory, and each positive test was confirmed. Before the hearing took place, counsel for each of the three respondent trainers, along with Deputy General Counsel for the Texas Racing Commission agreed to combine all of the cases and hold a single hearing. Present at the hearing were: Respondent Trainer Brian Stroud (1 positive test) with his attorney, Trent Rowell; Attorney Eleanor Ruffner, and Co-counsel Darrell Vienna, representing Respondent Trainers Judd Kearl (5 positive tests) and Trainer Jose Sanchez (2 positive tests). Also present was Deputy General Counsel for the Texas Racing Commission, Devon Bijansky, and the Board of Stewards, Anne Alley, Fred Winch and Michael Pelletier. The hearing was to determine the facts and circumstances surrounding all eight positives. The hearing concluded on the afternoon of 9/27/17, with additional transcripts of testimony submitted by stipulation on 10/6/17, and written closing arguments submitted on 10/10/17.

The Board of Stewards considered all of the testimony and evidence presented. The Board of Stewards finds that the Petitioner, Texas Racing Commission proved by a preponderance of the

  
ANNE ALLEY

  
MIKE PELLETIER

  
FRED WINCH JR



Texas Racing Commission  
Ruling Report for Licensee

Ruling # RETA2689

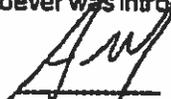
evidence (1) that each of the horses in question had Nomifensine in their systems on the day of their races, (2) that Nomifensine is a prohibited substance under the Racing Act and Commission Rules, and (3) that Respondents were the trainers for these horses in the manner and for the time necessary to prevent the administration of Nomifensine, and therefore, Respondents are responsible for the violations alleged against them.

The Texas Racing Act defines "prohibited substance" as "a drug, chemical, or other substance that (A) in its use or intended use, is reasonably capable of influencing or affecting the outcome of a race in a manner contrary to this Act or a commission rule; and (B) is prohibited by a commission rule regulating the unlawful influence of a race." Tex. Rev. Civ. Stat Ann. art. 179e, Section 1.03(72). Texas Racing Commission Rule 319.1(b)(1) defines "prohibited drugs, chemicals, or other substances" as "any stimulants, depressants, tranquilizers, local anesthetics, drugs, other drug metabolites which could affect the health or performance of a race animal." These drugs and substances are reasonably capable of influencing or affecting the outcome of a race in a manner contrary to the Texas Racing Act and Commission rules. Texas Racing Commission Rule 319.3(e) Medication Restricted, provides that "[a] positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race." This evidentiary presumption was not successfully rebutted by Respondents during the hearing.

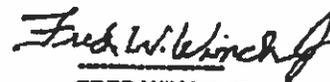
**Each Horse in Question Raced With Nomifensine in Their System**

During the hearing, Respondents raised several issues regarding the Commission's investigative process, specimen handling, and storage procedures. Respondents emphasized areas where procedures had departed from the written policies. Some procedures have been improved, while the written policy is currently in the process of being updated. Fewer tubes of blood are drawn from the horse after the race, because of the larger size of the storage tubes. Also, the process of storing the blood serum was improved, thereby lessening the chance of contamination. Respondents pointed out that some samples were refrigerated rather than frozen.

According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, freezing samples is the industry standard. However, the only effect refrigeration might have is that refrigeration of samples might reduce concentrations of substances in the blood being stored. Respondents also demonstrated that the security offices at the different tracks had keys to the test barns and freezers or refrigerators where the samples were stored. This too appears to be a departure from the written policy. However, none of these issues compromised the sufficiency of the chain of custody of these specimens, and no evidence whatsoever was introduced that the specimens were tampered with or that the results are not

  
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reliable.

While Nomifensine is not currently classified by the Association of Racing Commissioners International (ARCI). Texas Racing Commission Equine Medication Classification Policy and Penalty Guidelines, pursuant to ARCI recommendations, state that "Any substances or drugs found that are not included in these guidelines should be treated as Class 1 violations warranting a Class A penalty unless otherwise advised by the Executive Director." Nomifensine is therefore a Class 1 Prohibited Substance.

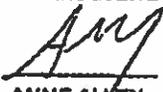
Nomifensine is a human antidepressant drug that was withdrawn from the market by manufacturers in the 1980s and had its FDA approval revoked in 1992. According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, Nomifensine is reasonably capable of influencing or affecting the outcome of a race and it could affect the health and performance of a racehorse.

**Respondent Trainers Are Responsible for the Violations**

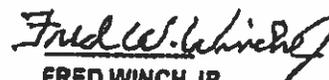
All three Respondents employed veterinarian Dr. Justin Robinson, and the logical inference from the totality of the evidence is that he was responsible for the administration of Nomifensine to all of the horses in question. All three Respondents claim that the administration of the Nomifensine was done without their knowledge and consent. However, ignorance does not relieve the Respondents of responsibility. Section 311.104 (b) of the Texas Racing Commission Rules of Racing, the Absolute Insurer Rule states: "(1) The trainer shall ensure the health and safety of each horse.....that is in the care and custody of the trainer. (2) A trainer shall ensure that a horse..... that runs in a race while in the care and custody of the trainer.....is free from all prohibited drug, chemicals, or other substances." Furthermore, Texas Racing Commission Rule Section 319.302 states: "The owner, trainer, groom, or other person who has care and custody of a race animal shall guard each animal in his or her custody before the animal races in the manner and for the time necessary to prevent the administration of a prohibited drug, chemical, or other substance." Although a trainer may not be present at all times, a trainer has control over who has access to the horses in his or her care, and is the only person with opportunity to secure his or her stable in an appropriate manner. If a trainer is not diligent in overseeing what substances are administered to horses in his or her care, it is the trainer that is remiss in fulfilling their obligations. To allow a trainer to excuse any positive by claiming ignorance regarding what a veterinarian administered, is to allow a trainer to abdicate a responsibility that is theirs by rule. Therefore, this Board of Stewards will not endorse a trainer's active ignorance as an excuse for a positive test for a prohibited substance in a race horse.

**Conclusion**

Owner-Trainer Judd Kearn is hereby suspended for five years (7/31/21 through 7/30/26) and fined twenty-five thousand (\$25,000) dollars and referred to the Executive Director. Third violation in this

  
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category.

During the term of this suspension, Mr. Kearl is denied access to all areas under the jurisdiction of the Texas Racing Commission. Horses owned or trained by Mr. Kearl are denied entry pending transfer to a party approved by a Board of Stewards

The horse, "Chivalri," is hereby disqualified from the 10th race at Relama Park on 6/9/17 and declared unplaced. The purse is ordered redistributed as follows:

1. (1) KK See U Later
  2. (4) Global Menace
  3. (9) Sonic Dashing Pool
  4. (3) Fantazzy
  5. (10) Luz Corona
  6. (6) TH Thomas Leo
  7. (5) Ignight
  8. (8) DKR Speedway
  9. (7) Salty On Fire
- Unplaced: (2) Chivalri.

  
ANNE ALLEY

  
MIKE PELLETIER

  
FRED WINCH JR

SOAH DOCKET NOS. 476-18-1010, 476-18-1011, AND 476-18-1012

JUDD KEARL, JOSE SANCHEZ, and BRIAN STROUD, Petitioners,	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	OF
	§	
TEXAS RACING COMMISSION, Respondent.	§	ADMINISTRATIVE HEARINGS

<b>PETITIONERS' EXCEPTIONS TO PROPOSAL FOR DECISION</b>
---------------------------------------------------------

Petitioners Judd Kearl and Jose Sanchez ("Petitioners"), file their Exceptions to the Proposal for Decision (the "PFD") rendered in the above-captioned matter on May 28, 2019 as follows:

**I. EXCEPTIONS TO FINDINGS OF FACT**

Petitioners object to the PFD's findings of fact as follows and propose amended findings of fact and conclusions of law, attached hereto as Exhibit A, with changes tracked for the Commission's convenience.<sup>1</sup>

**A. PETITIONERS' EXCEPTIONS TO FINDING OF FACT NO. 15 AND REQUEST FOR ADDITIONAL FINDING.**

Petitioners propose amending PFD finding of fact No. 15 for completeness to reflect that the Stewards' hearing concluded on September 27, 2017.<sup>2</sup> Petitioners further propose including additional findings of fact describing the summary suspensions and the circumstances under which Petitioners finally obtained the statutorily required evidentiary hearing on their summary suspensions.<sup>3</sup>

<sup>1</sup> Findings of fact may be based only on the evidence and on matters that are officially noticed. TEX. GOV'T CODE §2001.141(c). Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. TEX. GOV'T CODE §2001.141(d). In this case, the ALJ's summary of the underlying facts for his findings and conclusions are not based on the evidence presented.

<sup>2</sup> See Ex. A, p. 2.

<sup>3</sup> See Ex. A, p. 2.

After the summary suspension of Petitioners' licenses on September 6, 2017, the Commission was required to hold an evidentiary hearing within seven days.<sup>4</sup> The Commission did not schedule the required hearing. Petitioners repeatedly asserted their right to that hearing, but the Commission refused. Petitioners, with no other available remedy, sought injunctive relief. The Commission, through the Attorney General, appeared and confirmed 1) that Petitioners were in fact entitled to a hearing within seven days of the summary suspension; 2) that the Commission had in fact summarily suspended their licenses; 3) and that the Commission had refused to hold the hearing required by the Code. The Court ordered the Commission to hold the required hearing and, in the event they did not, Petitioners could return to the Court for relief. The Commission finally held the required hearing nineteen days after the summary suspension.<sup>5</sup>

The foregoing findings are appropriate and necessary to ensure that the PFD, regardless of the ultimate conclusions that the ALJ reaches, fairly represents the events as they have occurred in these proceedings and does not tend to minimize any party's failure to comply with relevant authorities.

**B. PETITIONERS' EXCEPTIONS TO FINDINGS OF FACT NOS. 16 AND 28.**

Petitioners object to the Stewards' conclusion and to finding of fact No. 16 because it is unsupported by the evidence, and to finding of fact No. 28 because it does not accurately reflect the state of the record. After the January 16, 2019 hearing adjourned, the parties were permitted to submit written closing briefs to assist the ALJ with the recordings of the Stewards' hearings. The record closed on February 1, 2019 when those briefs were submitted.<sup>6</sup> The ALJ was therefore required to render his PFD not later than the sixtieth day after the date by which the ALJ ordered all post-hearing documents to be filed.<sup>7</sup> The

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<sup>4</sup> 16 TEX. ADMIN. CODE §307.62(i). The statute does not specify an enforcement mechanism or any adverse consequences associated with the Commission's failure to hold a hearing within seven days.

<sup>5</sup> See Ex. A, p. 2.

<sup>6</sup> See SOAH Order No. 9 (January 17, 2019).

<sup>7</sup> TEX. GOV'T CODE §2001.058(f)(1).

sixty-day period may be extended only with the consent of all parties.<sup>8</sup> The PFD should have been issued on April 2, 2019.

One week before the PFD was due, on March 27, 2019, the ALJ reopened the record pursuant to Order No. 10 for the "limited purpose" of requesting the parties submit a copy of a court document related to this matter.<sup>9</sup> The reason for this order was unclear; the requested document had already been entered into the SOAH record before and during the January 16, 2019 hearing.<sup>10</sup> After the parties re-supplied the requested evidence, the ALJ took an additional sixty days to issue the PFD. None of the parties consented to an extension of the time allotted for the ALJ to issue the PFD.<sup>11</sup>

The foregoing findings are necessary and appropriate to ensure that the PFD contains an accurate recitation of the various delays that Petitioners have sustained throughout these proceedings.

**C. PETITIONERS' EXCEPTIONS TO FINDINGS OF FACT NOS. 12, 13, 29, AND 30.**

Petitioners object to the findings of fact which, taken together, suggest that the deviations from the Commission's blood testing procedure was permissible, nonprejudicial, and legally inconsequential. Petitioners also object to these findings because they are vague and wholly unsupported by the evidence.

Each of the PFD's findings of fact concern serum samples that were improperly collected and improperly stored by the Commission, in violation of the Commission's written procedures.<sup>12</sup> Petitioners presented evidence – and the ALJ agreed – that in all instances at issue before SOAH, the Commission instructed the test barn employees to deviate from

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<sup>8</sup> TEX. GOV'T CODE §2001.058(f)(1).

<sup>9</sup> See SOAH Order No. 10 (March 27, 2019).

<sup>10</sup> See Petitioner's Exhibits to SOAH Appellate Record of January 16, 2019 hearing ("SOAH Exhibits") Ex. 47; see also Petitioners' Motion for Summary Disposition, Ex. M.

<sup>11</sup> See Ex. A, p. 4; see also TEX. GOV'T CODE §2001.058(f)(1).

<sup>12</sup> See SOAH Exs. 50, p. 22; 52, p. 4; 53; 54, pp. 8-11; 56, pp. 2-4; 55; 58, pp. 2, 5, 7, 9-10; 59; 60, pp. 1, 3-4, 6-8; 61; 62, p. 1; 63.

the Commission's published drug testing procedures, and that those employees in fact followed those instructions.<sup>13</sup> The Commission stipulated to as much.<sup>14</sup>

The Texas Supreme Court has consistently affirmed that an agency's deviation from its published procedures constitutes illegal ad hoc rule-making in violation of the APA, rendering the results of such deviations invalid.<sup>15</sup> Following those precedents and other relevant law, the Travis County District Court held on May 14, 2018 that the tests at issue in this case were a result of illegal ad hoc rule making by the Commission.<sup>16</sup> Under Texas law, invalid procedures can produce only invalid results.<sup>17</sup> The ALJ acknowledged the Travis County District Court ruling that the challenged testing procedures were invalid because they constituted illegal ad hoc rulemaking by the Commission.<sup>18</sup> However, the PFD also stated that "the Court pointed out that Appellants had not exhausted their administrative remedies."<sup>19</sup>

This footnote reflects a misunderstanding of the District Court's rulings. On May 14, 2018, Judge Crump signed an order explicitly denying the Commission's plea to the jurisdiction as to the ad hoc rulemaking claims brought under Chapter 2001 of the TEXAS GOVERNMENT CODE. Nowhere did the Court amend the finality of this ruling by noting that any administrative remedies remained for Petitioners to exhaust. The Court considered but soundly rejected the Commission's argument that it had no jurisdiction under Chapter 2001 of the TEXAS GOVERNMENT CODE. Because §2001.038 requires the challenge to the Commission's ad hoc rulemaking to be brought "only in a Travis County district court," SOAH has no jurisdiction over any such claim. As a result, there exist no administrative remedies that could have been but were not exhausted.

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<sup>13</sup> See PDF, pp. 6-8.

<sup>14</sup> See PFD, p. 8.

<sup>15</sup> *El Paso Hosp. Dist. v. Tex. HHS Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008).

<sup>16</sup> See SOAH Ex. 47.

<sup>17</sup> See *El Paso Hosp. Dist.*, 247 S.W.3d at 715.

<sup>18</sup> See PFD, p. 1.

<sup>19</sup> See PFD, p. 1 fn.1. Contrary to the statement in this footnote, nowhere in the order does the Court point out any failure to exhaust administrative remedies. The orders issued by the Court were clear, specific, and final. They do not include the word "exhaust" or "remedies." The source of the PFD's assertion that the Court pointed out anything of the kind is without foundation in the District Court record or in the record before SOAH.

PFD footnote 1 seems to indicate that Judge Crump's findings are without effect in the related administrative proceedings or that the pendency of the SOAH actions during Judge Crump's consideration of the Commission's ad hoc rulemaking weakens the District Court's jurisdiction. Such an indication would be troubling. In fact, the parties agreed to postpone the SOAH hearing because the ad hoc rulemaking challenge, if successful, could affect the SOAH outcome. If the Texas Legislature had elected to authorize SOAH to consider and rule that the Commission engaged in illegal ad hoc rulemaking, then Appellants would have been bound to bring that issue before SOAH before seeking any remedies in the District Court. Because SOAH lacks that statutory authority, it is obligated to defer to the District Court's clear and final decision that what the Commission did was illegal and invalid.<sup>20</sup>

Moreover, the Commission's illegal conduct created a security breach. In this case, the Commission's deviation from procedure not only violated the law as written, but exposed the only evidence tying Petitioners to Nomifensine, or any other prohibited substance, to substantial risk of tampering and spoliation. The uncontroverted evidence showed that the samples were not properly secured in a locked freezer; that several people who should not have had access to the stored samples have keys to the test barns; and that the Commission cannot identify the number and identities of all those who have access to the improperly collected and stored samples.<sup>21</sup>

The PFD states, "Appellants first contend that none of the test results should be considered by the Commission because the test barn employees who withdrew and stored the blood samples deviated from the Commission's blood testing procedures. Appellants are correct."<sup>22</sup> The PFD continues, "Appellants also pointed out the test barn employees deviated from procedure by storing blood samples in a refrigerator instead of a freezer and failing to limit access to the samples stored in a locked freezer. Appellants are correct on both counts." This finding alone demonstrates that the Stewards' rulings were clearly in error. The PFD's analysis should have stopped there.

Instead, the PFD continued and asserted - without reference to supporting evidence in the record - that "some of the deviations from the Commission's blood testing procedure can be explained" and that "no evidence was presented on the likelihood that these

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<sup>20</sup> See SOAH Ex. 47.

<sup>21</sup> See SOAH Exs. 50, pp. 6-7, 12, 15-16, 18, 20-22; 51; 54, pp. 1, 5-11; 55; 56, pp. 2, 4-7; 57; 58, pp. 1-3, 5-11; 59; 60, pp. 2-3, 6-8; 61; 62, p. 2; 63; 68, p. 1; 69.

<sup>22</sup> See PFD, p. 10.

actions could have caused the positive test results for Nomifensine.”<sup>23</sup> The Commission alone had the burden to prove by a preponderance of the evidence that Petitioners violated or were responsible for a violation of the Texas Racing Act or a Commission rule.<sup>24</sup> The ALJ’s conclusion therefore represents an improper burden shifting. In effect, the ALJ burdens Petitioners with conducting an investigation into the effect of the Commission’s illegal ad hoc rulemaking to develop evidence to show a possible effect; however, any such investigation would have had to occur before that rulemaking could have been known.

The Commission’s decision to collect and store the blood samples pursuant to an invalid procedure in violation of its own policies and procedures necessarily means that no validly collected samples exist for testing. The Commission therefore had no competent evidence of any wrongdoing. As a result, the Commission could not establish the prima facie case required to suspend Petitioners’ licenses.<sup>25</sup>

It may be true that the Commission is short-staffed; that the deviations, if officially instituted, would improve the chain of custody; that the deviations would improve laboratory hygiene; or that the deviations do not affect the test outcomes. However, the Commission has itself established its need for consistent procedures for legal reasons, and the effect the deviant procedure would have, if any, is an improper consideration that should not have weighed in the Stewards’ or the ALJ’s analysis. Vacating the administrative disciplinary action is the only right outcome, given the Commission’s own standards.<sup>26</sup>

The foregoing corrections to these findings of fact are necessary and appropriate to fairly reflect the District Court’s actual rulings and final judgment and to apply, rather than challenge, the effect of those rulings to the facts in this case.

#### D. PETITIONERS’ EXCEPTIONS TO FINDINGS OF FACT NOS. 31-33.

Petitioners object to these findings of fact because they are unsupported by the evidence and because, taken together, they led the ALJ to incorrectly infer in Conclusion of Law

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<sup>23</sup> See PFD, pp. 10-11.

<sup>24</sup> 16 TEX. ADMIN. CODE §307.62(e).

<sup>25</sup> 16 TEX. ADMIN. CODE §307.62(e).

<sup>26</sup> See SOAH Exs. 23, p. 1 and 24, pp. 1, 9.

Nos. 20 and 21 (discussed below) as a matter of law that Nomifensine is a prohibited substance.

First, the Commission presented no competent evidence to the Stewards or the ALJ that Nomifensine may affect the health and safety of a race animal. Petitioners presented evidence, and the ALJ agreed in the PFD, that the Commission's expert witness, Dr. Stanley, had never encountered an instance where a horse tested positive for Nomifensine; that he was unaware of any study on its effects on a horse; and "there is simply no empirical data . . . that establishes the manner and extent Nomifensine may have on a horse."<sup>27</sup> The PFD also agreed with Petitioners that there was no evidence of the effect, if any, Nomifensine may have on a horse: "Appellants also argued that Nomifensine did not meet the definition of a prohibited substance because no study has ever established the effects that Nomifensine may have on a horse, if any. While true, the ALJ found Dr. Stanley's testimony credible . . . It is reasonable that a drug lacking FDA approval would be harmful to a person or animal that ingests it."<sup>28</sup>

The ALJ's conclusion that a drug lacking FDA approval is necessarily harmful is unsupported by the evidence and does not sufficiently justify the ALJ's conclusion that Nomifensine may be harmful. Rather, it reflects an assumption that all non-FDA approved drugs must be harmful. That assumption is fallacious. While FDA approval may be an acceptable stand-in for safety, the inverse - that is, lack of FDA approval equaling lack of safety - is by no means guaranteed.

In fact, the Commission has labeled several FDA-unapproved substances as class 4 or 5 "therapeutic medications routinely used in racehorses."<sup>29</sup> The following drugs all lack FDA approval but are therapeutic medications routinely used in racehorses:<sup>30</sup>

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<sup>27</sup> See Ex. A, p. 9.

<sup>28</sup> See Ex. A, p. 11.

<sup>29</sup> See SOAH Exs. 23 and 24.

<sup>30</sup> Information concerning FDA-approved substances can be found on the FDA's public-facing website, including a list of approved drug products current as of March of 2019. See, e.g., [www.fda.gov/media/71494/download](http://www.fda.gov/media/71494/download). Texas courts allow adjudicators to take judicial notice of government websites because they are self-authenticating under TEXAS RULES OF EVIDENCE 902(5) and can usually be internally authenticated under 901(b)(4). See, e.g., *In re Doe*, 501 S.W.3d 313, 321 n.11 (Tex. App. —Houston [14th Dist.] 2016, no pet.).

- Acetylsalicylic acid
- Adrenochrome monosemicarbazone salicylate
- Aldosterone
- Amiodorone
- Anisindione
- Antipyrine
- Benclomenthasone
- Benzocaine
- Bethanichol
- Bromhexine
- Camphor
- Carbazochrome
- Clobetasol
- Cortisone
- Dicumarol
- Dimethylsulfoxide
- Flunixin
- Isometheptene
- Isopropamide
- Isoxsuprine
- Methscopolamine (except methscopolamine bromide)
- Methysergide, mexilitine (except mexiletine hydrochloride)
- Milrinone (except milrinone lactate)
- Misoprostel
- N-butylscopolamine
- Oxyphenbutazone
- Oxyphencyclimine
- Oxyphenonium
- Paramethasone
- Pentoxifylline
- Phenacemide
- Phenindione
- Phenprocoumon
- Phensuximide
- Phenylbutazone
- Pirenzepine
- Polythiazide
- Propylhexedrine
- Salicylamide
- Spironalactone (except spironolactone)
- Terfenadine
- Tetrahydrozoline
- Theobromine
- Thiosalicylate
- Thiphenamil
- Tocainide
- Trichlormethiazide
- Tridihexethyl
- Trimeprazine
- Vedaprofen
- Xylometazoline
- Zeranol

As shown by the above list, even the Commission does not claim that lack of FDA approval is sufficient to show that a substance is harmful to race animals.

By contrast, the Commission allows the use of certain Class 1 substances, including morphine, cocaine, and even methamphetamine, all of which lack FDA approval and are generally considered unsafe, with a reduced penalty if the owner or trainer shows its presence in a race animal was unintentional and not based upon an attempt to affect the outcome of a race.<sup>31</sup> Substances generally considered safe that are not FDA-approved

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<sup>31</sup> See SOAH Exs. 23 and 24.

include aloe vera, commonly used to relieve sores and sunburns; acidophilus, a probiotic widely available over the counter; biotin, sold over the counter and as a prescription most commonly to pregnant women; green tea, consumed daily by billions of people; and melatonin, a naturally occurring sleep-aid.

Second, the ALJ's conclusion that Nomifensine may be harmful is not supported by the testimony of the Commission's only expert witness, Dr. Stanley. Without competent evidence supporting a finding that Nomifensine is a prohibited substance, there can be no basis for any administrative penalty. Only substances that are reasonably capable of influencing or affecting the outcome of a race or of affecting the health or performance of a racehorse is a "prohibited substance."<sup>32</sup>

Dr. Stanley testified, and the ALJ accepted his testimony, that he had never heard of Nomifensine before the Commission contacted him to testify in this contested case; that he had no personal knowledge of the effect of Nomifensine on horses through any of his own research or studies; that no one has ever studied the effects of Nomifensine in a horse; and there is no anecdotal evidence of the effect of Nomifensine in a horse at all.<sup>33</sup> The ALJ correctly concluded that "There is simply no empirical data . . . that establishes the manner and extent Nomifensine may have on a horse."<sup>34</sup>

Dr. Stanley testified only to the effects of the drug on humans, not horses, which was irrelevant to the ultimate issue – whether Nomifensine effects or could affect horses – and his testimony that reuptake inhibitor mechanisms in humans and horses may be similar is not credible evidence informing that ultimate issue.<sup>35</sup> Dr. Stanley referred to no scientific evidence, anecdotal evidence, or personal knowledge that horses and humans

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<sup>32</sup> 16 TEX. ADMIN. CODE §319.1(b).

<sup>33</sup> See SOAH Exs. 64, pp. 9-13, 15; 65; see also *E.I. DuPont De Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995) ("opinions formed solely for the purpose of testifying are more likely to be biased toward a particular result").

<sup>34</sup> See PFD, p. 9.

<sup>35</sup> See SOAH Exs. 64, pp. 10, 12-13, 15-16; 65; *GMC v. Iracheta*, 161 S.W.3d 462, 470-71 (Tex. 2005) (conclusory, speculative, or unreliable opinion testimony is not relevant and therefore not admissible); *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004) ("a claim will not stand or fall on the mere *ipse dixit* of a credentialed witness"); *Missouri Pacific Railroad Co. v. Buenrostro*, 853 S.W.2d 66, 77 (Tex. App. – San Antonio 1993, writ denied) (an expert's testimony that is not probative of any fact issue is no evidence).

would metabolize or react to a particular drug in a particular manner. Dr. Stanley's incompetent testimony had the exactly the effect on the ALJ that Petitioners were concerned it would have: it misled the ALJ by implying that FDA approval correlates in any way with its effect on horses, and as a result, the ALJ improperly concluded that it did.<sup>36</sup>

Dr. Stanley's opinion amounted to nothing more than a report on whether Nomifensine had FDA approval; it is not competent evidence of potential harm or effect in this case and is insufficient as a matter of Texas law.<sup>37</sup> His opinion was not based on reasonable probability or even the mere possibility of a drug's effect on a horse, which is required under Texas law.<sup>38</sup> Rather, the testimony was speculative on its face, based only on conjecture, and not on any scientific foundation or knowledge.<sup>39</sup> As a matter of law, it was not competent or sufficient evidence of the effects of Nomifensine in horses.<sup>40</sup>

Petitioners therefore request the Commission modify the PFD as shown in Exhibit A because that finding of fact must be supported by competent evidence, of which none exists.

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<sup>36</sup> See *id.*; see also PFD, p. 9.

<sup>37</sup> See SOAH Exs. 64, pp. 12, 16; 65; see also *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997) (when expert "brings to court little more than his credentials and a subjective opinion," there is insufficient evidence to support judgment); *Gharda USA, Inc. v. Control Solutions, Inc.*, 464 S.W.3d 338, 350 (Tex. 2015) (same); *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 905 (Tex. 2003) (J. Hecht, concurring) (same); *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 643 (Tex. 2009); *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499-500 (Tex. 1995) (conclusory, speculative, or unreliable opinion testimony irrelevant); *Houston Unlimited, Inc. v. Mel Acres Ranch*, 443 S.W.3d 820, 835, 838 (Tex. 2014).

<sup>38</sup> See *id.*; see also SOAH Exs. 64, p. 11; 65.

<sup>39</sup> See SOAH Exs. 64, pp. 11-12, 15-16; see also *Havner*, 953 S.W.2d at 714-15; *Volkswagen*, 159 S.W.3d at 904-05; *Crye*, 907 S.W.2d at 499-500; *Coastal Transp.*, 136 S.W.3d at 232; *Gharda*, 464 S.W.3d at 349; *State Farm Lloyds v. Mireles*, 63 S.W.3d 491, 499 (Tex. App. — San Antonio 2001, no pet.) (expert testimony lacking a proper foundation or that is not grounded in scientific methods and procedures is unreliable and therefore inadmissible); *Whirlpool*, 298 S.W.3d at 643; *Mel Acres Ranch*, 443 S.W.3d at 838.

<sup>40</sup> *Id.*

## II. EXCEPTIONS TO CONCLUSIONS OF LAW

Petitioners object to the PFD's conclusions of law and propose they be amended as shown on Exhibit A.

### A. PETITIONERS' EXCEPTIONS TO CONCLUSIONS OF LAW NOS. 1-11 AND 20-22.

Petitioners object to conclusions of law Nos. 1-11 and 20-22 because they do nothing more than recite the applicable code provisions.<sup>41</sup> Petitioners object to conclusion of law 21 because it is unsupported by any competent evidence as described above.

### B. PETITIONERS' EXCEPTIONS TO CONCLUSIONS OF LAW NOS. 12-19 AND 23 AND REQUEST FOR ADDITIONAL CONCLUSIONS.

Petitioners object to the foregoing conclusions of law because they are erroneous, unsupported by the evidence as discussed above, and are unreasonable. First, there was no evidence that Petitioners did not meet the applicable standard of reasonable diligence as defined in the Code.<sup>42</sup> There is no evidence or definition of the relevant standard of care, nor did the Commission undertake any effort to establish a relevant standard of care through a person with knowledge, experience, or training in the field of horse training. Whatever that standard of care is, the uncontroverted evidence showed that Petitioners met or exceeded it.<sup>43</sup>

The Stewards clearly erred when they failed to consider the purpose of their prohibition and penalty scheme, as well as the uncontroverted evidence and testimony – which the ALJ accepted – that Petitioners were not at fault for the administration of Nomifensine:

When determining the amount of a penalty, the stewards should consider what penalty would best punish the violator for the harm caused by the violation and deter future similar violations by the violator and other licensees. The stewards should avoid blindly assessing 'consistent' penalties without regard to the specifics of each case. . . . To ensure due process for the affected licensees, every violation must be judged on the evidence presented to the stewards. . . . An example of

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<sup>41</sup> TEX. GOV'T CODE §2001.141.

<sup>42</sup> 16 TEX. ADMIN. CODE §319.302.

<sup>43</sup> See SOAH Exs. 64, pp. 3-6; 65; 66, pp. 2-6; 67.

mitigating circumstances is when the trainer presents credible evidence that another individual actually caused the horse to race with a prohibited substance in its system.<sup>44</sup>

The maximum penalties should only be imposed “in the absence of persuasive, credible evidence of mitigating circumstances justifying a lesser penalty.”<sup>45</sup> On the other hand, if mitigating evidence exists, failing to consider those circumstances renders the administrative process as a blind rubber stamp, not as a system truly considering the stated purposes of that process.

In this case, there is persuasive, credible evidence of mitigating circumstances justifying a lesser penalty – in particular, that Justin Robinson, a veterinarian who remains licensed by the Commission to this day – may have introduced substances to some horses, including those relevant to this case.

Petitioners presented ample, uncontroverted evidence that Commission veterinarian Justin Robinson alone was responsible for the secret administration of Nomifensine to Petitioners’ horses.<sup>46</sup> The Commission affirmatively requires trainers to use “the services of those veterinarians licensed by the Commission to attend animals that are on association grounds.”<sup>47</sup> Petitioners affirmatively testified that they were not involved in and had no knowledge of Nomifensine prior to the alleged positive tests.<sup>48</sup> Several witnesses testified under oath before the Stewards that it was highly unlikely that Petitioners would have engaged in the alleged conduct.<sup>49</sup> Additionally, Petitioner Kearn was not present at the track for the race involving three of the five animals at issue in this proceeding – a conclusion the Stewards included in their findings.<sup>50</sup> When the Commission conducted barn searches, no unauthorized or questionable items or drugs

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<sup>44</sup> See SOAH Ex. 21, p. 4.

<sup>45</sup> See SOAH Ex. 21, p. 5.

<sup>46</sup> See SOAH Exs. 15, 15:23-16:3, 20:19-23, 23:10-12, 26:23-27:8, 33:5-15; 50, pp. 2-3, 30-31; 51; 52, pp. 11-13; 53; 64, p. 8; 65; 66, pp. 3-5; 67.

<sup>47</sup> 16 TEX. ADMIN. CODE §311.104(k)(6).

<sup>48</sup> See SOAH Ex. 15, 4:19-5:8, 12:11-14:5.

<sup>49</sup> See SOAH Exs. 64, pp. 3-6; 65; 66, pp. 2-6; 67.

<sup>50</sup> See SOAH Exs. 15, 24:3-16; 44; 45.

were discovered.<sup>51</sup> Petitioners both testified under oath that after they alerted Robinson to the positive test results, he admitted his culpability.<sup>52</sup> Robinson even confessed to Petitioner Kearn as well as attorney Darrell Vienna, who also testified under oath to the conversation.<sup>53</sup> Multiple non-party witnesses testified that Dr. Robinson, not Petitioners, would have administered any drug (authorized or not) to Petitioners' horses.<sup>54</sup>

On the other hand, the Commission produced no witnesses, documents, or other evidence connecting Petitioners to Nomifensine or any other unlawful conduct.<sup>55</sup> The Commission simply relied on allegedly positive test results produced through invalid, illegal ad hoc procedures. Despite this overwhelming evidence, the Commission took no action either to investigate or impose penalties onto Robinson, and no action has been taken to restrict his access to race animals.<sup>56</sup>

The Commission's own rules provide that "rules pertaining to a licensee and rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a Rule or ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee because the other person is legally liable for the conduct that violated the Rule or is the subject of the ruling; or the other person benefitted financially from that conduct."<sup>57</sup> The ALJ found that "when Appellants confronted Dr. Robinson about the positive test results, he fled the state and has been unresponsive to the Appellants and the Commission."<sup>58</sup> The PFD further notes that "the ALJ finds Dr. Robinson's actions highly questionable. However, the rule as

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<sup>51</sup> See SOAH Exs. 50, pp. 24, 26; 51; 52, pp. 12-14; 53.

<sup>52</sup> See SOAH Ex. 15, 5:17-6:13, 15:21-16:19.

<sup>53</sup> See SOAH Ex. 15, 19:17-21:6, 21:22-23:7, 26:23-30:24, 32:19-33:21.

<sup>54</sup> See SOAH Exs. 15, 29:18-30:10, 31:16-32:7; 50, p. 3; 51; 64, pp. 8-9; 65; 66, pp. 1-5; 67.

<sup>55</sup> See SOAH Exs. 50, pp. 28-33; 51; 52, pp. 11-14; 53; 64, pp. 3, 5-6; 65; 66, p. 5; 67.

<sup>56</sup> See SOAH Exs. 5), pp. 30-31; 51; *see also* 16 TEX. ADMIN. CODE §319.304(a)(3), authorizing penalties on "any other person responsible for the care and custody of the animal; and all individuals determined to have administered or to have attempted, caused, or conspired to administer the prohibited drug, chemical, or other substance."

<sup>57</sup> 16 TEX. ADMIN. CODE §307.66(a).

<sup>58</sup> See PFD, p. 10.

written makes no exception even under the extenuating circumstances Appellants now find themselves.”<sup>59</sup>

The ALJ has incorrectly applied the law here, as the uncontroverted evidence indicated that Dr. Robinson was not only responsible for the administration of any Nomifensine, but that he did so in secret without Petitioners’ knowledge or participation. In this instance, Dr. Robinson is unquestionably the person who is legally liable for the conduct that violated the Rule and is the subject of the Stewards’ rulings, and whose actions circumvent the intent of a Rule by permitting Petitioners to take the fall for his culpable conduct.<sup>60</sup> Additionally, Robinson would have benefited financially because the winning horses would receive the purse.<sup>61</sup>

The Stewards and ALJ erred by failing to consider this applicable statute before applying and upholding the penalties imposed against Petitioners. The Commission claims, and the ALJ appears to agree, that there is really no way around the absolute insurer rule as written, despite the Commission’s own guidelines regarding mitigating penalties. The evidence described above established that Petitioners were careful, compliant trainers who took every reasonable action – above and beyond what most other trainers do – to protect the horses in their care from tampering. The Commission veterinarian took advantage of his access and position to try to tip the odds in his own favor. The Commission ignored the overwhelming evidence weighing against Petitioners’ culpability, applying only those rules that would harm Petitioners and failing or refusing to consider any other factors. In every other aspect of this case, the Commission has failed to follow its own rules as written. For all these reasons, Petitioners except to the PFD because it purports to uphold a clearly erroneous ruling by the Stewards; a ruling which resulted from a series of violations of Petitioners’ due process, a sloppy investigation, illegal deviation from blood collection, storage, and testing procedures, and personal animus.

This revision to the conclusions of law is necessary and appropriate so that the PFD reconciles the continued ability of Dr. Robinson to serve as a licensed Commission veterinarian, the lack of evidence of wrongdoing or knowledge by Petitioners, and the principles that govern the imposition of administrative penalties with the maximum penalties that have been applied in this case.

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<sup>59</sup> See PFD, p. 11.

<sup>60</sup> 16 TEX. ADMIN. CODE §307.66(a).

<sup>61</sup> 16 TEX. ADMIN. CODE §307.66(a).

### III. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioners Judd Kearl and Jose Sanchez request that the Administrative Law Judge revise the PFD as described above and as reflected on Exhibit A hereto, and that the Administrative Law Judge recommend that Petitioners' licenses not be suspended and that Petitioners not be assessed an administrative penalty. Petitioners also request any such other and further relief to which they may have shown themselves to be justly entitled.

Respectfully submitted,

**RUFFNER SCHOENBAUM PLLC**

By: /s/ Eleanor Ruffner

Eleanor Ruffner

State Bar No. 24047034

Tanya Robinson

State Bar No. 24095822

1603 West 6<sup>th</sup> Street

Austin, Texas 78703

(512) 275-6277 (telephone)

(512) 681-0800 (facsimile)

Eleanor@RSLawTX.com

Tanya@RSLawTX.com

ATTORNEYS FOR PETITIONERS JUDD KEARL  
AND JOSE SANCHEZ

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7<sup>th</sup> day of June, 2019, a true and correct copy of the foregoing document has been delivered via email as follows:

Virginia S. Fields  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711  
Email: virginia.fields@txrc.texas.gov

*Attorney for Respondent the Texas Racing Commission*

Devon Bijansky  
Texas Racing Commission  
8505 Cross Park Drive, Ste. 110  
Austin, Texas 78711  
Email: devon.bijansky@txrc.texas.gov

*Deputy General Counsel for Respondent the Texas Racing Commission*

Trent C. Rowell  
TRENT C. ROWELL, ATTORNEY AT LAW  
P.O. Box 457  
Stockdale, Texas 78160  
Email: lawofficeoftrentrowell@gmail.com

*Attorney for Petitioner Brian Stroud*

Carbon Copy via Email:

Darrell J. Vienna  
LAW OFFICES OF DARRELL J. VIENNA  
P.O. Box 725  
Sierra Madre, California 91025  
Email: horselawyer@gmail.com

/s/ Eleanor Ruffner  
Eleanor Ruffner

# **EXHIBIT A**

SOAH DOCKET NOS. 476-18-1010, 476-18-1011, AND 476-18-1012

JUDD KEARL, JOSE SANCHEZ,  
and BRIAN STROUD,  
Petitioners,

BEFORE THE STATE OFFICE

v.

OF

TEXAS RACING COMMISSION,  
Respondent.

ADMINISTRATIVE HEARINGS

**PETITIONERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**V. FINDINGS OF FACT**

1. Judd Kearn (Appellant) is licensed by the Texas Racing Commission (Commission) as an owner-trainer with license number 91094.
2. Jose Sanchez (Appellant) is licensed by the Commission as an owner-trainer with license number 963028.
3. Brian Stroud (Appellant) is licensed by the Commission as an owner-trainer with license number 157702.
4. On May 22, 2017, Zoomin N Celebrating, trained by Appellant Kearn, placed in the tenth race at Sam Houston Race Park and provided blood sample #SH064401.
5. On June 9, 2017, Million Dollar Kiss, trained by Appellant Kearn, placed in the ninth race at Retama Park and provided blood sample #RP043194.
6. On June 9, 2017, Chivalri, trained by Appellant Kearn, won the tenth race at Retama Park and provided blood sample #RP043195.
7. On June 10, 2017, Contentious Strike, trained by Appellant Sanchez, won the sixth race at Retama Park and provided blood sample #RP043208.
8. On June 10, 2017, Tellern Honeys Here, trained by Appellant Kearn, won the tenth race at Retama Park and provided blood sample #RP043216.
9. On June 16, 2017, Dancers Toast, trained by Appellant Sanchez, placed in the tenth race at Retama Park and provided blood sample #RP043237.

10. On June 17, 2017, Zoomin N Celebrating, trained by Appellant Kearl, won the sixth race at Retama Park and provided blood sample #RP043248.
11. On June 17, 2017, Desdemona Rambler, trained by Appellant Stroud, won the eighth race at Retama Park and provided blood sample #RP043252.
12. Each blood sample was divided into two specimens. The first specimen from every blood sample was sent to the Texas Veterinary Medical Diagnostic Laboratory, where each tested positive for Nomifensine.
13. At the request of each Appellant, the second specimen from every blood sample was sent to Pennsylvania Toxicology and Research Laboratory, where each tested positive for Nomifensine.
14. Each horse was disqualified from its race and had its purse redistributed
15. On September 6, 2017, the Stewards summarily suspended Appellants Kearl and Sanchez licenses. The Stewards took testimony at that hearing from Petitioners Kearl and Sanchez and attorney Darv[il] Vienna.
16. The Commission did not schedule the statutorily required evidentiary hearing on Petitioners' summary suspensions within seven days. Petitioners repeatedly asserted their right to that hearing, but the Commission refused. Petitioners, with no other available remedy, sought injunctive relief. The Commission, through the Attorney General, appeared and confirmed 1) that Petitioners were in fact entitled to a hearing within seven days of the summary suspension, 2) that the Commission had in fact summarily suspended their licenses, 3) and that the Commission had refused to hold the hearing required by the Code. The Court ordered the Commission to hold the required hearing and, in the event they did not, Petitioners could return to the Court for relief. The Commission finally held the required hearing nineteen days after the summary suspensions.
17. On September 25-27, 2017, the Retama Park Board of Stewards (Stewards) conducted a hearing. The following witnesses gave testimony: Commission Investigators Johnny Whitley and Roger Osio; Test Barn Supervisors Edna Griswold and Laura Hoffinan; Security Officers Rhonda Garcia, Christopher Ackerley, and Roland Tamez; Racing Chemist Al Fine and Travis Mays; Trainers James Lackey and Trey Ellis; and Dr. Scott Stanley.
18. Appellants had never heard of Nomifensine before these proceedings.

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19. The credible evidence reflected that Commission veterinarian Dr. Robinson was solely responsible for administration of Nonifensine to Appellants' horses, and Dr. Robinson confessed to doing so.
20. The Stewards found in each instance that Appellants violated the Commission's rules at 16 Texas Administrative Code | 311.104(b), 319.1(b)1, 319.3(a), and 319.302.
21. On October 18, 2017, in Ruling No. RETA2682, Appellant Stroud was fined \$10,000 and received a one-year license suspension. The Commission did not consider any mitigating circumstances.
22. On October 20, 2017, in Ruling No. RETA2686, Appellant Sanchez was fined \$10,000 and received a one-year license suspension. The Commission did not consider any mitigating circumstances.
23. On October 20, 2017, in Ruling No. RETA2687, Appellant Sanchez was fined \$25,000 and received a one-year license suspension. The Commission did not consider any mitigating circumstances.
24. On October 21, 2017, in Ruling No. SHRP5093, Appellant Kearn was fined \$10,000 and received a one-year license suspension. The Commission did not consider any mitigating circumstances.
25. On October 21, 2017, in Ruling No. RETA 2688, Appellant Kearn was fined \$25,000 and received a three-year license suspension. The Commission did not consider any mitigating circumstances.
26. On October 21, 2017, in Ruling No. RETA2689, Appellant Kearn was fined \$25,000 and received a three-year license suspension. The Commission did not consider any mitigating circumstances.
27. On October 21, 2017, in Ruling No. RETA2690, Appellant Kearn was fined \$25,000 and received a five-year license suspension. The Commission did not consider any mitigating circumstances.
28. On October 21, 2017, in Ruling No. RETA2691, Appellant Kearn was fined \$25,000 and received a five-year license suspension. The Commission did not consider any mitigating circumstances.

29. Appellants filed a timely appeal of the Stewards' decisions, and the appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing.

30. At SOAH, these matters were joined for one hearing.

31. On December 10, 2018, Staff issued notices of hearing to each Appellant. Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed at SOAH.

32. On January 16, 2019, ALJ Steven M. Rivas convened the hearing on the merits at SOAH in Austin, Texas. Attorney Virginia Fields represented Commission Staff. Appellants Judd Kearn and Jose Sanchez were represented by attorney Eleanor Ruffner. Appellant Brian Stroud was represented by attorney Trent Rowell. The hearing adjourned that day and the record closed on February 1, 2019 after the parties' post-hearing briefs were submitted. One week before the PFD was due, the ALJ reopened the record on March 27, 2019 pursuant to Order No. 10 for the "limited purpose" of requesting a copy of a court document related to this matter that had already been entered into the SOAH record before and during the January 16, 2019 hearing. After the parties re-supplied the requested evidence, the ALJ took an additional sixty days to issue this PFD. None of the parties consented to an extension of the time allotted for the ALJ to issue the PFD.

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33. The test barn employees at Sam Houston Race Park and Retama Park were instructed by the Commission to deviate from the Commission's blood testing procedure. The Travis County District Court has ruled in a final order that these instructions constituted illegal ad hoc rulemaking and are invalid.

34. The test barn employees followed the Commission's instructions and did in fact deviate from the Commission's blood testing procedure.

35. Nomifensine was an antidepressant drug.

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36. No study has been done to determine the effect of Nomifensine on horses. There is no anecdotal evidence of the effect of Nomifensine on horses. The Commission's expert witness had never heard of Nomifensine before he was contacted to testify

in these proceedings. He had no personal knowledge of the effect of Nomifensine on horses.

37. There is no empirical data that establishes the manner and extent Nomifensine may have on a horse.
38. No effects have been observed in the horses whose blood samples tested positive for Nomifensine in this case.
39. The Federal Drug Administration withdrew its approval of Nomifensine in 1992 after people reported adverse effects from taking the drug.

#### VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act). Tex. Rev. Civ. Stat. art. 179c § 3.16, 7.04.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 16 Tex. Admin. Code 307.31(c).
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act 3.07(b); 16 Tex. Admin. Code 307.61.
4. The Commission bears the burden to prove by a preponderance of the evidence that Appellants violated or were responsible for a violation of the Texas Racing Act or a Commission rule. 16 Tex. Admin. Code 307.62(c).
5. A person aggrieved by a ruling of the Stewards may appeal to the Commission, and those appeals are referred to SOAH for hearing. 16 Tex. Admin. Code 307.67.
6. Appellants have the burden of proof in this matter to show the Stewards' rulings were clearly erroneous. 16 Tex. Admin. Code 307.67(c).
7. A horse participating in a race may not carry in its body a prohibited drug, chemical, or other substance. 16 Tex. Admin. Code 319.3(a).
8. A trainer must guard the horse he trains against administration of prohibited substances before the race and is subject to penalties if his horse races with a prohibited substance in its body. 16 Tex. Admin. Code 319.302.

9. When determining the amount of a penalty, the stewards should consider what penalty would best punish the violator for the harm caused by the violation and deter future similar violations by the violator and other licensees. The stewards should avoid blindly assessing 'consistent' penalties without regard to the specifics of each case. To ensure due process for the affected licensees, every violation must be judged on the evidence presented to the stewards. Equine Medication Classification Policy and Penalty Guidelines, p. 4.
10. An example of mitigating circumstances is when the trainer presents credible evidence that another individual actually caused the horse to race with a prohibited substance in its system. Equine Medication Classification Policy and Penalty Guidelines, p. 5.
11. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven calendar days after the license is suspended. 16 Tex. Admin. Code 307.61(i).
12. The administrative law judge shall render the decision that may become final under Tex. Gov't Code Section 2001.144 not later than the 60<sup>th</sup> day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other post-hearing documents to be filed, and the 60-day period may be extended only with consent of all parties, including the occupational licensing agency. Tex. Gov't Code 2001.058(f)(1).
13. The Commission's instructions to test barn employees to deviate from the Commission's written procedures constituted ad hoc rulemaking by the Commission, rendering the instructions and the deviant procedures the test barn employees followed invalid.
14. The Commission failed to meet its initial burden to prove by a preponderance of the evidence that Appellants violated or were responsible for a violation of the Texas Racing Act or a Commission Rule.
15. As trainer of Zoomin N Celebrating, Million Dollar Kiss, Chivalri, and Tellem Honcys Herc, Appellant Kcarl was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e - 3.16(h); 16 Tex. Admin. Code 311.104(b).

16. As trainer of Dancers Toast and Contentious Strike, Appellant Sanchez was the absolute insurer that the horses would be free of prohibited substances when they raced. Tex. Rev. Civ. Stat. art. 179e 3.16(h); 16 Tex. Admin. Code 311.104(b).

17. As trainer of Desdemona Rambler, Appellant Stroud was the absolute insurer that the horse would be free of prohibited substances when it raced. Tex. Rev. Civ. Stat. art. 179e 3.16(h); 16 Tex. Admin. Code 311.104(b).

18. The Stewards clearly erred by failing or refusing to consider the mitigating circumstances in this case showing that Commission veterinarian Dr. Justin Robinson alone was responsible for the alleged violations.

19. If a split sample is submitted for testing to a Commission-approved and listed laboratory that is acceptable to the owner or trainer, and the test on the split specimen confirms the findings of the original lab, it is a prima facie violation of the Commission's rules on racing with prohibited substances. 16 Tex. Admin. Code 319.3(e), 319.362(c), (e).

20. Stewards' Ruling No. RETA2682 was clearly erroneous in finding that Appellant Stroud violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Desdemona Rambler with Nomifensine in its system.

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21. Stewards' Ruling No. RETA2682 was clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Dancers Toast with Nomifensine in its system.

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22. Stewards' Ruling No. RETA2687 was clearly erroneous in finding that Appellant Sanchez violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Contentious Strike with Nomifensine in its system.

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23. Stewards' Ruling No. SHRP5093 was clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.

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24. Stewards' Ruling No. RETA2688 was clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Million Dollar Kiss with Nomifensine in its system.

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25. Stewards' Ruling No. RETA2689 was clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Chivalri with Nomifensine in its system.

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26. Stewards' Ruling No. RETA2690 was clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code | 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Tellem Honeys Here with Nomifensine in its system.

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27. Stewards' Ruling No. RETA2691 was clearly erroneous in finding that Appellant Kearn violated 16 Texas Administrative Code | 311.104(b), 319.1(b)(1), 319.3(a), and 319.302 by racing Zoomin N Celebrating with Nomifensine in its system.

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28. Nomifensine is not listed on the Commission's Equine Medication Classification Policy and Penalty Guidelines (Guidelines). 16 Tex. Admin. Code 319.304(b).

29. Nomifensine does not meet the statutory definition of a prohibited substance. 16 Tex. Admin. Code | 319.1(b)(1).

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30. Under the Guidelines, the Stewards are authorized to disqualify the animal and order the race purse redistributed, impose a fine of up to \$25,000 on the animal's trainer, and impose a full suspension on the trainer's license for up to five years as a penalty for a prohibited drug, chemical, or substance. 16 Tex. Admin. Code | 307.64(a), 319.304(a).

31. The Commission should vacate the Stewards' Ruling Nos. SHRP5093, RETA2688, RETA2689, RETA2690, RETA2691, RETA2686, RETA2687, and RETA2682 in their entirety, including the fines, suspensions, and redistribution of purses outlined therein.

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**SOAH DOCKET NO. 476-18-1010**

JUDD KEARL,	§	BEFORE THE STATE OFFICE
v.	§	OF
TEXAS RACING COMMISSION	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 476-18-1011**

JOSE SANCHEZ	§	BEFORE THE STATE OFFICE
v.	§	OF
TEXAS RACING COMMISSION	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 476-18-1012**

BRIAN STROUD	§	BEFORE THE STATE OFFICE
v.	§	OF
TEXAS RACING COMMISSION	§	ADMINISTRATIVE HEARINGS

**RESPONDENT'S REPLY TO APPELLANTS KEARL AND SANCHEZ'S EXCEPTIONS**

COMES NOW the Respondent, Texas Racing Commission ("the Commission"), and files its Reply to Appellants Kearl and Sanchez's Exceptions to the Proposal for Decision (PFD) and in further support of denying Appellant's additional and proposed modifications to the PFD findings of fact (FOF) and conclusions of law (COL) would show:

1. Respondent objects to Appellants' additional and modified FOF and COL related to separate, distinct, and final proceedings<sup>1</sup> as not relevant to the specific question before the State Office of Administration Hearings, namely, whether the Stewards' Rulings were clearly in error<sup>2</sup>. In particular, Respondent objects to Appellants' proposed new FOF Nos. 15, 16, new COL Nos. 11,

<sup>1</sup> Appellants' Summary Suspension Ruling appeals were decided in SOAH Docket Nos. 476-17-5681 and 476-17-5682 with no exceptions filed. The Commission final orders adopting the respective PFD on the Appellants' summary suspensions were issued February 13, 2018 without further appeal. Any summary suspension issues raised are estopped by the final Commission final orders in SOAH Docket Nos. 476-17-5681 and 476-17-5682 and are not part of the Stewards' suspension rulings here. Appellants wish to bootstrap additional findings of fact and conclusions of law into the PFD.

<sup>2</sup> 16 TEX. ADMIN. CODE § 307.67(c).

13 and Appellants' modified PFD FOF Nos. 28, 29<sup>4</sup> and 33. The *Keeton*<sup>5</sup> Court held the Commission's penalty and prohibited substance classification guidelines were not agency statements subject to notice and comment. The Court stated the test barn procedures to obtain specimens were also guidelines,<sup>6</sup> noting that when deviations from the sample procedures occur, the issue then becomes whether the integrity of the sample was compromised, tainting the reliability of the test results.<sup>7</sup> The underlying Texas Racing Commission policies or rules in this case are valid and consistent with the Court's holding in *Keeton*. The internal employee test barn instructions for obtaining specimens are standards of procedure mandated by the Racing Act and Rules.<sup>8</sup> Further, there are no specific Commission rules governing the number of specimen collection tubes, the harvesting of serum, the use of evidence tape, the freezing of split samples or key access. In *Keeton v Texas Racing Commission*<sup>9</sup> the Appellants argued the Commission failed to follow the APA by modifying a rule of general applicability without notice and comment rulemaking 1) contending it was the "practice" of the Commission's staff to allow the owner to keep the purse and position in the race, but the Commission redistributed the purse and disqualified the horse without notice of the change and 2) contending the medication classifications, not promulgated under notice and comment rulemaking, were invalid. The Court held redistribution of the purse and disqualification of the horse were publicly known under 16 TEX. ADMIN. CODE §

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<sup>4</sup> Appellants' Exceptions Exhibit A redlined PFD lists the modified PFD FOF as Nos. 32 and 33.

<sup>5</sup> *Keeton v. Tex. Racing Comm'n*, No. 03-03-0049-CV, 2003 Tex. App. LEXIS 6925 (Tex. App. - Austin, Aug. 14, 2003, pet. denied) (mem. op.). See also *Veterans of Foreign Wars v. Abbott*, No. 03-02-00447 CV, 2003 Tex. App. LEXIS 6326 (Tex. App. - Austin July 24, 2003, no pet. h.) (mem. op.).

<sup>6</sup> In *Keeton v. Tex. Racing Comm'n*, Appellants argued the Commission failed to follow its own rules by not (i) properly storing the sample when it was returned, (ii) reshipping the sample within the required time, and (iii) giving Keeton notice of the returned and opportunity to observe reshipment of the split sample. The Court refers to the instructions as "guidelines construing these rules". The Court noted the sample shipping box metal seal was locked and intact with no evidence of tampering and found that the Commission rules require that the Commission's "veterinarian or designee shall store the split sample in a manner that ensure the integrity of the specimen". The *Keeton* Court cites 16 TEX. ADMIN. CODE §§ 319.362(b) and 319.338. See also the Racing Act § 3.02(a) The Commission shall regulate and supervise every race meeting in this state involving wagering on the result of greyhound or horse racing and 16 TEX. ADMIN. CODE §§ 313.48 and 315.32 "commission veterinarians shall supervise all veterinary practices on association grounds, advise the executive secretary and the racing judges on all veterinary matters". Ultimately, the *Keeton* Court found the Commission acted reasonably and nothing in the record demonstrated or even suggested any compromise to the integrity of the sample rendering the *Keeton* test results unreliable.

<sup>7</sup> In *Keeton* and the present case, both laboratories confirmed presence of the prohibited substance. More importantly the integrity of these present samples is confirmed by Appellants who have acknowledged the presence of Nomifensine after consulting their veterinarian.

<sup>8</sup> TEX. REV. CIV. STAT. art. 179e § 3.16(b) and (j) and 16 TEX. ADMIN. CODE CH. 319. See also 16 TEX. ADMIN. CODE §§ 319.301 (Testing Authorized), 319.332 (Procedure for Obtaining Specimen), 319.333 (Specimen Tags), 319.334 (Delivery and Retention of Specimens), 319.337 (Interference with Testing Prohibited), and 319.338 (Storage of Splits).

<sup>9</sup> *Keeton v Tex Racing Comm'n*, No. 03-03-00049-CV 2003 Tex. App. LEXIS 6925, at 9-10 (Tex. App -Austin Aug.14, 2003, no pet.) (mem. op.).

319.304(a) (2003)<sup>10</sup>, and that the Commission rules broadly define prohibited substance with the medication classification guidelines listing the specific prohibited substance. The Court reasoned “it makes sense that the Commission listed specific drugs in guidelines instead of rules because agencies have greater flexibility in revising guidelines than rules”.<sup>11</sup>

2. Respondent objects to exceptions proposing the addition of new FOF and COL that are not supported by the record, specifically, FOF Nos. 18, 19, 34<sup>12</sup>, 37, 38, new COL Nos. 4, 9, 10<sup>13</sup>, 14<sup>14</sup>, 18<sup>15</sup> and Appellants’ modifications to PFD FOF Nos. 12, 13, 15, 17-24<sup>16</sup>, 31<sup>17</sup> 32<sup>18</sup> and 33<sup>19</sup>.

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<sup>10</sup> In rejecting the Appellants claim of new penalties without notice, the Court reasoned that the statute, rule and policy manual were in effect before the date in question giving the appellants and the regulated industry notice of the rules and policies in place and both Appellants were also aware of certain aspects of the rules and policies.

<sup>11</sup> The Appeals Court then cites *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432,443 (Tex. 1994) and *Brinkley v. Texas Lottery Comm’n*, 986 S.W.2d 764, 769-70 (Tex. App.-Austin 1999, no pct.) “Not every agency statement is a rule”. See also Ron Beal, *A Miry Bog Part II: UDJA and APA Declaratory Judgment Actions and Agency Statements Made Outside a Contested Case Hearing Regarding the Meaning of the Law*, 59 Baylor L. Rev. 267, Spring 2007.

<sup>12</sup> The Rulings address the test barn instructions stating: “During the hearing, Respondents raised several issues regarding the Commission’s investigative process, specimen handling, and storage procedures. Respondents emphasized areas where procedures have departed from the written policies. Some procedures have been improved, while the written policy is currently in the process of being updated. Fewer tubes of blood are drawn from the horse after the race, because of the larger size of the storage tubes. Also, the process of storing the blood serum was improved, thereby lessening the chance of contamination. Respondents pointed out some samples were refrigerated rather than frozen...Respondents also demonstrated that the security offices at the different tracks had keys to the test barns and freezers or refrigerators where the samples were stored. This too appears to be a departure from the written policy. However, none of these issues compromised the sufficiency of the chain of custody of these specimens, and no evidence whatsoever was introduced that the specimens were tampered with or that the results are not reliable.”

<sup>13</sup> See 16 TEX. ADMIN. CODE § 319.304(b) The executive secretary may promulgate a classification for prohibited drugs, chemicals, and other substances and a schedule for recommended disciplinary action for use by stewards in assessing penalties. See also *Keeton v Tex. Racing Comm’n* at 9-10.

<sup>14</sup> The Rulings state: “Texas Racing Commission Rule 319.3(c) Medication Restricted, provides that “[a] positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or substance was administered to the animal and was carried in the body of the animal while participating in a race. This evidentiary presumption was not successfully rebutted by Respondents during the hearing.”

<sup>15</sup> The Rulings state: “To allow a trainer to excuse any positive by claiming ignorance regarding what a veterinarian administered is to allow a trainer to abdicate a responsibility that is theirs by rule. Therefore, the Board of Stewards will not endorse a trainer’s active ignorance as an excuse for a positive test for a prohibited substance in a race horse”.

<sup>16</sup> Appellants’ Exceptions Exhibit A redlined PFD lists the modified PFD FOF as Nos. 21-28. Respondent objects to the Appellants’ modifications relevant to “Commission” considerations when the Stewards are the presiding officials. The Stewards decide and issue the respective rulings. The Appellants only mitigating evidence introduced at the Stewards’ hearing was the testimony of trainers James Lackey and Trey Ellis as purported character witnesses and portions of unscripted direct testimony of the Appellants and Darrell Vienna from the summary suspensions hearing.

<sup>17</sup> Appellants’ Exceptions Exhibit A redlined PFD lists the modified PFD FOF as No. 35.

<sup>18</sup> Appellants’ Exceptions Exhibit A redlined PFD lists the modified PFD FOF as No. 36.

The credibility of the witnesses and the weight of the evidence presented at the Stewards' hearing are, and rightly were, given deference even if the ALJ would decide weight of evidence and credibility issues differently.<sup>20</sup> The Executive Secretary adopts personnel policies and other internal operating policies and procedures.<sup>21</sup> Proposed new FOF Nos. 37 and 38 misconstrue the evidence and Stewards' findings of the expert's testimony and the potential likelihood of the drug's similar effects in humans and horses.<sup>22</sup>

3. Respondent objects to exceptions proposing modifications that conflict with the ALJ's conclusion that the stewards' decisions were not clearly in error, including but not limited to, PFD COL Nos. 12-19<sup>23</sup>, 29 and 31.

### PRAYER

WHEREFORE PREMISES CONSIDERED, Staff for the Commission prays that Appellants' Exceptions be denied.

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<sup>19</sup> The Commission's underlying rules and polices are valid. The instructions for obtaining specimens are required by the Racing Act and Rules,<sup>19</sup> and there are no specific rules governing deviations in the number of specimen collection tubes, harvesting of serum, use of evidence tape, freezing of split samples or key access. *See also* TEX. REV. CIV. STAT. art. 179c § 3.16(b) and (j) and 16 TEX. ADMIN. CODE CH. 319.

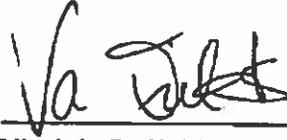
<sup>20</sup> 16 TEX. ADMIN. CODE § 307.62(d)(4) states in part: "The stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony".

<sup>21</sup> *See* 16 TEX. ADMIN. CODE § 303.8(c). *See also* 16 TEX. ADMIN. CODE § 319.4(f)(4) and 319.332(a) the Commission veterinarian supervises the operation of the test barn or test area and the collection of specimens for testing.

<sup>22</sup> The uncontroverted expert testimony was that no study had been done to determine the actual effect of Nomifensine on horses but, in his expert opinion stated that the drug had the potential to or could cause the same harm in horses as in humans. "While Nomifensine is not currently classified by the Association of Racing Commissioners International (ARCI), Texas Racing Commission Equine Medication Classification Policy and Penalty Guidelines, pursuant to ARCI recommendations, state that "Any substances or drugs found that are not included in these guidelines should be treated as Class I violations warranting a Class A penalty unless otherwise advised by the Executive Director. Nomifensine is therefore a Class I prohibited substance. Nomifensine is a human antidepressant drug that was withdrawn from the market by manufacturers in the 1980s and had its FDA approval revoked in 1992 According to expert testimony from Dr. Scott Stanley of the UC-Davis School of Veterinary Medicine and the K.L. Maddy Equine Analytical Lab, Nomifensine is reasonably capable of influencing or affecting the outcome of a race and it could affect the health and performance of a racehorse".

<sup>23</sup> Appellants' Exceptions Exhibit A redlined PFD lists the modified PFD COL as Nos. 20-27. Appellants refer to RETA2682 two separate times in their redlined PFD COL Nos. 20 and 21 attached to their Exceptions as Exhibit A.

Respectfully submitted,



Virginia S. Fields  
Texas Racing Commission  
PO Box 12080  
Austin, Texas 78711  
(512) 490-4009 telephone  
(512) 833-6907 facsimile  
[virginia.fields@txrc.texas.gov](mailto:virginia.fields@txrc.texas.gov)

**CERTIFICATE OF SERVICE**

I certify that true and correct copies of the foregoing Respondent's Reply to Appellants' Exceptions have been sent by certified mail, return receipt requested 7004 1350 0003 5202 8824 to Eleanor Ruffner and Tanya Robinson, Ruffner Schoenbaum, PLLC, 1603 West 6<sup>th</sup> Street, Austin, Texas 78703, and by certified mail, return receipt requested 7004 1350 0003 5202 8855 to Trent C. Rowell at PO Box 457, Stockdale, Texas 78160, and filed with the State Office of Administrative Hearings via efileing, on this the 21<sup>st</sup> day of June, 2019.



Virginia S. Fields

## **V. PROCEEDINGS ON RULES**

A. Discussion and possible action to propose amendments to:

1. 16 TAC § 309.8, Racetrack License Fees
2. 16 TAC § 309.51, Designation of Active and Inactive Racetrack Licenses
3. 16 TAC § 309.118, Regulatory Office Space and Equipment
4. 16 TAC § 319.3, Medication Restricted
5. 16 TAC § 319.102, Veterinarian's List
6. 16 TAC § 319.333, Specimen Tags
7. 16 TAC § 321.313, Select Three, Four, or Five

**CHAPTER 309**                    **RACETRACK LICENSES AND OPERATIONS**  
**SUBCHAPTER A**                **RACETRACK LICENSES**  
**DIVISION 1**                    **GENERAL PROVISIONS**  
**SECTION 309. 8**                **RACETRACK LICENSE FEES**

1 (a) Purpose of Fees. An association shall pay a license fee to the Commission to pay  
2 the Commission's costs to administer and enforce the Act[,] and to regulate, oversee,  
3 and license live and simulcast racing at racetracks.

4 (b) Annual License Fee. A licensed racing association shall pay an annual license fee  
5 by remitting to the Commission 1/12th of the fee on the first business day of each  
6 month. The annual license fee for each license type is as follows:

7        (A) for a Class 1 racetrack, \$200,000;

8        (B) for a Class 2 racetrack, \$95,000;

9        (C) for a Class 3 or 4 racetrack, \$25,000; and

10       (D) for a Greyhound racetrack, \$140,000.

11 (c) Adjustment of Fees.

12       (1) Annual fees are calculated using a projected base of 48 days of live horse racing  
13 per Class 1 racetrack, 8 days of live horse racing per Class 3 or 4 racetrack, and a total  
14 of 36 performances of live greyhound racing per fiscal year. If a Class 1 horse racetrack  
15 does not intend to use all of the race days allotted to it, it may share the unused days  
16 with another Class 1 track. To cover the additional regulatory cost in the event  
17 additional days or performances are requested by the associations, the executive  
18 secretary may:

19           (A) recalculate a horse racetrack's annual fee by adding \$5,345 for each live race  
20 day added beyond the base; and

21           (B) recalculate a greyhound racetrack's annual fee by adding \$750 for each live  
22 performance added beyond the base.

23       (2) If the simulcast tax revenue collected in any quarter ending November 30,  
24 February 28, May 31, or August 31 is less than 96 percent of the amount collected in  
25 the same period the year before, the fees in subsection (b) of this section shall be  
26 increased, for the second month of the following quarter, on a pro rata basis in an  
27 amount sufficient to generate revenue in the amount of the difference between the

28 amount of simulcast tax revenue collected in the quarter and the amount that is 96  
29 percent of the amount collected in the same quarter the year before.

30 (3) If the executive secretary determines that the total revenue from the annual fees  
31 exceeds the amount needed to pay its costs, the executive secretary shall order a  
32 moratorium on all or part of the license fees remitted monthly by any or all of the  
33 associations. Before entering a moratorium order, the executive secretary shall develop  
34 a formula for imposing the moratorium in an equitable manner among the associations.  
35 In developing the formula, the executive secretary shall consider the amount of excess  
36 revenue received by the Commission, the source of the revenue, the Commission's  
37 costs associated with regulating each association, the Commission's projected receipts  
38 for the next fiscal year, and the Commission's projected expenses during the next fiscal  
39 year.

40 ~~[(b) Fees for The Period From September 1, 2018, Through February 28, 2019.~~

41 ~~(1) Base License Fee. A licensed racing association shall pay a license fee in the~~  
42 ~~following annualized amount:~~

- 43 ~~(A) for a Class 1 racetrack, \$714,650;~~
- 44 ~~(B) for a Class 2 racetrack, \$127,600;~~
- 45 ~~(C) for a Class 3 or 4 racetrack, \$35,725; and~~
- 46 ~~(D) for a Greyhound racetrack, \$204,175.~~

47 ~~(2) Adjustment of Fees. Annualized fees are calculated using a base of 68 days of~~  
48 ~~live horse racing and 36 performances of live greyhound racing per fiscal year. To cover~~  
49 ~~the additional regulatory cost in the event additional days or performances are~~  
50 ~~requested by the associations the executive secretary may:~~

51 ~~(A) recalculate a horse racetrack's annualized fee by adding \$6,313 for each live~~  
52 ~~day added beyond the base;~~

53 ~~(B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each~~  
54 ~~live performance added beyond the base; and~~

55 ~~(C) review the original or amended race date request submitted by each~~  
56 ~~association to establish race date baselines for specific associations if needed.~~

57 ~~(3) Payment of Fee. Each association shall pay its license fee by remitting to the~~  
58 ~~Commission 1/12 of its annualized fee on the first business day of each month.~~

59 ~~(c) Unless the Commission Amends These Provisions, Fees for The Period Beginning~~  
60 ~~March 1, 2019:~~

61 ~~(1) Base License Fee. A licensed racing association shall pay a license fee in the~~  
62 ~~following annualized amount:~~

63 ~~(A) for a Class 1 racetrack, \$540,000;~~

64 ~~(B) for a Class 2 racetrack, \$230,000;~~

65 ~~(C) for a Class 3 or 4 racetrack, \$70,000; and~~

66 ~~(D) for a Greyhound racetrack, \$360,000.~~

67 ~~(2) Adjustment of Fees. Annualized fees are calculated using a base of 83 days of~~  
68 ~~live horse racing and 270 performances of live greyhound racing per fiscal year. To~~  
69 ~~cover the additional regulatory cost in the event additional days or performances are~~  
70 ~~requested by the associations the executive secretary may:~~

71 ~~(A) recalculate a horse racetrack's annualized fee by adding \$3,750 for each live~~  
72 ~~day added beyond the base;~~

73 ~~(B) recalculate a greyhound racetrack's annualized fee by adding \$750 for each~~  
74 ~~live performance added beyond the base; and~~

75 ~~(C) review the original or amended race date request submitted by each~~  
76 ~~association to establish race date baselines for specific associations if needed.~~

77 ~~(3) Payment of Fee.~~

78 ~~(A) For the period from March 1 through August 31, 2019:~~

79 ~~(i) On the first business day of the month, an association that is conducting~~  
80 ~~live racing or simulcasting shall pay its license fee by remitting to the Commission 1/12~~  
81 ~~of the fee specified in Section 309.8(c)(1), as adjusted pursuant to Section 309.8(c)(2).~~

82 ~~(ii) On the first business day of the fiscal quarter, an association that is not~~  
83 ~~conducting live racing or simulcasting shall pay its license fee by remitting to the~~  
84 ~~Commission 1/4 of the fee specified in Section 309.8(c)(1).~~

85 ~~(B) For the period beginning September 1, 2019:~~

86 ~~(i) An association that is conducting live racing or simulcasting shall pay its~~  
87 ~~license fee by remitting to the Commission 1/12 of the total fee on the first business day~~  
88 ~~of each month.~~

89                   (ii) ~~An association that is not conducting live racing or simulcasting shall pay~~  
90 ~~its license fee in four equal installments on September 1, December 1, March 1, and~~  
91 ~~June 1 of each fiscal year.~~

92 ~~(d) If the executive secretary determines that the total revenue from the fees exceeds~~  
93 ~~the amount needed to pay those costs, the executive secretary may order a moratorium~~  
94 ~~on all or part of the license fees remitted monthly by any or all of the associations.~~  
95 ~~Before entering a moratorium order, the executive secretary shall develop a formula for~~  
96 ~~providing the moratorium in an equitable manner among the associations. In developing~~  
97 ~~the formula, the executive secretary shall consider the amount of excess revenue~~  
98 ~~received by the Commission, the source of the revenue, the Commission's costs~~  
99 ~~associated with regulating each association, the Commission's projected receipts for the~~  
100 ~~next fiscal year, and the Commission's projected expenses during the next fiscal year.]~~



**CHAPTER 309**                      **RACETRACK LICENSES AND OPERATIONS**  
**SUBCHAPTER B**                 **OPERATION OF RACETRACKS**  
**DIVISION 2**                    **FACILITIES AND EQUIPMENT**  
**SECTION 309.118**              **REGULATORY OFFICE SPACE AND EQUIPMENT**

- 1 (a) An association shall provide adequate office space for the use of the stewards or  
2 racing judges, occupational licensing personnel, the Commission's investigative unit, the  
3 pari-mutuel auditing staff and the staff employed by the comptroller, the Commission  
4 veterinary and drug testing staff, and the Department of Public Safety. The location and  
5 size of the office space, furnishings, electrical outlets, telephone lines, television  
6 monitors, and equipment required under this section must be approved by the executive  
7 director [~~secretary~~].
- 8 (b) – (d) (No change.)
- 9 (e) The office space for occupational licensing personnel must consist of two rooms,  
10 one of which must be private. The room that is not private must be equipped with:
- 11 (1) – (5) (No change.)
- 12 (6) a dedicated Ethernet [~~telephone~~] line to be used by a credit card machine or  
13 other secure line with access to the internet that is acceptable to the executive director  
14 [~~and that does not require a code to access an outside line~~];
- 15 (7) – (9) (No change.)
- 16 (f) The office space for the pari-mutuel auditing staff and the staff employed by the  
17 comptroller must:
- 18 (1) – (7) (No change.)
- 19 (8) if requested by the Commission or the comptroller, have an additional Ethernet or  
20 other secure line with access to the internet that is acceptable to the executive director  
21 [~~voice line to support dial-up capabilities for a personal computer~~]; and
- 22 (9) a dedicated telephone line to be used by a fax machine.
- 23 (g) Commission Veterinarian's Office.
- 24 (1) – (4) (No change.)
- 25 (5) The office must be equipped with:
- 26 (A) a sink with hot and cold water built into a counter of a size required by the  
27 executive director [~~secretary~~];
- 28 (B) desks and filing cabinets, in numbers as required by the executive director  
29 [~~secretary~~], equipped with locks;
- 30 (C) at horse racetracks, refrigerators and freezers, in sizes and numbers as  
31 required by the executive director [~~secretary~~], equipped with locks;

32 (D) at greyhound racetracks, a freezer in a size as required by the executive  
33 director [secretary];

34 (E) a storage area, of a size required by the executive director [secretary], with a  
35 door approved by the executive director [secretary].

36 (F) telephone lines with telephones as required by the executive director  
37 [secretary];

38 (G) television monitors as required by the executive director [secretary]; and

39 (H) at horse racetracks, a freestanding counter of a size required by the  
40 executive director [secretary].

41 (6) All locks must be of a type approved by the executive director [secretary].

42 (h) (No change.)

43 (i) All telephone lines provided under this section must:

44 (1) be assigned a unique telephone number that is directly accessible by outside  
45 callers;

46 (2) if requested by the executive director [secretary], be listed in the governmental  
47 section of the local telephone directory; and

48 (3) if requested by the executive director [secretary], be listed on the association's  
49 website.

50 (j) An association shall provide at its expense computer lines, phone equipment, and  
51 any necessary voice and data network cabling in the offices of the state regulatory and  
52 law enforcement personnel as prescribed by the executive director [secretary]. In  
53 addition, the association shall reimburse the Commission for the costs of any network or  
54 data circuits installed or caused to be installed by the Commission at the association's  
55 location.

56 (k) All costs of telecommunications for regulatory and law enforcement personnel  
57 provided under this section shall be paid by the association and the telecommunications  
58 service may not be interrupted at any time. To ensure minimal disruption to the  
59 Commission's regulatory functions, the association shall ensure the Commission staff  
60 has twenty-four hour access and keys to any telecommunications rooms serving  
61 regulatory and law enforcement personnel as prescribed by the executive director  
62 [secretary].

63 (l) An association shall provide to the Commission a number of keys to the Commission  
64 offices as approved by the executive director [secretary].

65 (m) (No change.)

**CHAPTER 319**                    **VETERINARY PRACTICES AND DRUG TESTING**  
**SUBCHAPTER A**                **GENERAL PROVISIONS**  
**SECTION 319.3**                **MEDICATION RESTRICTED**

1 (a) – (e) (No change.)

2 (f) Except as provided in paragraph (1) [~~(2)~~] of this subsection, clenbuterol and albuterol  
3 are [~~is~~] prohibited and shall not be administered to a horse participating in racing at any  
4 time.

5        [~~(1) Any horse that is the subject of a finding by the stewards that a test specimen~~  
6 ~~contains clenbuterol shall immediately be placed on the Veterinarian's List for not less~~  
7 ~~than 60 days.~~

8            (A) ~~In order to have a horse removed from the Veterinarian's List after being~~  
9 ~~placed on the list under this subsection, the trainer must contact a commission~~  
10 ~~veterinarian to schedule a time and test barn location where the horse must be~~  
11 ~~presented after the sixtieth day in order for a commission veterinarian to obtain test~~  
12 ~~specimens to be submitted to the official laboratory for testing.~~

13            (B) ~~The cost of each test conducted under this section, including applicable~~  
14 ~~shipping costs, shall be borne by the owner and must be paid in full at the time the~~  
15 ~~specimens are shipped to the laboratory.~~

16            (C) ~~The collected specimens must not have any detectable level of clenbuterol. If~~  
17 ~~no detectable level of clenbuterol is present, the horse shall be removed from the~~  
18 ~~Veterinarian's List. If a detectable level of clenbuterol is present, then the horse shall~~  
19 ~~remain on the Veterinarian's List until such time that a test specimen reveals no~~  
20 ~~detectable level of clenbuterol.~~

21            (D) ~~A horse placed on the Veterinarian's List pursuant to this subsection may not~~  
22 ~~be entered in a race until it has been removed from the list.]~~

23        (1) [~~(2)~~] A horse may only be administered clenbuterol or albuterol if:

24            (A) it [~~the clenbuterol~~] is prescribed by a licensed veterinarian;

25            (B) within 24 hours of initiating treatment, the trainer or owner has submitted to  
26 the Commission a form prescribed by the Commission and signed by the veterinarian,  
27 indicating:

28            (i) the name of the horse;

- 29 (ii) the name of the trainer;
- 30 (iii) the name of the veterinarian;
- 31 (iv) that the veterinarian has personally examined the horse and made an
- 32 accurate clinical diagnosis justifying the ~~[clenbuterol]~~ prescription;
- 33 (v) the proper dosage and route of administration; and
- 34 (vi) the expected duration of treatment; and

35 (C) only FDA-approved clenbuterol or albuterol that is labeled for use in the

36 horse is prescribed and dispensed.

37 (2) ~~[(3)]~~ A horse that has been administered clenbuterol or albuterol under paragraph

38 (1) ~~[(2)]~~ of this subsection shall be placed on the Veterinarian's List for a period ending

39 not less than 30 days after the last administration of the drug as prescribed, subject to a

40 negative test for clenbuterol, albuterol, or any other beta-agonist drug ~~[test]~~ before being

41 removed from the list.

42 (A) In order to have a horse removed from the Veterinarian's List after being

43 placed on the list pursuant to paragraph (1) ~~[(2)]~~ of this subsection, the trainer must

44 contact a commission veterinarian to schedule a time and test barn location where the

45 horse must be presented after the thirtieth day in order for a commission veterinarian to

46 obtain test specimens to be submitted to the official laboratory for testing.

47 (B) (No change.)

48 (C) The collected specimens must not have any detectable level of clenbuterol,

49 albuterol, or any other beta-agonist drug. If no detectable level of clenbuterol, albuterol,

50 or any other beta-agonist drug is present, the horse shall be removed from the

51 Veterinarian's List. If a detectable level of clenbuterol, albuterol, or any other beta-

52 agonist drug is present, then the horse shall remain on the Veterinarian's List until such

53 time that a test specimen reveals no detectable level of clenbuterol, albuterol, or any

54 other beta-agonist drug.

55 (D) A horse placed on the Veterinarian's List pursuant to paragraph (1) ~~[(2)]~~ of

56 this subsection may not be entered in a race until it has been removed from the list.

**CHAPTER 319**

**VETERINARY PRACTICES AND DRUG TESTING**

**SUBCHAPTER B**

**TREATMENT OF HORSES**

**SECTION 319.102**

**VETERINARIAN'S LIST**

1 (a) – (c) (No change.)

2 (d) Before removing a horse from the veterinarian's list, the commission veterinarian  
3 may require the horse to perform satisfactorily in a workout or qualifying race.  
4 Performance in such a workout or qualifying race must be conducted in accordance with  
5 §319.3 of this title (relating to Medication Restricted), except that, for a workout or  
6 qualifying race to be used for the purpose of removing a horse from the veterinarian's  
7 list, the horse must not have any detectable level of permissible therapeutic medication  
8 other than furosemide. The commission veterinarian may require the collection of test  
9 specimens from a horse after a workout or race required under this subsection. If a  
10 specimen is collected under this subsection, the commission veterinarian may not  
11 remove the horse from the veterinarian's list until the results of the test are negative.

12 (e) (No change.)

**CHAPTER 319**                    **VETERINARY PRACTICES AND DRUG TESTING**  
**SUBCHAPTER D**                **DRUG TESTING**  
**DIVISION 2**                    **TESTING PROCEDURES**  
**SECTION 319.333**              **SPECIMEN IDENTIFICATION [TAGS]**

1 (a) Each specimen obtained for testing must be marked for identification in a manner  
2 that ensures that: [~~with a tag with multiple parts. A part of the tag must accompany the~~  
3 ~~specimen to the testing laboratory and the commission veterinarian or test barn~~  
4 ~~supervisor shall retain a part of the tag in a locked cabinet in the test barn or test area.~~

5        (1) the commission can identify which horse, trainer, owner, and race the specimen  
6 came from; and

7        (2) the laboratory testing the sample cannot identify from the labeling on the  
8 specimen which horse, trainer, owner, or race the specimen came from.

9 (b) The executive director may issue standards for specimen identification in a manner  
10 that ensures the integrity of the specimens. [~~The part of the tag that is sent with the~~  
11 ~~specimen to the laboratory may contain only the date the specimen was obtained and a~~  
12 ~~unique identification number assigned by the executive secretary. The part of the tag~~  
13 ~~that is retained in the test barn or test area must contain:~~

14        (1) ~~the signature of the commission veterinarian or test barn supervisor;~~

15        (2) ~~the initials of each individual who collected the urine or serum;~~

16        (3) ~~the initials of the individual who processed the serum for split sampling;~~

17        (4) ~~the date the specimen was obtained;~~

18        (5) ~~the unique identification number;~~

19        (6) ~~the name of the race animal;~~

20        (7) ~~the signature of the witness, if any; and~~

21        (8) ~~any other information required by the executive secretary.]~~

**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

Date of Request: 6/27/2019

***Request for Proposed Change to an Existing Rule or  
Addition of a New Rule to the Rules of Racing***

Please submit this information to the attention of the Executive Director *at least 14 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules, and failure to complete all sections may delay consideration of your request.

Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, TX 78754-4552  
Phone: 512/833-6699 Fax: 512-833-6907  
email: [info@txrc.texas.gov](mailto:info@txrc.texas.gov)

**Contact Information:**

Name:	Frank Hopf		
Phone Number:	281-807-8803	Fax number:	281-807-8720
Mailing address:	7575 N. Sam Houston Pkwy W. Houston, TX 77064		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Sam Houston Race Park  
(Name of Organization)

Proposed Change to (if known): Chapter: 321 Rule: 313

Proposed Addition to (if known): Chapter: \_\_\_\_\_ Rule: \_\_\_\_\_

Other Rules Affected by Proposal (if any): Chapter: \_\_\_\_\_ Rule: \_\_\_\_\_

Chapter: \_\_\_\_\_ Rule: \_\_\_\_\_

Statutory Authority for Proposed Change: \_\_\_\_\_

**A. Summary of the Issue and Proposed Solution**

1. Summarize the issue. Address the following:
  - Proposed rule would be inline with ARCI-004-105 Calculation of Payouts and Distribution of Pools- Pick (n) Pools (7) (Page 75, Version 9.0 April 2019)
2. Summarize proposed solution(s). Address the following:
  - This rule change will provide constiency for the betting public on all Pick 3, 4, 5, 6 wagers in Texas.

**B. Impact of Proposal**

Please answer the following questions to the best of your ability. Explain all “yes” answers below.

	Yes	No
1. Is this change likely to have any fiscal impact on state or local government over the next five years?		X
2. Is there likely to be any cost to persons or businesses required to comply with the change?		X
3. Is the change likely to result in the creation or elimination of a government program?		X
4. Is the change likely to create any new employee positions or eliminate any existing employee positions within the Texas Racing Commission?		X
5. Is the change likely to require an increase or decrease in future legislative appropriations to the agency?		X
6. Is the change likely to require a substantial increase or decrease in the total amount of fees paid to the agency?		X
7. Does the change create any new regulations or expand any existing regulations?		X
8. Is the change likely to increase the number of individuals subject to the rule's applicability?		X
9. Is the change likely to have an impact on the Texas economy?		X
10. Is the change likely to have a negative economic effect on small businesses?		X
11. Is the change likely to have a negative impact on micro-businesses (independently owned businesses with no more than 20 employees)?		X
12. Is the change likely to have a negative impact on the local economy?		X
13. Is the change likely to have a negative impact on rural communities (communities with a population of less than 25,000)?		X
14. Is the change likely to have a negative impact on employment conditions in Texas?		X
15. Is the change likely to restrict, limit, or impose a burden an owner’s right to his or her private real property?		X

16. Explain any “yes” answers, including estimates of cost where appropriate.

17. If you answered "yes" to any questions above, is there another way to achieve the same goal that would not result in a "yes" answer?

18. What is the anticipated public benefit of this change?

This addition to the current rule will allow for constinency to the betting public on multi-leg wagers in Texas.

#### D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, members of the public, or others.)

- Lone Star Park and Retama Park

Are there any affected stakeholder groups that have not been consulted on this proposal?

- Yes, both locations support the proposal.

#### C. Proposal

Provide rule language you are proposing. Please show any language to be added with underlined text (example: new text) and any current rule language to be eliminated in brackets with strikethroughs (example: [~~text to be deleted~~]). To substitute text, show the new text first (example: new text [~~old text~~]).

- (a) no change
- (b) no change
- (c) no change
- (d) no change
- (e) no change
- (f) no change
- (g) no change
- (h) no change
- (i) no change

(j) When the condition of the turf course warrants a change of racing surface in any of the races open to a select three, four or five, and such change has not been made known to the betting public prior to the close of wagering for the first select three, four or five race, the Stewards shall declare the changed races a "no contest" for select three, four or five purposes and the pool shall be distributed in accordance with subsection (i) of this section. Following the designation of a race as a "no contest", no tickets shall be sold selecting a horse in such "no contest" race.

~~(k)~~ (k) In the event of a dead heat for win between two or more animals:

(1) in a select three, all the animals in the dead heat for win shall be considered as winning animals in the race for the purpose of calculating the major or minor pools and the affected pool is calculated:

(A) As a profit split to those whose selections finished first in each of the three contests; but if there are no such wagers, then

(B) As a single price pool to those who selected the first place finisher in any two of the three contests; but if there are no such wagers, then

(C) As a single price pool to those who selected the first place finisher in any one of the three contests; but if there were no such wagers, then in accordance with paragraph (f) of this section.

(2) in a select four or five race, all the animals in the dead heat for win shall be considered as winning animals in the race for the purpose of calculating the major or minor pools and the affected pool is calculated as a win pool.

~~(1)~~ (1) A pari-mutuel ticket for the select three, four, or five pool may not be sold, exchanged, or canceled after the time wagering closes in the first of the races comprising the select three, four, or five, except for refunds on select three, four, or five tickets as required by subsection (h) of this section. A person may not disclose the number of tickets sold in the select three, four, or five pool or the number or amount of tickets selecting winners of select three, four, or five races until the stewards or racing judges have determined the last race comprising the select three, four, or five to be official.

**CHAPTER 321**                    **PARI-MUTUEL WAGERING**  
**SUBCHAPTER C**                **REGULATION OF LIVE WAGERING**  
**DIVISION 2**                    **DISTRIBUTION OF PARI-MUTUEL POOLS**  
**SECTION 321.313**               **SELECT THREE, FOUR, OR FIVE**

1 (a) – (i) (No change.)

2 (j) When the condition of the turf course warrants a change of racing surface in any of  
3 the races open to a select three, four, or five, and such change has not been made  
4 known to the betting public prior to the close of wagering for the first select three, four,  
5 or five race, the stewards shall declare each changed race a “no contest” for select  
6 three, four, or five purposes and the pool shall be distributed in accordance with  
7 subsection (i) of this section. Following the designation of a race as a “no contest,” no  
8 tickets shall be sold selecting a horse in such “no contest” race.

9 (k) [(j)] In the event of a dead heat for win between two or more animals:

10        (1) – (2) (No change.)

11 (l) [(k)] A pari-mutuel ticket for the select three, four, or five pool may not be sold,  
12 exchanged, or canceled after the time wagering closes in the first of the races  
13 comprising the select three, four, or five, except for refunds on select three, four, or five  
14 tickets as required by subsection (h) of this section. A person may not disclose the  
15 number of tickets sold in the select three, four, or five pool or the number or amount of  
16 tickets selecting winners of select three, four, or five races until the stewards or racing  
17 judges have determined the last race comprising the select three, four, or five to be  
18 official.

## **V. PROCEEDINGS ON RULES**

- B. Discussion and possible action to propose new 16 TAC Chapter 303, Subchapter G, Horse Industry Escrow Account, including:
  - 1. 16 TAC § 303.301, Definitions
  - 2. 16 TAC § 303.302, General Provisions
  - 3. 16 TAC § 303.311, Allocations to Horse Racetrack Associations
  - 4. 16 TAC § 303.312, Limitation on Use of Funds by Racetrack Associations
  - 5. 16 TAC § 303.321, Allocations to Breed Registries
  - 6. 16 TAC § 303.322, Limitations on Use of Funds by Breed Registries
  - 7. 16 TAC § 303.323, Modifications to Approved Events
  - 8. 16 TAC § 303.324, Recordkeeping and Audits
  - 9. 16 TAC § 303.325, Quarterly Reports
- C. Discussion and possible action to propose the repeal of 16 TAC § 321.509, Escrowed Purse Account

1 AN ACT

2 relating to the deposit and allocation of certain funds to the horse  
3 industry escrow account and to the maximum balance of that account.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2028.202(b), Occupations Code, is  
6 amended to read as follows:

7 (b) From the total amount deducted under Subsection (a), a  
8 greyhound racetrack association that receives an interstate  
9 cross-species simulcast signal shall distribute the following  
10 amounts from each pari-mutuel pool wagered on the signal at the  
11 racetrack:

12 (1) a fee of 1.5 percent to be paid to the racetrack in  
13 this state sending the signal;

14 (2) a purse in the amount of 0.75 percent to be paid to  
15 the official state horsebreed registry for Thoroughbred horses for  
16 use as purses at racetracks in this state;

17 (3) a purse in the amount of 0.75 percent to be paid to  
18 the official state horse breed registry for quarter horses for use  
19 as purses at racetracks in this state; and

20 (4) a purse of 4.5 percent to be escrowed with the  
21 commission [~~for purses~~] in the manner provided by Section 2028.204.

22 SECTION 2. Section 2028.203, Occupations Code, is amended  
23 to read as follows:

24 Sec. 2028.203. REIMBURSEMENT FOR SIMULCAST SIGNAL

1 COST. If a racetrack association purchases an interstate  
2 simulcast signal and the signal cost exceeds five percent of the  
3 pari-mutuel pool, the commission, from the escrowed [~~purse~~] account  
4 under Section 2028.202(b)(4), shall reimburse the racetrack  
5 association an amount equal to one-half of the signal cost that  
6 exceeds five percent of the pari-mutuel pool.

7 SECTION 3. The heading to Section 2028.204, Occupations  
8 Code, is amended to read as follows:

9 Sec. 2028.204. ALLOCATION OF MONEY IN ESCROW ACCOUNTS  
10 [~~ESCROWED PURSES~~].

11 SECTION 4. Section 2028.204(b), Occupations Code, is  
12 amended to read as follows:

13 (b) Any horse racetrack association in this state may apply  
14 to the commission for receipt of money in the horse industry escrow  
15 [~~all or part of the escrowed purse~~] account for use as purses. Any  
16 state horse breed registry listed in Section 2030.002(a) may apply  
17 for receipt of money in the account for any event that furthers the  
18 horse industry. The commission:

19 (1) shall determine the horse racetrack associations  
20 and state horse breed registries to be allocated money from the  
21 [~~escrowed purse~~] account and the percentages to be allocated,  
22 taking into consideration purse levels, racing opportunities, and  
23 the financial status of the requesting racetrack association or  
24 requesting breed registry; and

25 (2) may not annually allocate more than 70 percent of  
26 the amount deposited into the account to horse racetrack  
27 associations for use as purses.

1 SECTION 5. Subchapter E, Chapter 2028, Occupations Code, is  
2 amended by adding Section 2028.2041 to read as follows:

3 Sec. 2028.2041. ALLOCATION OF CERTAIN FUNDS. (a) In each  
4 state fiscal biennium, the comptroller shall deposit the amounts  
5 allocated under Section 151.801(c-3), Tax Code, into the escrow  
6 account established under Section 2028.204(b), until the  
7 comptroller determines the amount deposited into the account in  
8 that fiscal biennium equals the greater of:

9 (1) the amount appropriated to the commission for the  
10 purposes of Section 2028.204 for that fiscal biennium; or

11 (2) \$50 million.

12 (b) Once the comptroller determines the greater of the  
13 amount described by Subsection (a)(1) or (2) has been deposited  
14 during a state fiscal biennium into the escrow account established  
15 under Section 2028.204(b), for the remainder of that fiscal  
16 biennium the comptroller shall deposit the amounts allocated under  
17 Section 151.801(c-3), Tax Code, into the general revenue fund.

18 (c) The balance of the escrow account established under  
19 Section 2028.204(b) shall not exceed \$50 million.

20 SECTION 6. Sections 2028.205(a) and (b), Occupations Code,  
21 are amended to read as follows:

22 (a) In addition to money allocated under Section 2028.204, a  
23 horse racetrack association operating a racetrack that is located  
24 not more than 75 miles from a greyhound racetrack that offers  
25 wagering on a cross-species simulcast signal and that sends the  
26 cross-species simulcast signal to the greyhound racetrack may apply  
27 to the commission for an allocation of up to 20 percent of the money

1 in the escrowed [~~purse~~] account that is attributable to the  
2 wagering on a cross-species simulcast signal at the greyhound  
3 racetrack.

4 (b) If the applying horse racetrack association can prove to  
5 the commission's satisfaction that the racetrack association's  
6 handle has decreased directly due to wagering on an interstate  
7 cross-species simulcast signal at a greyhound racetrack located not  
8 more than 75 miles from the applying racetrack association, the  
9 commission shall allocate amounts from the escrowed [~~purse~~] account  
10 as the commission considers appropriate to compensate the racetrack  
11 association for the decrease. The amounts allocated may not exceed  
12 20 percent of the money in the escrowed [~~purse~~] account that is  
13 attributable to the wagering on the interstate cross-species  
14 simulcast signal at the greyhound racetrack.

15 SECTION 7. Section [151.801](#), Tax Code, is amended by  
16 amending Subsections (a) and (d) and adding Subsection (c-3) to  
17 read as follows:

18 (a) Except for the amounts allocated under Subsections (b),  
19 (c), [~~and~~] (c-2), and (c-3), all proceeds from the collection of the  
20 taxes imposed by this chapter shall be deposited to the credit of  
21 the general revenue fund.

22 (c-3) Subject to the limitation imposed under Section  
23 2028.2041, Occupations Code, an amount equal to the proceeds from  
24 the collection of the taxes imposed by this chapter on the sale,  
25 storage, or use of horse feed, horse supplements, horse tack, horse  
26 bedding and grooming supplies, and other taxable expenditures  
27 directly related to horse ownership, riding, or boarding shall be

1 deposited to the credit of the escrow account administered by the  
2 Texas Racing Commission and established under Section 2028.204,  
3 Occupations Code.

4 (d) The comptroller shall determine the amount to be  
5 deposited to the highway fund under Subsection (b) according to  
6 available statistical data indicating the estimated average or  
7 actual consumption or sales of lubricants used to propel motor  
8 vehicles over the public roadways. The comptroller shall determine  
9 the amounts to be deposited to the funds or accounts under  
10 Subsection (c) according to available statistical data indicating  
11 the estimated or actual total receipts in this state from taxable  
12 sales of sporting goods. The comptroller shall determine the  
13 amount to be deposited to the fund under Subsection (c-2) according  
14 to available statistical data indicating the estimated or actual  
15 total receipts in this state from taxes imposed on sales at retail  
16 of fireworks. The comptroller shall determine the amount to be  
17 deposited to the account under Subsection (c-3) according to  
18 available statistical data indicating the estimated or actual total  
19 receipts in this state from taxable sales of horse feed, horse  
20 supplements, horse tack, horse bedding and grooming supplies, and  
21 other taxable expenditures directly related to horse ownership,  
22 riding, or boarding. If satisfactory data are not available, the  
23 comptroller may require taxpayers who make taxable sales or uses of  
24 those lubricants, of sporting goods, ~~or~~ of fireworks, or of horse  
25 feed, horse supplements, horse tack, horse bedding and grooming  
26 supplies, or other taxable expenditures directly related to horse  
27 ownership, riding, or boarding to report to the comptroller as

1 necessary to make the allocation required by Subsection (b), (c),  
2 [~~or~~] (c-2), or (c-3).

3 SECTION 8. Section 151.801(e), Tax Code, is amended by  
4 adding Subdivisions (4) and (5) to read as follows:

5 (4) "Horse feed" means a product clearly packaged and  
6 labeled as feed for a horse.

7 (5) "Horse supplement" means a product clearly  
8 packaged and labeled as a supplement for a horse, including a  
9 vitamin, mineral, or other nutrient intended to supplement horse  
10 feed.

11 SECTION 9. As soon as practicable after the effective date  
12 of this Act, the Texas Racing Commission shall revise existing  
13 rules or adopt new rules as necessary to comply with Subtitle A-1,  
14 Title 13, Occupations Code (Texas Racing Act), as amended by this  
15 Act.

16 SECTION 10. The comptroller of public accounts is required  
17 to implement a provision of this Act only if the legislature  
18 appropriates money specifically for that purpose. If the  
19 legislature does not appropriate money specifically for that  
20 purpose, the comptroller may, but is not required to, implement a  
21 provision of this Act using other appropriations available for that  
22 purpose.

23 SECTION 11. The Texas Racing Commission is required to  
24 implement a provision of this Act only if the legislature  
25 appropriates money specifically for that purpose. If the  
26 legislature does not appropriate money specifically for that  
27 purpose, the commission may, but is not required to, implement a

1 provision of this Act using other appropriations available for that  
2 purpose.

3 SECTION 12. This Act takes effect September 1, 2019.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 2463 was passed by the House on May 10, 2019, by the following vote: Yeas 91, Nays 38, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2463 on May 24, 2019, by the following vote: Yeas 99, Nays 42, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 2463 was passed by the Senate, with amendments, on May 21, 2019, by the following vote: Yeas 22, Nays 9.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

**CHAPTER 303**  
**SUBCHAPTER G**  
**DIVISION 1**

**GENERAL PROVISIONS**  
**HORSE INDUSTRY ESCROW ACCOUNT**  
**GENERAL PROVISIONS**

1 303.301, Definitions

2 The following words and terms, when used in this subchapter, shall have the following  
3 meanings:

4 (1) Account – the horse industry escrow account.

5 (2) Association – a horse racetrack association.

6 (3) Event – a planned occasion or activity, such as a competition or other public gathering,  
7 including one planned and/or hosted by an organization other than a state horse breed  
8 registry.

9

10 303.302 General Provisions

11 (a) At least once each year, the Commission shall make an allocation of funds from the  
12 horse industry escrow account in accordance with §§2028.204-.205 of the Act.

13 (b) The Commission may make allocations of funds from the account at different times to  
14 horse racetrack associations and to breed registries, provided that not more than 70% of  
15 the amount deposited into the account is allocated to racetrack associations each year.

16 (c) At least 30 days before a deadline for submitting requests for allocation from the  
17 account, the executive director shall notify all entities eligible to request funds from the  
18 account at that time.

19

20 **DIVISION 2** **HORSE RACETRACK ASSOCIATIONS**

21 303.311 Allocations to Horse Racetrack Associations

22 (a) When requesting allocation from the account for purses, each association shall also  
23 recommend the percentages by which it will divide its share of the horse industry escrow  
24 account funds among the various breeds of horses.

25 (b) The Commission shall determine the amount of the allocation to each racetrack in  
26 accordance with the standards set forth in the Act, §§2028.204-.205.

27 (c) The percentages by which an association will divide the horse industry escrow account  
28 revenue among the various breeds of horses is subject to the approval of the Commission.  
29 When requesting Commission approval of the percentages, the association shall present

30 in writing studies, statistics, or other documentation to support its proposed division of  
31 horse industry escrow account revenue. The Commission may consider the following  
32 criteria when evaluating the association's studies, statistics, or other documentation  
33 submitted to support its proposed division of horse industry escrow account revenue  
34 before granting its approval:

35 (1) local public interest in each breed as demonstrated by, but not limited to, the  
36 following factors:

37 (A) simulcast import handle by breed;

38 (B) live handle by breed; and

39 (C) live attendance.

40 (2) earnings generated by the association from each breed;

41 (3) racetrack race date request and opportunities given to each breed;

42 (4) statewide need by breed; and

43 (5) national public interest in each breed as determined by the live simulcast export  
44 handle of each Texas meet.

45 (d) If the Commission determines that the association's proposed division of the horse  
46 industry escrow account revenue is inconsistent with the association's obligation to accord  
47 reasonable access to races for all breeds of horses, the Commission may:

48 (1) require the association to submit additional information supporting its  
49 recommendation for consideration at the next Commission meeting;

50 (2) reject the association's recommendation and require the association to submit a  
51 new recommendation for consideration at the next Commission meeting; or

52 (3) reject the association's recommendation and approve an alternate division of the  
53 horse industry escrow account revenue as determined by the Commission.

54 (e) In lieu of the process outlined in subsections (c) and (d) of this section, a signed  
55 agreement between the association and the organizations recognized by the Commission  
56 or in the Act as representatives of horse owners, trainers, and/or breeders may be  
57 submitted to the Commission for consideration and approval. For the Commission to  
58 approve the agreement, the agreement must:

59 (1) delineate the percentages by which the horse industry escrow account revenue  
60 received by the association will be divided amongst the various breeds of horses; and

61 (2) be signed by all organizations recognized by the Commission or in the Act as  
62 representatives of horse owners, trainers, and/or breeders.

63  
64 303.312 Limitation on Use of Funds by Racetrack Associations  
65 Funds allocated to racetrack associations from the horse industry escrow account may  
66 only be used for purses.

67  
68 **DIVISION 3** **BREED REGISTRIES**

69 303.321 Allocations to Breed Registries

70 (a) A breed registry is eligible to request funds from the horse industry escrow account if it  
71 is listed in Section 2030.002(a) of the Act.

72 (b) When requesting an allocation from the horse industry escrow account, an eligible  
73 breed registry shall indicate the event(s) for which it intends to use the funds and provide  
74 the following information for each event:

75 (1) the date(s) or approximate date(s);

76 (2) a detailed description of the event;

77 (3) the dollar amount requested for the event;

78 (4) a detailed explanation of the budget for the event; and

79 (5) the anticipated economic impact of the event on the horse industry.

80 (c) The Commission may approve a request for allocation of funds submitted by an eligible  
81 breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that  
82 the request satisfies the requirement that the funds be used for events to further the horse  
83 industry. Requests may be approved in full or in part, at the discretion of the Commission.

84 (d) In the event that the total of funds requested by eligible breed registries exceed the  
85 funds expected to be available in the account, the Commission may approve requests on a  
86 pro rata basis, may approve funding for certain events but not others, or a combination.

87 Priority shall be given to events that the Commission finds likely to have the greatest  
88 economic impact in the following areas:

89 (1) the state's horse racing industry;

90 (2) live racing at the state's racetracks;

91 (3) the horse breeding industry;

92 (4) the state of Texas as a whole; and

93 (5) non-racing horse industry activities.

94 (e) Notwithstanding subsections (c) and (d) of this section, prior to January 1, 2020, the  
95 executive director may act on behalf of the Commission to approve requests for allocation  
96 from the account.

97

98 303.322 Limitations on Use of Funds by Breed Registries

99 (a) A breed registry may use horse industry escrow account funds only for events that  
100 further the horse industry. The Commission may require a breed registry to repay funds if  
101 the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act  
102 and this section within twelve months of the date it receives the funds. The following types  
103 of costs may not be paid from funds allocated from the account:

104 (1) operating expenses, including the salaries of breed registry staff, interest and other  
105 financial costs related to borrowing and the cost of financing, contributions to a  
106 contingency reserve or any similar provision for unforeseen events, and audits or other  
107 accounting services;

108 (2) the purchase of capital assets or capital improvements;

109 (3) donations or contributions made to any individual or organization without express  
110 approval from the Commission for such contribution or donation;

111 (4) costs of entertainment, amusements, social activities, and incidental costs relating  
112 thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging,  
113 rentals, transportation, tips, and gratuities;

114 (5) fines, penalties, or other costs resulting from violations of or failure to comply with  
115 federal, state, or local laws and regulations;

116 (6) liability insurance coverage not specific to a particular event or series of events for  
117 which the Commission has allocated funds from the account;

118 (7) expenses related to litigation;

119 (8) professional association fees or dues for the breed registry or an individual;

120 (9) legislative expenses such as salaries and other expenses associated with lobbying  
121 the state or federal legislature or similar local governmental bodies, whether incurred for  
122 purposes of legislation or executive direction; or

123 (10) fundraising.

124 (b) A breed registry may pay a cost out of funds awarded from the horse industry escrow  
125 account if it satisfies subsection (a) of this section and is reasonable and adequately  
126 documented.

127 (1) A cost is reasonable if the cost does not exceed that which would be incurred by a  
128 prudent individual or organization under the circumstances prevailing at the time the  
129 decision was made to incur the cost and it is necessary to achieve the purpose for which  
130 the funds were sought.

131 (2) A cost is adequately documented if the cost is supported by Generally Accepted  
132 Accounting Principles, the breed registry's accounting records, and documented in  
133 accordance with §303.325 of this subchapter (relating to Quarterly Reports).

134

### 135 303.323 Modifications to Approved Events

136 (a) A breed registry seeking to make a modification to the date, description, or budget for  
137 an event for which funds have been allocated from the horse industry escrow account shall  
138 submit a request to:

139 (1) the executive director for changes to one or more of the following:

140 (A) the date, if the proposed new date is within six months of the original date;

141 (B) the description, if the change does not materially change the nature or scope of  
142 the event; or

143 (C) the budget, if the proposed new budget is within ten percent of the original  
144 budget for the event; or

145 (2) the Commission, for all other changes.

146 (b) The request must explain the proposed change, the reason for the change, and the  
147 anticipated economic impact of the event as modified on the horse industry.

148 (c) The executive director may approve or deny a change requested under subsection  
149 (a)(1) of this section or may forward the request to the Commission for consideration.

150

### 151 303.324 Recordkeeping and Audits

152 (a) Subject to audit by the Commission or auditors or investigators working on behalf of the  
153 Commission, including the State Auditor and/or the Comptroller of Public Accounts for the  
154 State of Texas, a breed registry receiving funds from the horse industry escrow account

155 shall maintain all records of expenses paid out of funds from the account for a minimum of  
156 five years following the event. Records may be maintained in electronic or paper format.

157 (b) The Commission may request, and the breed registry must provide, any such record as  
158 part of a review or audit.

159 (c) The funds received and/or expended by the breed registry from the horse industry  
160 escrow account must be included in the breed registry's annual audit of the financial  
161 statements required to be submitted by June 15 of each year. An auditor's statement must  
162 be included as part of the annual audit attesting to the proper use of the funds received  
163 from the horse industry escrow account by the breed registry.

164

### 165 303.325 Quarterly Reports

166 (a) A breed registry receiving funds from the horse industry escrow account shall submit to  
167 the Commission a report every quarter. The report must include:

168 (1) the amount of funds expended toward each event for which funds have been  
169 allocated;

170 (2) for each completed event, the total amount of funds expended toward the event and  
171 a breakdown of the funds expended for that event; and

172 (3) the following certification: "By my signature below, I certify that (1) all of the  
173 information in this report is correct, (2) all funds expended from the horse industry escrow  
174 account were used in accordance with Section 2028.204 of the Texas Racing Act and the  
175 Rules of the Texas Racing Commission, and (3) the breed registry has all documentation  
176 required by 16 TAC § 303.324.

177 (b) Quarterly reports shall be submitted to the Commission no later than November 30,  
178 February 28, May 31, and August 31 of each year.

**CHAPTER 321**                    **GENERAL PROVISIONS**  
**SUBCHAPTER D**                **SIMULCAST WAGERING**  
**DIVISION 2**                    **COMMON POOL WAGERING**  
**SECTION 321.509**              **ESCROWED PURSE ACCOUNT**

1 ~~(a) At least once a year, the Commission shall distribute all funds accrued in the escrowed~~  
2 ~~purse account. The executive secretary shall establish a deadline for receiving requests for~~  
3 ~~distribution from the account and publicize that deadline to the horse racetrack~~  
4 ~~associations at least 30 days before the deadline. The associations when requesting for~~  
5 ~~distribution from the account shall also recommend the percentages by which it will divide~~  
6 ~~the escrowed purse account revenue among the various breeds of horses.~~

7 ~~(b) The Commission shall determine the amount of the distribution to each racetrack in~~  
8 ~~accordance with the standards set forth in the Act, §§2028.204-.205.~~

9 ~~(c) The percentages by which an association will divide the escrowed purse account~~  
10 ~~revenue among the various breeds of horses is subject to the approval of the Commission.~~  
11 ~~When requesting Commission approval of the percentages, the association shall present~~  
12 ~~in writing studies, statistics, or other documentation to support its proposed division of~~  
13 ~~escrowed purse account revenue. The Commission may consider the following criteria~~  
14 ~~when evaluating the association's studies, statistics, or other documentation submitted to~~  
15 ~~support its proposed division of escrowed purse account revenue before granting its~~  
16 ~~approval:~~

17 ~~(1) local public interest in each breed as demonstrated by, but not limited to, the~~  
18 ~~following factors:~~

- 19 ~~(A) simulcast import handle by breed;~~
- 20 ~~(B) live handle by breed; and~~
- 21 ~~(C) live attendance.~~

22 ~~(2) earnings generated by the association from each breed;~~

23 ~~(3) racetrack race date request and opportunities given to each breed;~~

24 ~~(4) statewide need by breed; and~~

25 ~~(5) national public interest in each breed as determined by the live simulcast export~~  
26 ~~handle of each Texas meet.~~

27 ~~(d) If the Commission determines that the association's proposed division of the escrowed~~  
28 ~~purse account revenue is inconsistent with the association's obligation to accord~~  
29 ~~reasonable access to races for all breeds of horses, the Commission may:~~

30 ~~(1) require the association to submit additional information supporting its~~  
31 ~~recommendation for consideration at the next Commission meeting;~~

32 ~~(2) reject the association's recommendation and require the association to submit a~~  
33 ~~new recommendation for consideration at the next Commission meeting; or~~

34 ~~(3) reject the association's recommendation and approve an alternate division of the~~  
35 ~~escrowed purse account revenue as determined by the Commission.~~

36 ~~(e) In lieu of the process outlined in subsections (c) and (d) of this section, a signed~~  
37 ~~agreement between the association and the organizations recognized by the Commission~~  
38 ~~or in the Act as representatives of horse owners, trainers, and/or breeders may be~~  
39 ~~submitted to the Commission for consideration and approval. For the Commission to~~  
40 ~~approve the agreement, the agreement must:~~

41 ~~(1) delineates the percentages by which the escrowed purse account revenue received~~  
42 ~~by the association will be divided amongst the various breeds of horses; and~~

43 ~~(2) be signed by all organizations recognized by the Commission or in the Act as~~  
44 ~~representatives of horse owners, trainers, and/or breeders.]~~

## **VI. PROCEEDINGS ON RACETRACKS**

Discussion and possible action on the following race date items:

- A. Allocation of live race dates for horse racetracks under 16 TAC § 33.41 for the period beginning January 1, 2020, and ending August 1, 2021
- B. Allocation of live race dates for greyhound racetracks under 16 TAC § 33.41 for the period beginning January 1, 2020, and ending August 1, 2021







**LONE STAR PARK**  
at Grand Prairie®

*Our Mission:  
Create Winning Experiences.*

July 14, 2019

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, TX 78754

Via Email and Regular Mail

Dear Joel:

Enclosed you will find Lone Star Park's completed race date application for the Commission's review and consideration.

In summary, we respectfully request the following dates for 2020:

**Thoroughbred Meet – April 16 through July 19 (44 days)**

- 2:35 pm post time on Saturdays, Sundays & Memorial Day
- 6:35 pm post time on Thursdays & Fridays
- 5:00 pm post time on July 3 & 4
- 1:35 pm post time on Triple Crown Saturdays (5/2, 5/16 & 6/6)

**Quarter Horse Meet – September 25 through November 14 (16 days)**

- 6:05 pm post times on Fridays & Saturdays

Please feel free to contact me if you have any questions or need any additional information.

Sincerely,

Bart Lang  
Director of Racing

**Enclosures**

Cc: Sam Houston Race Park, Retama Park, Gillespie County Fair, Texas Horsemen's Partnership, Texas Thoroughbred Association, Texas Quarter Horse Association, Texas Paint Horse Association & Texas Arabian Breeders Association

1000 Lone Star Parkway  
Grand Prairie, Texas 75050  
(972) 263-7223  
LoneStarPark.com

**TEXAS RACING COMMISSION  
REQUEST FOR PERFORMANCES  
HORSE RACETRACKS**

**January 1, 2020 – December 31, 2020**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

**I. Schedule Requested**

Name of Racetrack: Lone Star Park

<b><u>First Meet</u></b>	Opening Day: <u>4/16/2020</u>	Closing Day: <u>7/19/2020</u>
Meet Type: X TB <input type="checkbox"/> QH <input type="checkbox"/> MX		Total Number of Race Days <u>44</u>
X Thoroughbred	# of Races Per Day <u>9</u>	Projected Purse Per Day \$ <u>165,000</u>
<input type="checkbox"/> Quarter Horse	# of Races Per Day _____	Projected Purse Per Day \$ _____
<input type="checkbox"/> Arabian	# of Races Per Day _____	Projected Purse Per Day \$ _____
<input type="checkbox"/> Paint Horse	# of Races Per Day _____	Projected Purse Per Day \$ _____
Totals	# of Races Per Day _____	Projected Purse Per Day \$ _____

<b><u>Second Meet</u></b>	Opening Day: <u>9/25/2020</u>	Closing Day: <u>11/14/2020</u>
Meet Type: <input type="checkbox"/> TB    X QH <input type="checkbox"/> MX		Total Number of Race Days <u>16</u>
<input type="checkbox"/> Thoroughbred	# of Races Per Day _____	Projected Purse Per Day \$ <u>225,000</u>
X Quarter Horse	# of Races Per Day <u>12</u>	Projected Purse Per Day \$ _____
X Arabian	# of Races Per Day <u>&lt;1</u>	Projected Purse Per Day \$ _____
X Paint Horse	# of Races Per Day <u>&lt;1</u>	Projected Purse Per Day \$ _____
Totals	# of Races Per Day _____	Projected Purse Per Day \$ _____

**Third Meet**

Opening Day: \_\_\_/\_\_\_/\_\_\_

Closing Day: \_\_\_/\_\_\_/\_\_\_

Meet Type:  TB  QH  MX

Total Number of Race Days \_\_\_\_\_

Thoroughbred # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Quarter Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Arabian # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Paint Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Totals # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

**II. Negotiation with Breed Registries**

Specify how the total races scheduled for 2020 will be allocated among the various breeds:

Appaloosa .5 %

Arabian 1 %

Paint .5 %

Quarter Horse 31 %

Thoroughbred 67 %

Check all that apply:

Attached are letters from the affected breed registries that have agreed to this allocation.

The \_\_\_\_\_ breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

**Participants in Negotiations**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

**III. Dates Requested**

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

**IV. Charity Days**

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: 10/9/2020

Day 2: 10/16/2020

Day 3 (Optional): 10/30/2020

Day 4 (Optional): \_\_\_\_\_

Day 5 (Optional): \_\_\_\_\_

Identify the charities:

*REQUIRED BY RULE*

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: Race Track Chaplaincy of Texas  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: Texas A&M Equine  
(Name of Charity)

**OPTIONAL CHARITY DAYS**

Day 3 Charity: Grand Prairie ISD Education Foundation  
 (Name of Charity)

Day 4 Charity: \_\_\_\_\_  
 (Name of Charity)

Day 5 Charity: \_\_\_\_\_  
 (Name of Charity)

**For each charity listed, attach the following information:**

1. The name of the charity;
2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;
3. a brief description of the activities or purposes of the charity; and
4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

**V. Coordination of Request**

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

	Affected?		Letter of Support Attached?		
	Yes	No	Yes	No	N/A
<b><u>Racetrack</u></b>					
Gillespie County Fair & Festivals Association	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laredo Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lone Star Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Manor Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retama Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam Houston Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valle de los Tesoros	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Horsemen's Organization</u></b>					
Texas Horsemen's Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Name of Racetrack)

## Requested Performances for 2020

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 New Year's Day	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 Martin Luther King Jr. Day	21	22	23	24	25
26	27	28	29	30	31	

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14 Valentine's Day	15
16	17 President's Day	18	19	20	21	22
23	24	25	26	27	28	29

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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				

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16 T-6:35 PM	17 T-6:35 PM	18 T-2:35 PM
19 T-2:35 PM	20	21	22	23	24 T-6:35 PM	25 T-2:35 PM
26 T-2:35 PM	27	28	29	30		

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 T-6:35 PM	2 T-1:35 PM
3 T-2:35 PM	4	5	6	7 T-6:35 PM	8	9 T-2:35 PM
10 T-2:35 PM	11	12	13	14	15 T-6:35 PM	16 T-1:35 PM
Mother's Day 17 T-2:35 PM	18	19	20	21	22	23 T-2:35 PM
24 T-2:35 PM	25 T-2:35 PM Memorial Day	26	27	28	29 T-6:35 PM	30 T-2:35 PM

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
31 T-2:35 PM	1	2	3	4	5 T-6:35 PM	6 T-1:35 PM
7 T-2:35 PM	8	9	10	11 T-6:35 PM	12	13 T-2:35 PM
14 T-2:35 PM	15	16	17	18 T-6:35 PM	19	20 T-2:35 PM
21 T-2:35 PM	22	23	24	25 T-6:35 PM	26	27 T-2:35 PM
Father's Day 28 T-2:35 PM	29	30				

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 T-5:00 PM	4 T-5:00 PM Independence Day
5 T-2:35 PM	6	7	8	9	10 T-6:35 PM	11 T-2:35 PM
12 T-2:35 PM	13	14	15	16 T-6:35 PM	17 T-6:35 PM	18 T-2:35 PM
19 T-2:35 PM	20	21	22	23	24	25
26	27	28	29	30	31	

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						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						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		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 Q-6:05 PM	26 Q-6:05 PM
27	28	29	30			

October						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2 Q-6:05 PM	3 Q-6:05 PM
4	5	6	7	8	9 Q-6:05 PM	10 Q-6:05 PM
11	12	13	14	15	16 Q-6:05 PM	17 Q-6:05 PM
18	19	20	21	22	23 Q-6:05 PM	24 Q-6:05 PM
25	26	27	28	29	30 Q-6:05 PM	31 Q-6:05 PM

November						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6 Q-6:05 PM	7 Q-6:05 PM
8	9	10	11	12	13 Q-6:05 PM	14 Q-6:05 PM
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		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		



*Race Track Chaplaincy of Texas*

North Texas Council at Lone Star Park

*Chaplain Sam Ed Spence*

June 30, 2011

Mr. Drew Shubeck, G.M.  
Lone Star Park  
1000 Lone Star Pkwy.  
Grand Prairie, TX 75050

Dear Drew:

As per your request earlier this month concerning the charity information for the Texas Racing Commission, enclosed is a copy of our I.R.S. letter of determination of 1996, which qualifies Race Track Chaplaincy of Texas as an exempt organization for federal income tax purposes.

According to our Articles of Incorporation, RTCT was organized for religious and educational purposes through placing an ordained minister at each racetrack in the state of Texas. Activities include (a) providing counseling for those with such problems as absenteeism, troublesome behavior, emotional and mental illness, marital and financial difficulties; (b) providing emotional support and encouragement to individuals struggling to overcome dependencies to alcohol or drugs; (c) influencing people to respect the property of others, thereby reducing crime; (d) comforting in times of stress, illness, hospital stays and bereavement; (e) helping people to better understand themselves and others; (f) promoting "golden rule" attitudes for mutual helpfulness, trustworthiness and dependability; (g) projecting a favorable image for the industry by establishing community relationships; (h) demonstrating the industry's concern for the social, educational, spiritual and physical well-being of its employees; (i) supporting values encouraged by the racing industry, such as integrity, loyalty and honesty; (j) officiating at weddings, funerals and other occasions.



LONE STAR PARK  
*at Grand Prairie*

1000 Lone Star Parkway, Grand Prairie, Texas 75050 Phone 972/237-4818 Fax 972/237-4819

**Race Track Chaplaincy of Texas  
North Texas Council  
2014 Board of Directors**

Bob Aquino – President  
3608 Perkins Rd.  
Arlington, TX 76106

Ed Larson – Vice President  
809 Oak Ct.  
Saginaw, TX 76179\

Terry Hobbs – Treasurer  
326 Eddy  
Joshua, TX 76058

Sam Ed Spence – Secretary  
2605 Florence Rd.  
Southlake, TX 76092

Mike Buffington  
87 Duncan Dr.  
Denison, TX 75021

Allan Jackson  
4801 Lakeshore Dr.  
Colleyville, TX 76034

Jaime Obregon \  
1434 N. Main St., Ste. 230  
Fort Worth, TX 76106

Glenn Waldon  
1500 Plantation Oaks Dr., #702  
Roanoke, TX 76262

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
1100 COMMERCE STREET  
DALLAS, TX 75242-0000

DEPARTMENT OF THE TREASURY

Date: MAY 14 1996

RACE TRACK CHAPLAINCY OF TEXAS, INC  
P.O. BOX 3392  
FORT WORTH, TX 76113

Employer Identification Number:  
75-2527982

Case Number:  
756131024

Contact Person:  
ANNETTE SMITH

Contact Telephone Number:  
(214) 767-6023

Accounting Period Ending:  
December 31

Foundation Status Classification:  
509(a)(1)

Advance Ruling Period Begins:  
January 14, 1994

Advance Ruling Period Ends:  
December 31, 1998

Addendum Applies:  
Yes

Dear Applicant:

Based on information you supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

Because you are a newly created organization, we are not now making a final determination of your foundation status under section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

Accordingly, during an advance ruling period you will be treated as a publicly supported organization, and not as a private foundation. This advance ruling period begins and ends on the dates shown above.

Within 90 days after the end of your advance ruling period, you must send us the information needed to determine whether you have met the requirements of the applicable support test during the advance ruling period. If you establish that you have been a publicly supported organization, we will classify you as a section 509(a)(1) or 509(a)(2) organization as long as you continue to meet the requirements of the applicable support test. If you do not meet the public support requirements during the advance ruling period, we will classify you as a private foundation for future periods. Also, if we classify you as a private foundation, we will treat you as a private foundation from your beginning date for purposes of section 507(d) and 4940.

Grantors and contributors may rely on our determination that you are not a private foundation until 90 days after the end of your advance ruling period. If you send us the required information within the 90 days, grantors and contributors may continue to rely on the advance determination until we make a final determination of your foundation status.

If we publish a notice in the Internal Revenue Bulletin stating that we

Letter 1045 (00/CG)

RACE TRACK CHAPLAINCY OF TEXAS, INC

will no longer treat you as a publicly supported organization, grantors and contributors may not rely on this determination after the date we publish the notice. In addition, if you lose your status as a publicly supported organization, and a grantor or contributor was responsible for, or was aware of, the act or failure to act, that resulted in your loss of such status, that person may not rely on this determination from the date of the act or failure to act. Also, if a grantor or contributor learned that we had given notice that you would be removed from classification as a publicly supported organization, then that person may not rely on this determination as of the date he or she acquired such knowledge.

If you change your sources of support, your purposes, character, or method of operation, please let us know so we can consider the effect of the change on your exempt status and foundation status. If you amend your organizational document or bylaws, please send us a copy of the amended document or bylaws. Also, let us know all changes in your name or address.

As of January 1, 1984, you are liable for social security taxes under the Federal Insurance Contributions Act on amounts of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the private foundation excise taxes under Chapter 42 of the Internal Revenue Code. However, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please let us know.

Donors may deduct contributions to you as provided in section 170 of the Internal Revenue Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Donors may deduct contributions to you only to the extent that their contributions are gifts, with no consideration received. Ticket purchases and similar payments in conjunction with fundraising events may not necessarily qualify as deductible contributions, depending on the circumstances. Revenue Ruling 67-246, published in Cumulative Bulletin 1967-2, on page 104, gives guidelines regarding when taxpayers may deduct payments for admission to, or other participation in, fundraising activities for charity.

You are not required to file Form 990, Return of Organization Exempt From Income Tax, if your gross receipts each year are normally \$25,000 or less. If you receive a Form 990 package in the mail, simply attach the label provided, check the box in the heading to indicate that your annual gross receipts are normally \$25,000 or less, and sign the return.

If you are required to file a return you must file it by the 15th day of the fifth month after the end of your annual accounting period. We charge a penalty of \$10 a day when a return is filed late, unless there is reasonable

Letter 1045 (00/CG)

RACE TRACK CHAPLAINCY OF TEXAS, INC

cause for the delay. However, the maximum penalty we charge cannot exceed \$5,000 or 5 percent of your gross receipts for the year, whichever is less. We may also charge this penalty if a return is not complete. So, please be sure your return is complete before you file it.

You are not required to file federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, we will assign a number to you and advise you of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

This determination is based on evidence that your funds are dedicated to the purposes listed in section 501(c)(3) of the Code. To assure your continued exemption, you should keep records to show that funds are spent only for those purposes. If you distribute funds to other organizations, your records should show whether they are exempt under section 501(c)(3). In cases where the recipient organization is not exempt under section 501(c)(3), you must have evidence that the funds will remain dedicated to the required purposes and that the recipient will use the funds for those purposes.

Since you have not indicated that you intend to finance your activities with the proceeds of tax exempt bond financing, in this letter, we have not determined the effect of such financing on your tax exempt status.

If we said in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help us resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

-4-

RACE TRACK CHAPLAINCY OF TEXAS, INC

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Bobby E. Scott  
District Director

Enclosure(s):  
Addendum  
Form 872-C

Letter 1045 (00/CG)

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**CONTACT**

**Toni Dowling '92**

Executive Administrative Assistant

 (979) 845-8161

 [tdowling@tamfoundation.com](mailto:tdowling@tamfoundation.com)

**TRUSTEES**

The Foundation is governed by seven trustees, each appointed for a period of seven years. A new trustee is appointed each year to ensure continuity.



**Van Taylor '71**

**Chairman**

Van Taylor is retired as president of network services for the southwest region of AT&T after 34-plus years with Southwestern Bell/SBC/AT&T. He was a member of the Research and Infrastructure Committee for Vision 2020, chair of The Association of Former Students in 2006 and is a member of the Dwight Look College of Engineering Advisory Council.

Taylor and his wife Carole established a President's Endowed Scholarship, a General Rudder Corps scholarship and are supporters of The Association of Former Students and Aggie athletics. Taylor also supported the MSC renovation and expansion project with a major gift to the Texas A&M Foundation. In appreciation of his support, a pillar in the renovated MSC bears his name.



**George K. Hickox Jr. '80**

**Chairman-Elect**

George Hickox is a principal of the energy investment firm Heller Hickox & Co. He established the endowed George K. Hickox Jr. Professorship in Petroleum Engineering. He was previously an advisory member to the Texas A&M Foundation's Investment Committee and to the Industry Board of Texas A&M University's Harold Vance Department of Petroleum Engineering, and currently serves on the Dwight Look College of Engineering Advisory Council.

Hickox made two major gifts in support of the MSC renovation and expansion project. In appreciation of his gift, the A&B Multipurpose Room on the upper level of the MSC bears the name of his friend and classmate Robert W. "Bob" Williams '80. With his second gift, Hickox chose to honor classmate and friend George M. "Randy" Smith '80 by naming the Southwest "Leadership" MSC entrance after him.



**Jorge Bermúdez '73**

**Trustee**

Jorge Bermúdez is retired as chief risk officer for Citigroup Inc. after a 34-year career with the company. Following his retirement, he founded Byebrook Group, a small College Station firm dedicated to research and advisory work in the financial services industry.

Bermúdez made a gift to the Mays Business School to support scholarships for undergraduate business honors students. He also established the Jorge A. Bermúdez '73 Family Endowed Scholarship Fund, which provides scholarships to the dependent child or



**T. Randall "Randy" Cain '82**

**Trustee**

Randy Cain is vice chair and southwest region managing partner at Ernst & Young in Dallas, where he oversees 12 offices in nine states. He and his wife Jyl are benefactors to Texas A&M, with a gift to Mays Business School to support the accounting program. Cain was also honored with the Mays Distinguished Alumnus Award.

He is a past chairman of the 12th Man Foundation, a member of the Dean's Development Council at Mays Business School and a former member of the

spouse of a veteran who served in or was killed or disabled in a conflict. Bermúdez is a former chairman of the board of The Association of Former Students.

Chancellor's Century Council.



### Charles H. Gregory '64

Trustee

Charles Gregory is president and general partner of Roymax Partners in Houston. Gregory made several major gifts to Texas A&M, including a 2001 faculty chair in the College of Liberal Arts. With his mother and siblings, he founded a faculty chair in civil engineering in honor of his late father, R.P. Gregory '32.

Gregory also supported the MSC renovation and expansion project with a major gift to the Texas A&M Foundation. In appreciation of his support, a pillar in the renovated MSC bears his name. Gregory served on Texas A&M's One Spirit One Vision capital campaign executive committee and is a Century Club member of The Association of Former Students.



### Richard Kardys '67

Trustee

Richard Kardys is group executive vice president and chief trust officer at Frost National Bank in San Antonio and is also a certified trust financial advisor. He is a member of the Texas A&M Foundation's Planned Giving Council and has served on Texas A&M's last two capital campaign committees.

He's part of the 12th Man Foundation Champions Council and its Council of Athletic Ambassadors. Kardys is past president of The Association of Former Students.



### P. William "Bill" Toler '76

Trustee

Bill Toler is chairman and CEO of Nevada-based Swift Communications Inc., which publishes more than 30 community newspapers and websites in seven western states. He recently completed a four-year term on The Association of Former Students' Board of Directors and previously served on Texas A&M's *Vision 2020* Advisory Board.

Toler and his wife Melanie created a bequest through the Foundation to fund a President's Endowed Scholarship. He is an Endowed Diamond Century Club member of The Association of Former Students.

The Texas A&M Foundation    Toll-Free: (800) 392-3310  
31 George Bush Dr.    Main: (979) 845-8161  
College Station, TX 77840    Fax: (979) 845-3973

[info@txamfoundation.com](mailto:info@txamfoundation.com)



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CONTACT

☎ (979) 845-8161  
✉ [info@tamfoundation.com](mailto:info@tamfoundation.com)

## HISTORY

On Sept. 12, 1953, a group of 21 Texas A&M former students and regents gather to officially create an organization they have long discussed. Peering into the future, they know that the Agricultural & Mechanical College of Texas will eventually need large charitable gifts to continue offering a quality academic experience.

Utilizing the Texas Trust Law, the Texas A&M College Development Foundation is formed with an initial \$100 in assets. Wofford Cain '13, [Sterling Evans '21](#), [Herman Heep '20](#), W.P. Machemehl '33 and A.F. Mitchell '22 are named its first trustees.



Visionary philanthropist Sterling C. Evans'21 was one of five founders of the Texas A&M College Development Foundation in 1953.

### 1960s

#### A New Name

Following the lead of Texas A&M in 1962, the Texas A&M College Development Foundation changes its name to the Texas A&M University Development Foundation.

#### President's Endowed Scholarships Are Born

In the 1960s, Texas A&M is maturing from an all-male, military and technical college into a full-fledged university. To help it along, five of the university's most illustrious former students fund five four-year scholarships. These scholarships—intended to raise the quality bar for Texas A&M students—become the President's Endowed Scholarship (PES) program. Awarded to high-achieving high school seniors, these scholarships inaugurate the Foundation's most visible giving program.

Since 1968, more than 4,500 students have attended Texas A&M with the financial help of a PES award. In addition to a multitude of Foundation donors, these students have the program founders to thank: Ford Albritton Jr. '43, [Les Appelt '41](#), [John Lindsey '44](#), W. C. "mAggie" McGee Jr. '31 and Royce Wisenbaker '40.

### 1970s

In the 1970s, the number of trustees serving on the Foundation board increases from five to seven. The term of office for Foundation trustees also decreases from 10 to seven years.

### 1980s

#### Now a 501(c)(3)

Following a controversy at North Texas State University, Texas Attorney General Mark White rules that a private, fundraising body cannot be part of a public university. The Foundation, initially formed as a Texas Charitable Trust, officially separates from the university and incorporates as a 501(c)(3) charitable corporation. Bob Rutledge becomes its executive director.

#### Capital Campaign: A Top Priority

For decades, Texas A&M's fundraising mindset mirrored that of many public



Since 1988 more than 4500 students, like Rachel Thompson '10, have atten-

universities: asking former students for an annual "tithe." But the 1980s see a change in that trend as major-gift fundraising became more popular. A capital campaign planned for the mid-1980s was shelved when the economy plummeted, but when William H. Mobley becomes university president in 1988, a fundraising campaign is among his top priorities.

ded Texas A&M with the financial help of a Presidents Endowed Scholarship.

## 1990s

*Capturing the Spirit*, A&M's first capital campaign establishes a six-year goal of half a billion dollars. At the time, it is the largest campaign goal ever set by a public university. John Lindsey '44 accepts the position of national chairman while Bill McCord '49 becomes the campaign's nucleus fund chairman.

In 1992, the campaign is publicly launched, and in 1998, a full 10 months ahead of schedule, the *Capturing the Spirit* campaign reaches its \$500 million goal. [Learn more about the campaign.](#)

### A Fresh Face and Fiscal Direction

[Ed Davis '67](#) takes the helm of the Foundation in 1993. With a change in leadership comes a new focus. Davis leads the charge to take a long-term portfolio strategy approach to its money management. In the 1992-93 fiscal year, contributions jump 31 percent from \$46.9 million to \$61.4 million.

### A New Home, A New Name

[Jon Hagler '58](#)—a prominent member of the Investment Advisory Committee—presents the Foundation with a lead gift of \$5 million for the Foundation's new headquarters. The completion of the [Hagler Center](#) in 1999 provides new offices and meeting areas for Foundation administrators and staff. More important, it offers a central location on the university campus to recognize and celebrate philanthropy.

When the [Gruy Fountain](#) in front of the Hagler Center was formally dedicated December 14, 2007, Rae T. and H.J. "Hank" Gruy fulfilled a dream of leaving a tangible landmark on the Texas A&M campus.

The Texas A&M University Development Foundation caps off a successful campaign and completion of its headquarters with a new name: the Texas A&M Foundation.

### The Foundation Excellence Award

In 1998, the Foundation creates the [Foundation Excellence Award \(FEA\)](#) program to aid students from historically disadvantaged groups often underrepresented in the student body, including minorities and those who face significant economic or educational hurdles.

Since its founding, more than 1,000 students from under-represented groups have attended Texas A&M with the help of an FEA.

## 2000s

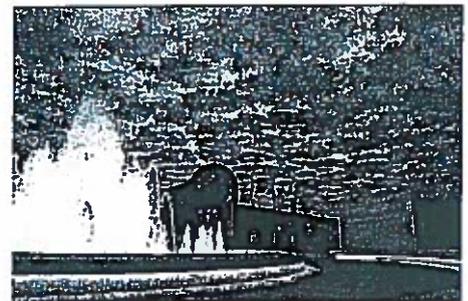
The Foundation begins the "silent phase" of the [One Spirit One Vision](#) campaign in 2000. If a \$500 million goal in the previous decade's campaign appeared audacious, this campaign's \$1 billion goal seems nothing short of staggering, especially with the capital markets reeling since the Internet bubble burst in March 2000.

The campaign comes to a close on Dec. 13, 2006. By the time all the checks are counted, more than \$1.5 billion in gifts and pledges have been made to the Foundation, the Association of Former Students, the 12th Man Foundation and the Bush Library Foundation during the seven-year campaign period. [Learn more about the campaign.](#)



### Capturing the Spirit TEXAS A&M UNIVERSITY CAMPAIGN

The Foundation's first capital campaign established a six-year goal of half a billion dollars. At the time it was the largest campaign goal ever set by a public university.



The Jon L. Hagler Center was completed in 1999, and Gruy Fountain joined the building's landscape in 2007. Photo credit: Stephen Fogg, The Battalion, 2008

### Texas A&M Legacy Society is Born

By 2004, the Foundation combines Texas A&M's two premier donor recognition societies, the Forsyth Heritage Society and University Associates, to become the A&M Legacy Society. This society recognizes donors whose cumulative, current giving to A&M totals \$100,000 or more, and individuals who plan to make future gifts through their estates. [Learn more about A&M Legacy Society membership.](#)

### A Scholarship Initiative and New Student Organization

Despite the unstable economy, in 2008 the Foundation launches *Operation Spirit and Mind<sup>SM</sup>*, a scholarship initiative to raise \$300 million for scholarships and graduate fellowships. Individuals, foundations and corporations contributed \$308.2 million to the initiative between Jan. 1, 2007, and Aug. 31, 2011. [Learn more about Operation Spirit and Mind.](#) That same year, Davis establishes a new student organization—the Maroon Coats—to serve as student ambassadors for the Foundation. Maroon Coats play a key role in helping the Foundation express appreciation to its donors by providing the student voice at Foundation events and writing or phoning donors to express gratitude for their gifts. [Learn more about the Maroon Coats.](#)



(left to right) Nick Gullemette '08, Eric Reed '08, Amber Arseneaux '09, Michael Schramm '08 and Logan Campbell '10 were the first Maroon Coats appointed by Foundation President Ed Davis.

### Our MSC: A Tribute to Honor

In 2009, the *Our MSC* campaign begins to raise \$20 million for the renovation to the Memorial Student Center. Students initiated the project, voting to increase student fees to cover \$82 million of the \$125 million total cost.

By the rededication of the MSC on April 21, 2012, donors had contributed more than \$15 million to the project, [including a \\$2 million commitment from Foundation Board of Trustee Chairman John Bathancourt.](#)



A \$2 million gift from the couple named the Debbie '76 and John '74 Bathancourt Family Ballroom in the renovated Memorial Student Center.

The Texas A&M Foundation    Toll-Free: (800) 392-3310  
401 George Bush Dr.        Main: (979) 845-8161  
College Station, TX 77840    Fax: (979) 845-3973

[Info@txamfoundation.com](mailto:Info@txamfoundation.com)



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5h

**Internal Revenue Service**

Date: April 21, 2005

TEXAS A&M FOUNDATION  
401 GEORGE BUSH DR  
COLLEGE SATATION TX 77840-281

Department of the Treasury  
P. O. Box 2508  
Cincinnati, OH 45201

Person to Contact:  
Schequistia Bolton 31-08028  
Customer Service Representative  
Toll Free Telephone Number:  
8:30 a.m. to 5:30 p.m. ET  
877-829-5500  
Fax Number:  
513-263-3756  
Federal Identification Number:  
74-2245072

Dear Sir or Madam:

This is in response to your organization's Articles of Incorporation filed with the state on December 7, 1981. We have updated our records to reflect the name as indicated above.

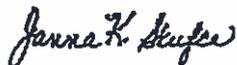
In January 1983 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code.

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Janna K. Skufca, Director, TE/GE  
Customer Account Services

## Section I

### Mission Statement

The Board of the Grand Prairie ISD Education Foundation is composed of leaders of the greater Grand Prairie Community.

The Mission of the Grand Prairie ISD Education Foundation is to promote educational excellence and to inspire community ownership, commitment, confidence, and pride in the Grand Prairie ISD.

### Goals

The Goals of the Grand Prairie ISD Education Foundation are:

- to secure resources from the private sector and distribute them to support programs which provide enriched educational experiences which are not possible through public funding and which prepare the students to become skilled, adaptable, knowledgeable, productive adults;
- to serve as a catalyst for increased community involvement in our school;
- and to ensure the long term viability and success of the Grand Prairie ISD Education Foundation.

### Objectives

#### Short Term (One Year)

Establish all organizational aspects of Foundation (structure, policies & procedures, etc.)

Define and implement initial fundraising efforts and provide operational funds to ensure necessary program funding.

#### Long Term (Five Years)

Establish Education Foundation as an integral part of the Grand Prairie Community and with significant funders (foundations, corporations).

Develop major donors

Grow Club 1970

Connect with Alumni

Obtain audit

Obtain outside grants & funding

Free flow funding?

Grow endowment fund to \$2,000,000

Education Foundation support functions are self funded.

Increase Legacy Giving (wills, insurance policy's).

## Section I

### **Mission Statement**

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### **Goals**

The Goals of the Grand Prairie ISD Education Foundation are:

- to secure resources from the private sector and distribute them to support programs which provide enriched educational experiences which are not possible through public funding and which prepare the students to become skilled, adaptable, knowledgeable, productive adults;
- to serve as a catalyst for increased community involvement in our school;
- and to ensure the long term viability and success of the Grand Prairie ISD Education Foundation.

### **Objectives**

#### Short Term (One Year)

Establish all organizational aspects of Foundation (structure, policies & procedures, etc.)

Define and implement initial fundraising efforts and provide operational funds to ensure necessary program funding.

#### Long Term (Five Years)

Establish Education Foundation as an integral part of the Grand Prairie Community and with significant funders (foundations, corporations).

Develop major donors

Grow Club 1970

Connect with Alumni

Obtain audit

Obtain outside grants & funding

Free flow funding?

Grow endowment fund to \$2,000,000

Education Foundation support functions are self funded.

Increase Legacy Giving (wills, insurance policy's).

DEC 09 2004

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: DEC 03 2004

GRAND PRAIRIE INDEPENDENT SCHOOL  
DISTRICT EDUCATION FOUNDATION  
C/O DAVID B SCHNAUFER  
2408 TEXAS DR  
IRVING, TX 75062-0000

Employer Identification Number:  
73-1697703  
DLN:  
17053293013034  
Contact Person:  
JOAN C KISER ID# 31217  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
DECEMBER 31  
Public Charity Status:  
170 (b) (1) (A) (vi)  
Form 990 Required:  
YES  
Effective Date of Exemption:  
MARCH 10, 2004  
Contribution Deductibility:  
YES  
Advance Ruling Ending Date:  
DECEMBER 31, 2008

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

If you distribute funds to other organizations, your records must show whether they are exempt under section 501(c)(3). In cases where the recipient organization is not exempt under section 501(c)(3), you must have evidence the funds will be used for section 501(c)(3) purposes.

Letter 1045 (DO/CG)

**GPISD Education Foundation 2016-2017 Board of Directors**

<b>President - Denise Clifton,</b> US Capital Advisors	<b>Rachel Brown,</b> Communi ty Volunteer
<b>Vice President - Donna Gra</b> <b>nt,</b> Principal at SGPHS	<b>Jorja Clemson,</b> Grand Pr airie City Council Memb er
<b>Secretary - Angela Sutton</b> <b>Giessner,</b> Farmers Insuranc e	<b>Alisha Crumley,</b> Principa l at Crockett Early Educa tion School
<b>Co-Secretary - Karla Chand</b> <b>ler,</b> Retired GPISD Teacher	<b>Mary Dominguez-Santin</b> <b>i,</b> Pioneer Event Center
<b>Treasurer - Nancy Wooten,</b> Retired GPISD Teacher	<b>Mal Earl,</b> Retired GPISD Teacher
<b>Immediate Past President</b> <b>- Bernie Ponzio,</b> Retired GPI SD Teacher	<b>Lindsay Fisher,</b> Commun ity Volunteer
<b>Past President - Dr. Carolyn</b> <b>Wicker,</b> 303 Animal Clinic Veterinarian	<b>Reyes Flores,</b> Encompas s Business Solutions
<b>Ex-Officio - Dr. Susan Simp</b> <b>son-Hull,</b> GPISD Superinten dent	<b>Kaye Gilbert,</b> Retired GP ISD Teacher
	<b>Brandie King,</b> Communit y Volunteer
<b>District Liaison - Dr. Lorain</b> <b>e Morazzano,</b> Chief of Hum an Capital	<b>Jake Kuykendall,</b> Americ an National Bank of Tex as

**District Liaison - Alex Geerts, GPISD Events and Special Projects Coordinator**

**Edward Lopez, Lineberger, Goggan, Blair & Sampson**

**Steve Pryor, CUMULUS - KTCK/CLIF-FM and GPISD Board of Trustees**

**Lesta Watson, Community Volunteer**



July 15, 2019

Chuck Trout  
Executive Director  
Texas Racing Commission  
PO Box 12080  
Austin, TX 78711

Dear Mr. Trout,

Written on behalf of the board of directors of the Texas Thoroughbred Association, this letter is to address race date applications submitted by the Class 1 racetracks. We support the requests as a **minimum number of race days for each track**, and urge them to add as many days as practicable as additional purse funds become available.

We look forward to working with the Commission, Texas Horsemen's Partnership and racetrack management to ensure successful Thoroughbred meets for all participants.

Sincerely,

Mary Ruyle  
Executive Director

cc: Bart Lang, Lone Star Park  
Steve Ross, Retama Park  
Dwight Berube, Sam Houston Race Park



## RETAMA PARK

July 15, 2019

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, TX 78754

Dear Mr. Speight:

Pinnacle Retama Partners, LLC, license holder on behalf of Retama Park Race Track, respectively requests a 28-date Mixed Meet for 2020, beginning on Friday, July 3, 2020 and ending on Wednesday, September 9, 2020.

Quarter Horse racing will be conducted on Fridays and Saturdays beginning July 3, 2020 with a post time of 6:45 p.m., with three Fridays (7/17, 8/7 and 8/21) and three Saturdays (7/18, 8/8 and 8/22) dark to avoid an overlap on the weekends Gillespie is racing. Thoroughbred racing will be on Tuesdays and Wednesdays, at 7:30 p.m., beginning on July 28, 2020, nine days after Lone Star closes on July 19, 2020.

As we discussed on the phone, Retama Park's preference would have been to apply for 2020 dates after the completion of its 2019 meet. That not being an option, we may submit a request to modify these dates at some time in the future.

Please let me know if you have any questions.

Sincerely,

Steve Ross  
Director of Racing Operations

**T E X A S   R A C I N G   C O M M I S S I O N**  
**R E Q U E S T   F O R   P E R F O R M A N C E S**  
**H O R S E   R A C E T R A C K S**

**January 1, 2020 – December 31, 2020**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

**I. Schedule Requested**

Name of Racetrack: **Retama Park**

<b>First Meet</b>	Opening Day: <u><b>7/3/2020</b></u>	Closing Day: <u><b>9/9/2020</b></u>
Meet Type: <input type="checkbox"/> TB <input type="checkbox"/> QH <input checked="" type="checkbox"/> MX		Total Number of Race Days <u><b>28</b></u>
<input checked="" type="checkbox"/> Thoroughbred	# of Races Per Day <u><b>8.5</b></u>	Projected Purse Per Day <b>\$100,000</b>
<input checked="" type="checkbox"/> Quarter Horse	# of Races Per Day <u><b>9.9</b></u>	Projected Purse Per Day <b>\$55,000</b>
<input checked="" type="checkbox"/> Arabian	# of Races Per Day <u><b>0.5</b></u>	Projected Purse Per Day <b>\$5,000 *</b>
<input checked="" type="checkbox"/> Paint Horse	# of Races Per Day <u><b>0.1</b></u>	Projected Purse Per Day <b>\$12,500 *</b>
<b>Totals</b>	# of Races Per Day <u><b>10.0</b></u>	Projected Purse Per Day <b>\$100k/55k</b>

Retama Park will conduct one Mixed Meet, with quarter horses racing on Fridays and Saturdays beginning July 3, 2020 and thoroughbred racing on Tuesdays and Wednesdays beginning on July 28, 2020. A total of 14 QH days and 14 TB days. There are a few weekends that Retama Park will be dark to avoid an overlap with Gillespie. See attached calendar.

\*Minor – Two Paint Stakes reces during the meet depending on available purse money. Arabian races subject to availability of horses and purse money. Retama Park will work in good faith with Ed Wilson of the TABA to provide racing opportunities for Arabians.

Retama Park would have preferred to submit this application after the completion of its 2019 meet. That not being an option, Retama Park may request to revise these dates at some future date.

## II. Negotiation with Breed Registries

Specify how the total races scheduled for 2020 will be allocated among the various breeds:

Appaloosa	____%	Arabian	<u>2.3 %</u>	Paint	<u>0.8 %</u>
Quarter Horse	<u>51.9 %</u>	Thoroughbred	<u>45.1 %</u>		

Check all that apply:

- Attached are letters from the affected breed registries that have agreed to this allocation.
- The \_\_\_\_\_ breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

### Participants in Negotiations

The proposed 2020 calendar is similar to Retama Park's 2019 calendar. It was emailed to industry representatives on July 11, 2019.

Ed Wilson of the TABA issued a statement of support, which is included with the application.

The THP issued a letter stating they cannot support any application until the effects of HB 2463 and HB 1995 are determined. A letter from Marsha Rountree is included with the application.

As of this writing, I haven't received a position statement from the TTA or TQHA. I will forward that to the Commission when I get something.

### III. Dates Requested

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

### IV. Charity Days

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: 9/1/2020

Day 2: 9/8/2020

Day 3 (Optional): \_\_\_\_\_

Day 4 (Optional): \_\_\_\_\_

Day 5 (Optional): \_\_\_\_\_

Identify the charities:

#### *REQUIRED BY RULE*

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: RTCA – South Texas Chapter  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: Texas A&M University Equine Research  
(Name of Charity)



# Retama Park

## Requested Performances for 2020

<b>July</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 QH 6:45	4 QH 6:45 *
5	6	7	8	9	10 QH 6:45	11 QH 6:45
12	13	14	15	16	17	18
19	20	21	22	23	24 QH 6:45	25 QH 6:45
26	27	28 T 6:45	29 T 6:45	30	31 QH 6:45	

\* May change to 7:30 to accommodate Gillespie

<b>August</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 QH 6:45
2	3	4 T 6:45	5 T 6:45	6	7	8
9	10	11 T 6:45	12 T 6:45	13	14 QH 6:45	15 QH 6:45
16	17	18 T 6:45	19 T 6:45	20	21	22
23	24	25 T 6:45	26 T 6:45	27	28 QH 6:45	29 QH 6:45
30	31					

<b>September</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 T 6:45	2 T 6:45	3	4 QH 6:45	5 QH 6:45
6	7	8 T 6:45	9 T 6:45	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

**Retama Park Proposed  
2020 Race Day Calendar**

July	August	September
1 We	1 Sa	1 Tu
2 Th	2 Su	2 We
3 Fr	3 Mo	3 Th
4 Sa	4 Tu	4 Fr
5 Su	5 We	5 Sa
6 Mo	6 Th	6 Su
7 Tu	7 Fr	7 Mo <small>Labor Day</small>
8 We	8 Sa	8 Tu
9 Th	9 Su	9 We
10 Fr	10 Mo	10 Th
11 Sa	11 Tu	11 Fr
12 Su	12 We	12 Sa
13 Mo	13 Th	13 Su
14 Tu	14 Fr	14 Mo
15 We	15 Sa	15 Tu
16 Th	16 Su	16 We
17 Fr	17 Mo	17 Th
18 Sa	18 Tu	18 Fr
19 Su	19 We	19 Sa
20 Mo	20 Th	20 Su
21 Tu	21 Fr	21 Mo
22 We	22 Sa	22 Tu
23 Th	23 Su	23 We
24 Fr	24 Mo	24 Th
25 Sa	25 Tu	25 Fr
26 Su	26 We	26 Sa
27 Mo	27 Th	27 Su
28 Tu	28 Fr	28 Mo
29 We	29 Sa	29 Tu
30 Th	30 Su	30 We
31 Fr	31 Mo	

Corrected

Racing 9/4 & 9/5  
not 9/5 & 9/6

On Fri, Jul 12, 2019 at 1:03 PM Steve Ross <retamapark@gmail.com> wrote:

The calendar needs one correction. It show QH racing on Saturday and Sunday, September 5 and 6. That should be Friday, September 4 and Saturday, September 5. I will fix it and send a new one.

Thanks.

Steve

On Fri, Jul 12, 2019 at 8:11 AM Steve Ross <retamapark@gmail.com> wrote:

Although Retama Park would prefer to wait until this year's meet is over before requesting dates for 2020, the Commission has imposed a deadline of this Tuesday, July 16 for submitting an application. They need the information now for budgeting purposes.

That being the case, Retama Park will submit an application with 2020 dates essentially the same as this year's dates, starting on Friday, July 3 and continuing through Tuesday, September 9.

The calendar is shown below and attached as a PDF . Retama Park QH is light purple, Retama Park TB is green, Gillespie is orange and Lone Star TB is blue (assuming last day July 19). Only one day of overlap with Gillespie, July 4.

I am happy to discuss this with anyone interested in doing so. Please call me at 210-862-7099.

The application asks that we submit a position statement from each breed association and the THP either supporting or not supporting the date request. I would greatly appreciate if you would send me something and copy Joel Speight and Ricky Walker. I'm sure forwarding a copy of this email with your statement will suffice. Thanks.

Steve

**Retama Park Proposed  
2020 Race Day Calendar**

			Lone Star TB	Retama QH	Retama TB
July	August	September			
1 We	1 Sa	1 Tu			
2 Th	2 Su	2 We			
3 Fr	3 Mo	3 Th			
4 Sa	4 Tu	4 Fr			
5 Su	5 We	5 Sa			
6 Mo	6 Th	6 Su			
7 Tu	7 Fr	7 Mo <small>Lone Day</small>			
8 We	8 Sa	8 Tu			
9 Th	9 Su	9 We			
10 Fr	10 Mo	10 Th			
11 Sa	11 Tu	11 Fr			
12 Su	12 We	12 Sa			
13 Mo	13 Th	13 Su			
14 Tu	14 Fr	14 Mo			
15 We	15 Sa	15 Tu			
16 Th	16 Su	16 We			
17 Fr	17 Mo	17 Th			
18 Sa	18 Tu	18 Fr			
19 Su	19 We	19 Sa			
20 Mo	20 Th	20 Su			
21 Tu	21 Fr	21 Mo			
22 We	22 Sa	22 Tu			
23 Th	23 Su	23 We			
24 Fr	24 Mo	24 Th			
25 Sa	25 Tu	25 Fr			
26 Su	26 We	26 Sa			
27 Mo	27 Th	27 Su			
28 Tu	28 Fr	28 Mo			
29 We	29 Sa	29 Tu			
30 Th	30 Su	30 We			
31 Fr	31 Mo				

## ***RTCA Vision/Mission Statement***

The Race Track Chaplaincy of America, Inc. is an evangelical, interdenominational, Christian organization whose purpose is to minister to those persons involved in all aspects of the horse racing industry. A Board of Directors who serves voluntarily, without compensation guides this non-profit, tax-exempt Corporation. The Ministry of the Race Track Chaplaincy of America, Inc. is carried out by Chaplains who are employed, supported, and supervised by Local Councils that take responsibility for the work on a particular track or group of tracks. In order to provide the horse racing industry with the best possible pastoral care, the RTCA, Inc. seeks to employ as Chaplains only those ministers who meet the highest standards of spiritual maturity, personal integrity, commitment, concern, education, training, and abilities. The Local Councils are comprised of both clergy and laypersons from the surrounding community and from the racing industry. These individuals serve voluntarily, out of a sense of commitment to the vision of the Race Track Chaplaincy of America, Inc.

The primary focus of the Race Track Chaplaincy of America, Inc. is to serve all those who are involved in the horse racing industry; this includes those found in the stable area, on the track, in the front offices, in the grandstands or clubhouse, at a training facility, or on a breeding farm, including horse owners and racing fans.

The Ministry of the Race Track Chaplaincy of America, Inc. is based upon the belief that it is God's desire that every person, including those in the horse racing industry, should have a personal relationship with Jesus Christ, resulting in a life that is full and abundant in its nature and eternal in its scope. Built upon that belief, the work of the Race Track Chaplaincy of America, Inc. is holistic in its approach; ministering not only to the spiritual needs of those in the horse racing industry, but to their physical, emotional and social needs as well.

**RTA BOARD MEMBERS**

**CHAPLAIN MICHAEL BINGAMAN**

8316 Morning Grove  
Converse TX 78109  
210-887-5581 cell  
210-277-7490 home

**ALFRED "FRITZ" NOLTING -PRESIDENT**

580 Leissner School Rd  
Seguin, TX 78155

220-273-1192

**MARSHA ROUNTREE-VICE PRESIDENT**

13410 Sandeen Rd  
Manor, TX 78653

512-657-9799

**PAM WILLIAMS- SECRETARY**

633 Rodlyn Dr  
Boerne, TX 78006

210-218-9159

**CATHY DAVIES - TREASURER**

114 Wickford Way  
San Antonio TX 78213  
210-414-2062 cell

**DENNIS SHERMAN**

5335 Vista Glen  
San Antonio TX 78247

**WILMA WRIGHT**

PO Box 248  
Adkins TX 78101

Address any reply to: P. O. Box 737, Atlanta, Georgia 30301

**Department of the Treasury**

**District Director  
Internal Revenue Service**

Date: MAY 23 1972

In reply refer to:  
411-12:MFM:A2110



▷ Race Track Chaplaincy of America, Inc.  
631 East 1 Ave.  
Hialeah, Fla. 33010

Gentlemen:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Pending issuance of regulations under section 509 of the Code, we are unable to determine whether you are a private foundation as defined in that section. After the regulations are issued, we will evaluate your application and notify you of your status under section 509. If we determine you are a private foundation, your governing instrument will have to meet the requirements of Code section 508(e) and the regulations under that section. Failure to comply with these requirements will result in retroactive revocation of this determination.

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for the taxes imposed under the Federal Unemployment Tax Act (FUTA). However, you are not automatically exempt from Federal excise taxes, and in this letter we are not determining whether you are exempt from any such taxes.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes under sections 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operation is changed, you must let us know so we can consider the effect of the change on your exempt status. Also, you must inform us of all changes in your name or address.

Please refer to the instructions accompanying Form 990, Return of Organization Exempt From Income Tax, to determine whether you are required to file that return. If required, you must file by the 15th day of the fifth month

SE DIR A FORM AUD-172-A (Rev. 7-71)

after the end of your annual accounting period. The law imposes a penalty of \$10 a day, up to a maximum of \$5,000, for failure to file a return on time.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

Please keep this determination letter in your permanent records.

Sincerely yours,

*W. T. Coppinger*  
W. T. Coppinger  
District Director

Address any reply to: P. O. Box 737, Atlanta, Georgia 30301

Department of the Treasury

*Permanent file*

District Director  
Internal Revenue Service

Date: JUN 11 1973 | In reply refer to: 411-12:CA:S-340



▷ Race Track Chaplaincy of America, Inc.  
631 East 1st Avenue  
Hialeah, Florida 33010

Gentlemen:

We have evaluated your notification concerning foundation status and, based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Internal Revenue Code because you are an organization described in section 170(b)(1)(A)(vi).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes.

You must keep us informed of any changes in your sources of support and method of operation so that we may consider the effect on your status.

Please keep this determination letter in your permanent records.

Sincerely yours,

*W. L. Womack*

Exempt Organization Specialist

SE DIR A FORM AUD-193 (Rev. 5-72)

FORM SS-4  
(3-69)  
PART 4

NOTICE OF EMPLOYER  
IDENTIFICATION NUMBER

Please make a separate  
record of this number for  
use in case this notice →  
should be lost or destroyed.

23 7181877

THE RACE TRACK CHAPLAINCY OF AMERICA, INC.

None

631 E. 1 Ave., Hialeah, Fla. 33010

Hialeah, Fla. 33010

Dade

The Identification Number shown above will be used by the Internal Revenue Service to identify your Federal tax returns, and other documents, i.e., 1120, 940, 941, etc., and your payments of the taxes reported on such returns. Your Identification Number should be shown on such returns, documents, and on any related forms or correspondence.



Steve Ross

---

**Re: Retama Park Charity Day**

1 message

---

**Heird, James C**  
To: Steve Ross  
Cc: Anna Morrison

Mon, Jun 27, 2016 at 1:27 PM

Steve,

We have been trying to find answers to your questions about past activity for this grant. Several key people who hopefully have the answers needed have been out of the office on vacation. We are continuing to try to get in touch with them to get your answers. If we can't get answers by Thursday, yes, we can accept the grant as a Charity Day recipient through the Texas A&M Equine Initiative. Contact info is on this email.

If we get answers before Thursday, we will let you know.

I am sorry for the delay, but our group hasn't worked on these projects, so it has been slow for us to get info for you.

jim

**Dr. Jim Heird**

Glenn Blodgett Equine Chair

Executive Professor, Coordinator of the Equine Initiative

Texas A&amp;M University

2255 TAMU

3240 F&amp;B Road

College Station, TX 77843-2255

Office: 979.845.6098

Cell: 970.222.1489

**Welcome to Aggieland**

---

**From:** Steve Ross**Date:** Monday, June 27, 2016 at 10:16 AM**To:****Subject:** Fwd: Retama Park Charity Day

Hi Dr. Heird,

The deadline for Retama Park's 2017 race date application is this Thursday. Do you think you will be able to provide the information the Commission requires? If not, I will submit the application naming Texas A&M University Equine Research as a Charity Day recipient with your contact information, if that is okay with you.

Thanks.

Steve

----- Forwarded message -----

6/27/2016

Gmail - Re: Retama Park Charity Day

**From: Steve Ross**  
**Date: Mon, Jun 13, 2016 at 12:08 PM**  
**Subject: Retama Park Charity Day**  
**To:**

Hi Dr. Heird,

Each year, Retama Park Race Track near San Antonio designates two charity days that provide funds for a worthwhile equine-related cause.

For as long as I can remember, Texas A&M University Equine Research has been a recipient. As part of the process, Retama Park is required to provide specific information about the charity to the Texas Racing Commission. Please see pages 1 and 2 of the attached, excerpted from our 2017 Race Date Application, that lists what is required. Page 3 is what we have used historically but appears to be dated and not entirely complete.

Is this something you can help me with? Our deadline to submit our application to the Commission is June 30. so we have a couple weeks.

Please do not hesitate to call with any questions. My cell is [210-862-7099](tel:210-862-7099).

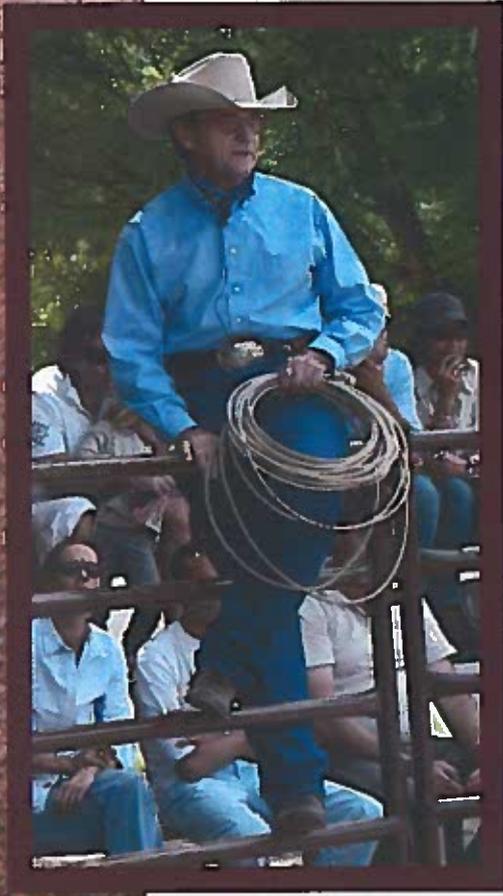
Thanks.

Steve Ross  
Director of Racing Operations  
Retama Park

# EQUINE INITIATIVE



# Welcome



I am honored and excited to introduce you to the Equine Initiative at Texas A&M University. Texas A&M is making a dedicated effort to develop the best collaborative equine program in the world. Our goal is to provide the equine industry with the most complete equine educational opportunities, the most knowledgeable faculty and the best equine veterinary care available anywhere.

Texas A&M is world renowned for its equine programs in the Department of Animal Science, the College of Veterinary Medicine & Biomedical Sciences and in Texas AgriLife Extension. Its research programs in equine reproduction and biotechnology, nutrition, epidemiology, genetics and various areas of equine disease prevention and management have notable reputations. For generations the 4H horse program in Texas has been a model for other states to follow.

Today our industry demands more than it ever has in the past. The needs of the horse industry of Texas, the nation and the world for scientific expertise, off-campus engagement, and graduates capable of leading the industry is greater than ever before. By combining the expertise available on its campus in veterinary medicine, animal science, business, facility and event management and international studies, Texas A&M intends to be the ultimate measure for all equine programs around the globe.

The administration of Texas A&M is committed to the goal of enhancing its connections to today's equine industry. Accomplishment of this vision will require strong partnerships between the various existing equine interests on campus, enrichment of existing curricula, greater and more detailed engagement activities, construction of state of the art facilities and finally support from the equine industry in Texas as well as the nation and the world.

This dream can be accomplished. I hope that you will take the time to dream and build with us. Most importantly I hope you appreciate the value of this plan to the equine industry now and in the future.

Sincerely,

Jim Heird  
Executive Professor & Coordinator  
Equine Initiative  
Texas A&M University

# Agriculture & Life Sciences



Horses have been a vital part of Texas A&M University since its beginning. The Department of Animal Science has been a leader in equine research, undergraduate instruction and graduate training for generations. Today Texas A&M is home to a nationally competitive horse judging program, NCAA equestrian team and men's and women's polo teams. The Texas AgriLife Extension Service has fostered the growth of Texas youth interested in horses as long as any state in the nation. At Texas A&M, we have been and remain committed to the horse industry.

The horse industry is changing and the demand for Texas A&M to lead and assist the equine industry is greater than ever before. We must graduate students who can move into leadership roles within the industry and our research must answer key industry and scientific questions. Our extension and outreach efforts must provide continuing education to equine owners and participants in Texas and beyond. Our clientele includes established breeders and professionals as well as the novice participant. As the land grant university of Texas, we serve the Texas equine industry - the largest in the nation.

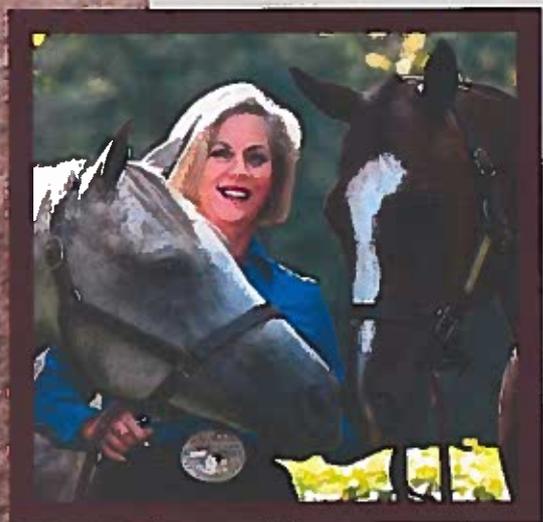
In order for us to fulfill our potential as the most comprehensive equine educational program in the country we must work together. This will be accomplished through enhanced partnerships between the equine programs of the College of Veterinary Medicine & Biomedical Sciences and the College of Agriculture & Life Sciences. It also includes utilizing the expertise available in areas such as agricultural economics, business, government and policy, as well as traditional animal science courses and programs. By establishing the Equine Initiative, Veterinary Medicine and Agriculture and Life Sciences have the commitment of the leadership of Texas A&M to build the best program possible.

I, along with Dr. Eleanor Green, believe we can achieved recognition as the highest-ranked equine program in the nation. I invite you to be a part of this ambitious endeavor. Give us your support and your input as we embark on this journey to greater excellence in equine sciences. At Texas A&M we will not only continue our heritage of partnering with the Equine Industry, we will do even more to serve the horse industry of this great state.

Sincerely,

Mark Hussey  
Vice Chancellor & Dean  
College of Agriculture & Life Sciences  
Texas A&M University

# Veterinary Medicine & Biomedical Sciences



Throughout the course of history, beside the footprint of man is the hoof print of the horse. Nowhere else is this statement truer than in Texas. Historic ranches continue to thrive within an increasingly urban society alongside continually advancing technologies. The horse industry is a formidable force in Texas. Its nearly one million horses, comprising almost 10% of the nation's equine population, rank Texas #1 in total numbers of horses. The Texas horse industry is an economic powerhouse responsible for a \$5.2 billion impact on the state's economy, the creation of nearly 100,000 jobs, and the involvement of ½ million people. At Texas A&M University, the land grant institution of the State of Texas, we are fortunate to exist within this equine backdrop and at the same time be able to advance the health and welfare of both horses and the horse industry.

The College of Veterinary Medicine & Biomedical Sciences at Texas A&M, one of the best in North America, takes its role seriously in serving Texas. It has created a notable equine program and arguably the best equine reproduction program in the world. The College is committed to equipping students with the medical knowledge and professional skills to be practice-ready upon graduation, and it is working.

Texas A&M boasts highly ranked colleges of veterinary medicine and agriculture. When veterinary medicine and agriculture "partner up," they are unstoppable. Today they have joined forces to create the Equine Initiative. The Equine Initiative at Texas A&M University will earn acclaim across the horse industry through its impact on equine health and welfare and on the young professionals seeking careers in the horse industry and veterinary profession. Texas A&M's reputation as the best in the world will be well founded on the Equine Initiative's performance and success in advancing the horse industry and Texas A&M University.

As you learn about the Equine Initiative at Texas A&M, imagine the scope of collaborations and partnerships that will be built. Imagine how Texas A&M graduates will contribute to sustained viability of the horse industry. Imagine the skill set of equine veterinarians who benefit from the effort of the Equine Initiative before receiving their Doctor of Veterinary Medicine from Texas A&M University. Imagine how the rich heritage of Texas will be built upon as Texas and horses continue to be linked by many across the nation and the globe. Where else but in Texas? Gig 'em!

Sincerely,

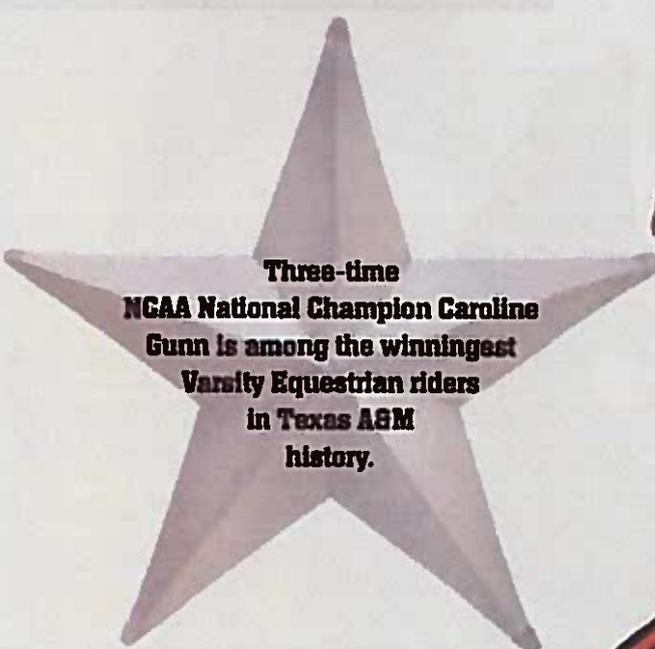
Eleanor M. Green  
Carl B. King Dean of Veterinary Medicine  
College of Veterinary Medicine & Biomedical Sciences  
Texas A&M University

# The Equine Initiative at Texas A&M University

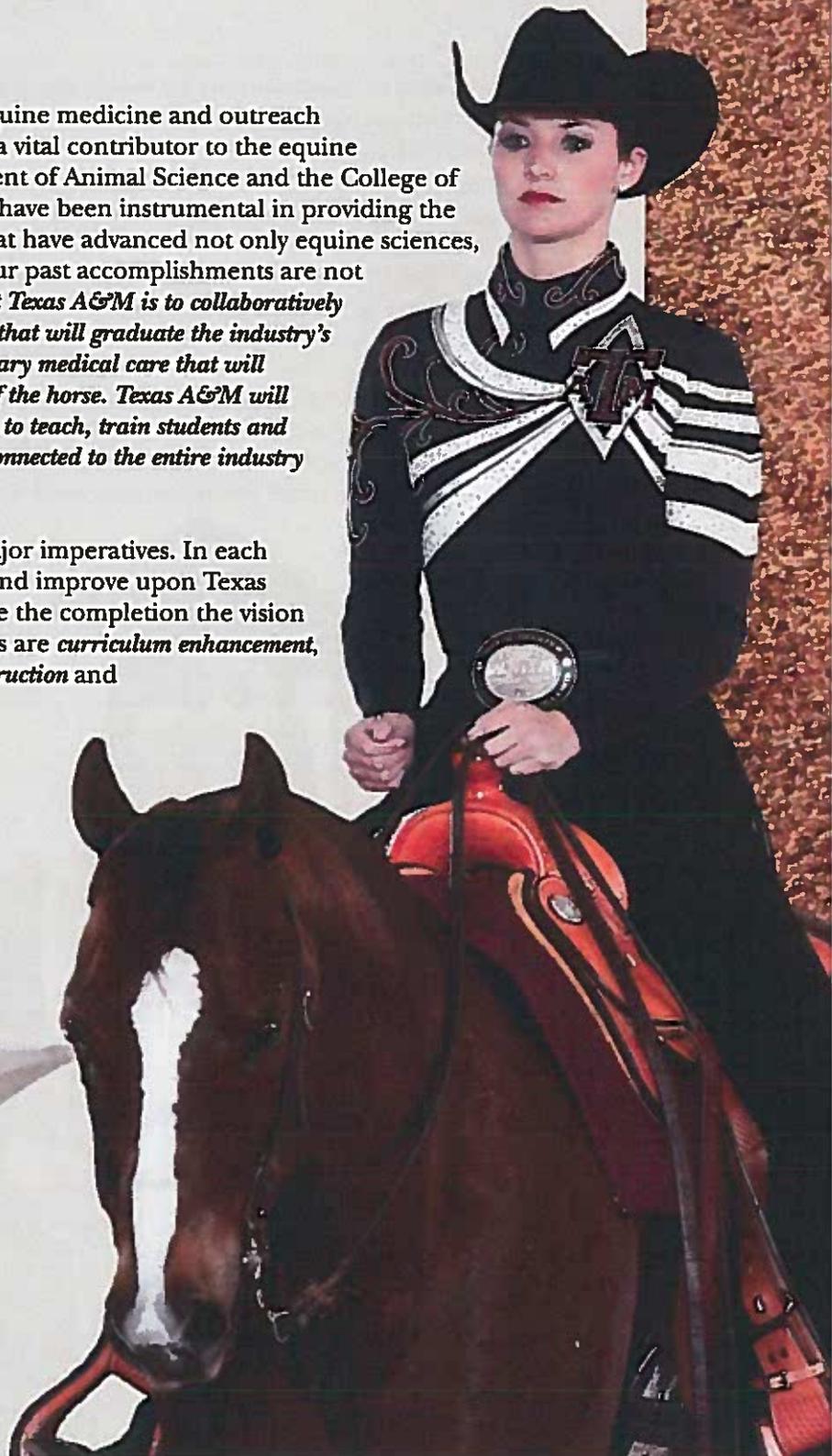


With a long history of teaching, research, equine medicine and outreach excellence, Texas A&M University has been a vital contributor to the equine industry for generations. Both the Department of Animal Science and the College of Veterinary Medicine & Biomedical Sciences have been instrumental in providing the equine industry with knowledge and care that have advanced not only equine sciences, but the welfare of the horse as well. Today our past accomplishments are not enough. *The purpose of the Equine Initiative at Texas A&M is to collaboratively utilize our expertise to build an equine program that will graduate the industry's future leaders and generate research and veterinary medical care that will improve the industry and the care and welfare of the horse. Texas A&M will build complete and modern facilities from which to teach, train students and conduct research. Further, Texas A&M will be connected to the entire industry through extensive outreach activities.*

The Equine Initiative has developed four major imperatives. In each of these areas, the focus will be to enhance and improve upon Texas A&M's existing strengths in order to facilitate the completion the vision of the Equine Initiative. The four imperatives are *curriculum enhancement, outreach & engagement expansion, facility construction and partnership development.*



**Three-time  
NCAA National Champion Caroline  
Gunn is among the winningest  
Varsity Equestrian riders  
in Texas A&M  
history.**

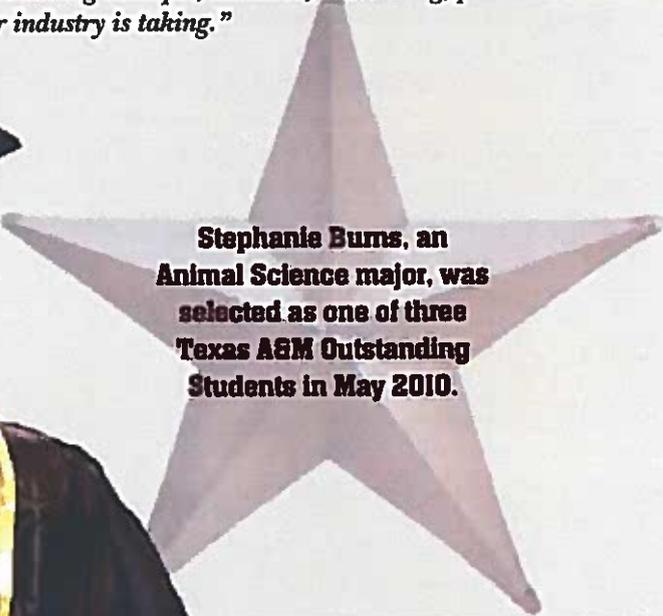


# Curriculum Enhancement



With over 80% of the jobs in the equine industry in areas other than equine production, it is critical that Texas A&M's graduates are trained in all areas of the industry. Texas A&M needs to be certain that its curriculum trains students who are able to meet the industry's demand for expertise in all areas of equine studies, including science, business and management, international experience and leadership - and become the industry's future leaders.

Dan Rosenberg, international industry consultant and former President and CEO of Three Chimneys Farm in Lexington Kentucky, said it best during the program assessment in early 2010. *"In the 60's, early 70's, and before, our industry was a husbandry based industry. In the 70's, 80's and 90's we added science to our husbandry knowledge. Now is the time to move to a business based education model that will allow graduates to utilize not only the knowledge we have acquired for generations, but also to be trained to manage our people, our assets and our bottom line. This will require young people capable of understanding marketing concepts, taxation, accounting, personnel management, and the broad global approach our industry is taking."*



**Stephanie Burns, an Animal Science major, was selected as one of three Texas A&M Outstanding Students in May 2010.**



# Outreach & Engagement Expansion



The Texas A&M Equine Initiative will encourage expanded engagement with the industry beyond existing excellence in Texas AgriLife Extension. The initiative will facilitate greater outreach education offerings to Texas and beyond. Texas A&M is a brand recognized and respected around the world. It is located in a state with a tremendous reputation for quality horses. By utilizing the total academic expertise on its campus, Texas A&M and Texas AgriLife Extension can meet the continuing education needs of the equine industry. With its historic brand, location and available expertise, the time is right for Texas A&M to become the world's leader in equine education.



**Texas A&M University  
is the only veterinary school  
in the state of Texas.  
125 new veterinarians  
graduate from Texas A&M  
each year.**

# Facility Construction



**The Texas A&M Varsity  
Equestrian Western Squad  
won its third  
consecutive National  
Championship in  
April 2011.**

Texas A&M will develop state-of-the-art facilities from which to teach, house student activities, conduct research, and serve the industry. In order for graduates to be able to manage state-of-the-art facilities, they must be exposed to outstanding facilities. Students need to experience management techniques and practices that emulate the best in the industry today. In order to appreciate the vital partnerships that exist between veterinary medicine and management practices in successful operations, students must see these practices in action.

In addition to teaching and training students, Texas A&M has several student organizations that are recognized as the best in the country.

For example, in 2011, for the third year in a row and the fourth time in five years, the Texas A&M NCAA Equestrian Team earned a national championship in NCAA Western competition.



# Facility Construction



The 2010 Texas A&M Men's Polo Team won another national championship and the Women's Team earned a reserve national championship. The Rodeo Team is and has for many years been one of the best programs in the country. The Stock Horse Team, although new, has begun to establish a tradition of excellence and enthusiasm, and the Parsons Mounted Cavalry is one of the most visible equine groups in Texas A&M's intercollegiate equine activities.

These are student equine groups and a part of a total equine program at Texas A&M. These outstanding student representatives of the university should be housed in facilities, on campus, of which they can be proud.

The goal of the Equine Initiative is to unite these excellent teams, teaching and research, and production programs at a single on-campus facility. This will be a facility for which not only faculty and students can feel a sense of pride and ownership, but one that all Aggies and Texans can proudly claim.



**The Texas A&M Men's Polo Team was the 2010 National Champion, and the Women's Polo Team earned the 2010 Reserve National Champion title.**

# Partnership Development



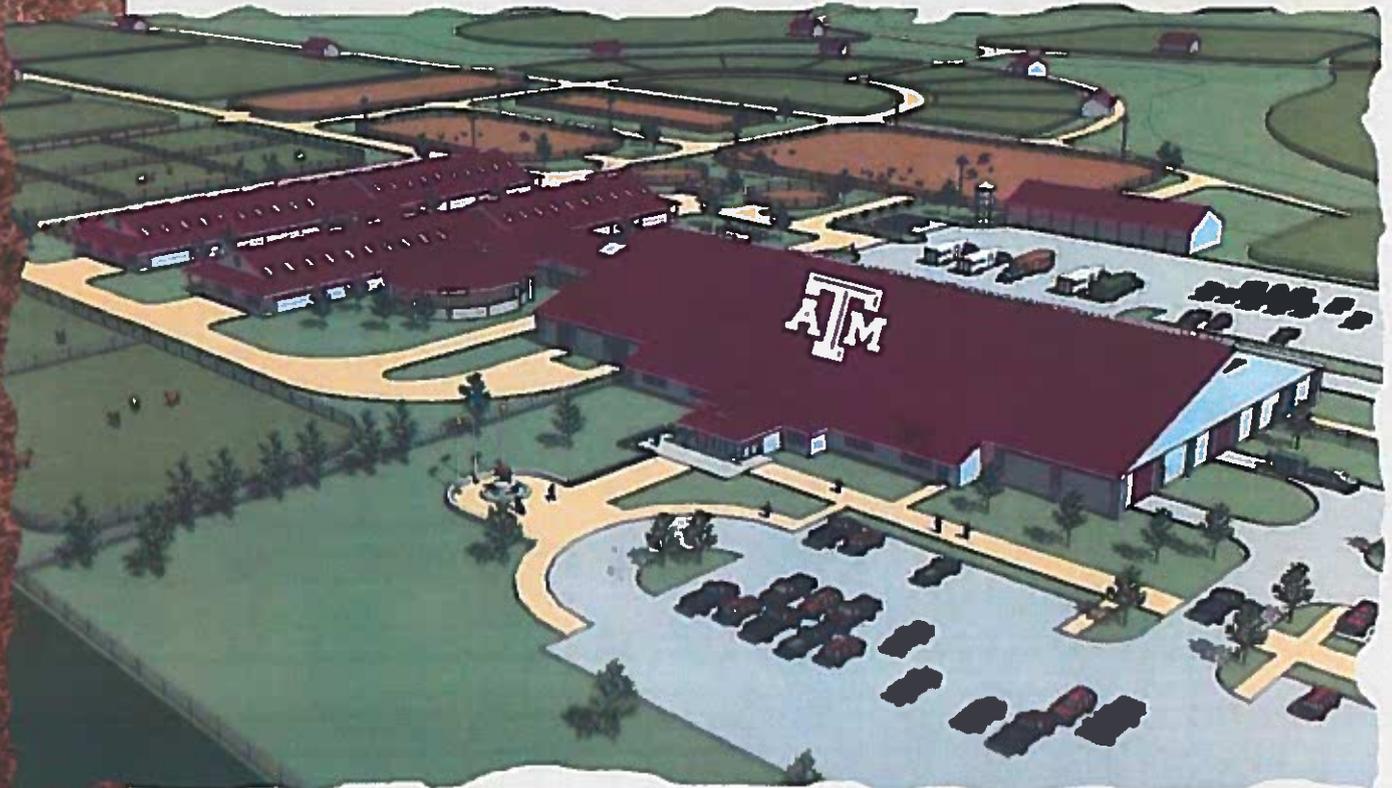
The fourth imperative for the initiative will be a development campaign with three major areas of emphasis. These areas of emphasis are:

### *Construction of facilities.*

In order to have the facilities previously described, the equine industry will need to help support this major undertaking. This is an opportunity to be a part of a unique dream—a dream to make Texas A&M the best in the world.

Partners supporting construction of the new facility will have unique opportunities to be recognized through naming rights including, but not limited to, the following areas:

- ★ Total Facility
- ★ NCAA Equestrian Barn, Arena & Locker Rooms
- ★ Polo Barn, Arena & Locker Rooms
- ★ Undergraduate Teaching Center
- ★ Mare & Stallion Reproduction Centers
- ★ Equine Nutrition Center
- ★ Outreach & Conference Center
- ★ Parsons Mounted Cavalry Facility



# Partnership Development



## *Creation of endowments to support vital faculty positions.*

Texas A&M is always in competition with other institutions to hire, retain and support outstanding faculty. In order to guarantee that the best people in the industry are hired, retained and prosper at Texas A&M, the establishment of endowed professorships is essential. These professorships will enable the University to offer competitive salaries and support to its best and brightest faculty members and leaders. The best programs are built and sustained by the best faculty. Endowed professorships are necessary to recruit and retain faculty of notoriety.

Endowments will be sought for the following faculty positions:

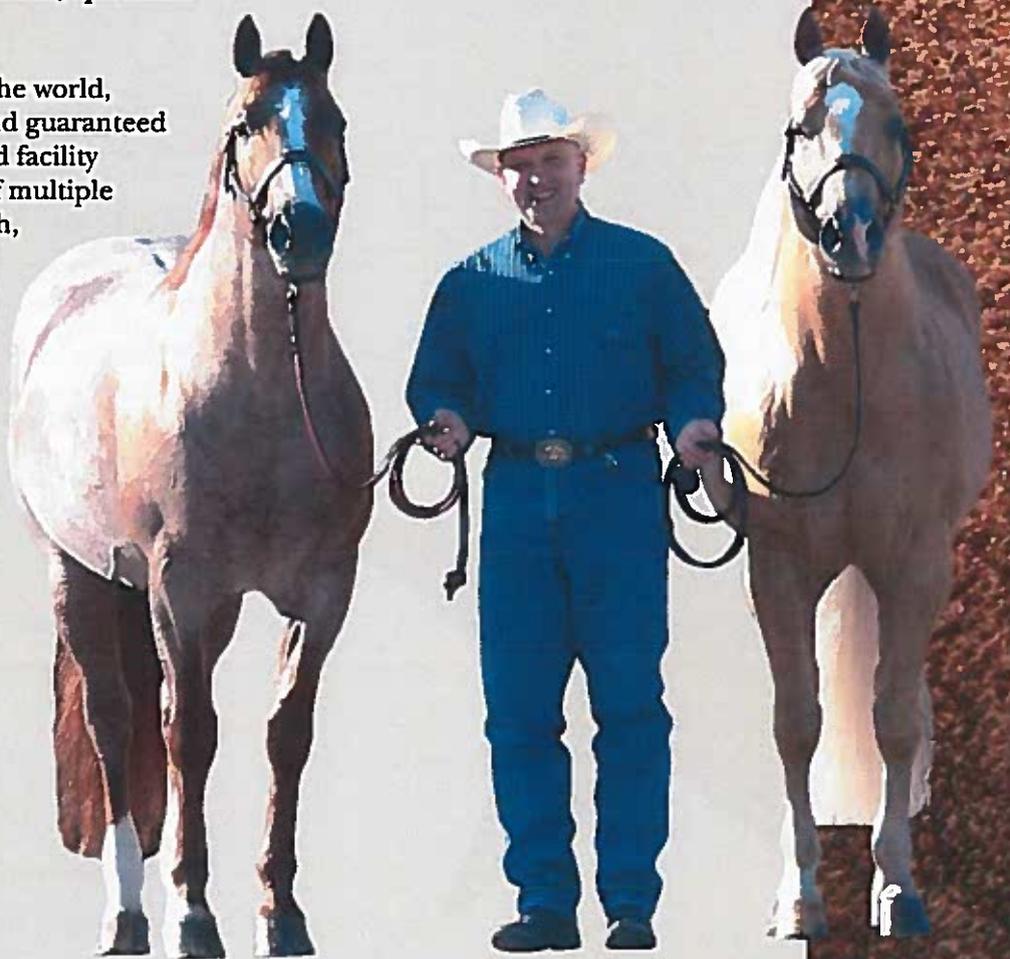
- ★ Coordinator of the Equine Initiative
- ★ Clinical Science Faculty
- ★ Equine Executive in Residence

## *Creation of endowments to support research, operations and facility management.*

To be the best equine program in the world, Texas A&M must have protected and guaranteed funding for research, operation and facility management. The establishment of multiple endowments for support of research, student organizations and clubs, as well as overall operational support, is essential to reach the pinnacle of the equine world. These endowments guarantee that Texas A&M will be at the forefront of the equine industry now and well into the future.

Endowments to support the following areas are vital to the future success of equine programming at Texas A&M:

- ★ Facility Operating Endowment
- ★ Research Endowment
- ★ Teaching Endowment





**COLLEGE OF AGRICULTURE & LIFE SCIENCES  
VETERINARY MEDICINE & BIOMEDICAL SCIENCES**



*Dr. Jim Heird  
Executive Professor & Coordinator*

*Anna McNaught  
Program Coordinator*

*1500 Research Parkway, Suite 202B  
2254 TAMU  
College Station, TX 77843-2254  
Tel. 979.845.6098  
Fax 979.862.1534  
tamuequine.com*



*Cover image courtesy of the George Bush Presidential Library and Museum*



July 15, 2019

Sent Via Electronic Mail

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711

Dear Mr. Speight:

Sam Houston Race Park was granted both Thoroughbred and Quarter Horse racing dates in 2020 at the Texas Racing Commission meeting on August 14, 2018. Therefore, it is not necessary for Sam Houston Race Park to submit a request for 2020 racing dates during the application period currently pending before the Commission.

Our request for 2021 Thoroughbred and Quarter Horse dates will be submitted during the next application period.

Please let me know if you have any questions.

Sincerely,

Dwight Berube,  
Vice President and General Manager  
Sam Houston Race Park

Cc: Marsha Rountree (THP)  
Mary Ruyle (TTA)  
Rob Werstler (TQHA)  
Frank Hopf (SHRP)

SAM HOUSTON RACE PARK LTD.

7575 North Sam Houston Parkway West, Houston, TX, 77064 • 281.807.8700 • shrp.com

**T E X A S R A C I N G C O M M I S S I O N**  
**R E Q U E S T F O R P E R F O R M A N C E S**  
**H O R S E R A C E T R A C K S**

**January 1, 2020 – December 31, 2020**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

**I. Schedule Requested**

Name of Racetrack: Fredericksburg Downs, Inc.

**First Meet**                      Opening Day: 07 / 04 / 20                      Closing Day: 08 / 23 / 20

Meet Type:    TB     QH     MX                      Total Number of Race Days   8  

Thoroughbred    # of Races Per Day                             Projected Purse Per Day \$       

Quarter Horse    # of Races Per Day                             Projected Purse Per Day \$       

Arabian                      # of Races Per Day                             Projected Purse Per Day \$       

Paint Horse                      # of Races Per Day                             Projected Purse Per Day \$       

                    Totals                      # of Races Per Day                             Projected Purse Per Day \$       

**Second Meet**                      Opening Day:   /  /                        Closing Day:   /  /  

Meet Type:    TB     QH     MX                      Total Number of Race Days       

Thoroughbred    # of Races Per Day                             Projected Purse Per Day \$       

Quarter Horse    # of Races Per Day                             Projected Purse Per Day \$       

Arabian                      # of Races Per Day                             Projected Purse Per Day \$       

Paint Horse                      # of Races Per Day                             Projected Purse Per Day \$       

                    Totals                      # of Races Per Day                             Projected Purse Per Day \$

**Third Meet**

Opening Day: \_\_\_/\_\_\_/\_\_\_

Closing Day: \_\_\_/\_\_\_/\_\_\_

Meet Type:  TB  QH  MX

Total Number of Race Days \_\_\_\_\_

Thoroughbred # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Quarter Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Arabian # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Paint Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Totals # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

**II. Negotiation with Breed Registries**

Specify how the total races scheduled for 2020 will be allocated among the various breeds:

Appaloosa	____%	Arabian	<u>3.5</u> %	Paint	<u>3.5</u> %
Quarter Horse	<u>72.075</u> %	Thoroughbred	<u>20.925</u> %		

Check all that apply:

Attached are letters from the affected breed registries that have agreed to this allocation.

The (all but THP) breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

**Participants in Negotiations**

\_\_\_\_/\_\_\_\_/\_\_\_\_ \_\_\_\_\_

06 / 28 / 19 Marsha Rountree, Executive Director, Texas Horseman's Partnership

\_\_\_\_/\_\_\_\_/\_\_\_\_ \_\_\_\_\_

\_\_\_\_/\_\_\_\_/\_\_\_\_ \_\_\_\_\_

\_\_\_\_/\_\_\_\_/\_\_\_\_ \_\_\_\_\_

**III. Dates Requested**

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

**IV. Charity Days**

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days: **(N/A-Class III Racetrack)**

Day 1: \_\_\_\_\_

Day 2: \_\_\_\_\_

Day 3 (Optional): \_\_\_\_\_

Day 4 (Optional): \_\_\_\_\_

Day 5 (Optional): \_\_\_\_\_

Identify the charities:

*REQUIRED BY RULE*

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: \_\_\_\_\_  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: \_\_\_\_\_  
(Name of Charity)

**OPTIONAL CHARITY DAYS**

Day 3 Charity: \_\_\_\_\_  
(Name of Charity)

Day 4 Charity: \_\_\_\_\_  
(Name of Charity)

Day 5 Charity: \_\_\_\_\_  
(Name of Charity)

**For each charity listed, attach the following information:**

1. The name of the charity;
2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;
3. a brief description of the activities or purposes of the charity; and
4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

**V. Coordination of Request**

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

	Affected?		Letter of Support Attached?		
	Yes	No	Yes	No	N/A
<u>Racetrack</u>					
Gillespie County Fair & Festivals Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
** Laredo Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
** Lone Star Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
** Manor Downs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
** Retama Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
**Sam Houston Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
**Valle de los Tesoros	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**\*\* (Not according to 2020 Race Dates Calendar posted per TxRC website 6-28-19)**

<u>Horsemen's Organization</u>	Letter of Support Attached?		
	Yes	No	N/A
Texas Horsemen's Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Requested Performances for 2020

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 New Year's Day	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 Martin Luther King Jr. Day	21	22	23	24	25
26	27	28	29	30	31	

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14 Valentine's Day	15
16	17 President's Day	18	19	20	21	22
23	24	25	26	27	28	29

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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				

--	--	--	--	--	--	--

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			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		

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
Mother's Day						
17	18	19	20	21	22	23
24	25 Memorial Day	26	27	28	29	30

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	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
Father's Day						
28	29	30				

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4 Independence Day (M)
5 (M)	6	7	8	9	10	11
12	13	14	15	16	17	18 (M)
19 (M)	20	21	22	23	24	25
26	27	28	29	30	31	

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		Type text here				1
2	3	4	5	6	7	8 (M)
9 (M)	10	11	12	13	14	15
16	17	18	19	20	21	22 (M)
23 (M)	24	25	26	27	28	29
30	31					

September						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		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						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				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						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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					

December						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		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		

**T E X A S R A C I N G C O M M I S S I O N**  
**R E Q U E S T F O R P E R F O R M A N C E S**  
**H O R S E R A C E T R A C K S**

**January 1, 2021 - August 31, 2021**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 17, 2018.

**I. Schedule Requested**

Name of Racetrack: Fredericksburg Downs, Inc.

**First Meet**                      Opening Day: 07 / 03 / 21                      Closing Day: 08 / 29 / 21

Meet Type:     TB     QH     MX                      Total Number of Race Days 8

Thoroughbred    # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Quarter Horse    # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Arabian                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Paint Horse                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

                    Totals                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

**Second Meet**                      Opening Day: \_\_\_/\_\_\_/\_\_\_                      Closing Day: \_\_\_/\_\_\_/\_\_\_

Meet Type:     TB     QH     MX                      Total Number of Race Days \_\_\_\_\_

Thoroughbred    # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Quarter Horse    # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Arabian                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

Paint Horse                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

                    Totals                      # of Races Per Day \_\_\_\_\_                      Projected Purse Per Day \$ \_\_\_\_\_

**Third Meet**

Opening Day: \_\_\_/\_\_\_/\_\_\_

Closing Day: \_\_\_/\_\_\_/\_\_\_

Meet Type:  TB  QH  MX

Total Number of Race Days \_\_\_\_\_

Thoroughbred # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Quarter Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Arabian # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Paint Horse # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

Totals # of Races Per Day \_\_\_\_\_

Projected Purse Per Day \$ \_\_\_\_\_

**II. Negotiation with Breed Registries**

Specify how the total races scheduled for 2021 will be allocated among the various breeds:

Appaloosa	_____ %	Arabian	<u>3.5</u> %	Paint	<u>3.5</u> %
Quarter Horse	<u>72.075</u> %	Thoroughbred	<u>20.925</u> %		

Check all that apply:

Attached are letters from the affected breed registries that have agreed to this allocation.

The THP breed registry(ies) has not agreed to this allocation, but negotiations with the breed registry(ies) occurred as described below:

**Participants in Negotiations**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

06 / 28 / 19 Marsha Rountree, Executive Director, Texas Horseman's Partnership

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

### III. Dates Requested

Indicate on the attached calendar each live race date requested with a "T" (Thoroughbred), "QH" (Quarter Horse), or "M" (Mixed). Include standard post time in space provided on calendar. Any exceptions, such as holidays, should be noted.

### IV. Charity Days

A Class 1 or Class 2 racetrack shall conduct at least two and not more than five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days: **(N/A-Class III Racetrack)**

Day 1: \_\_\_\_\_

Day 2: \_\_\_\_\_

Day 3 (Optional): \_\_\_\_\_

Day 4 (Optional): \_\_\_\_\_

Day 5 (Optional): \_\_\_\_\_

Identify the charities:

#### *REQUIRED BY RULE*

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: \_\_\_\_\_  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: \_\_\_\_\_  
(Name of Charity)

**OPTIONAL CHARITY DAYS**

Day 3 Charity: \_\_\_\_\_  
(Name of Charity)

Day 4 Charity: \_\_\_\_\_  
(Name of Charity)

Day 5 Charity: \_\_\_\_\_  
(Name of Charity)

**For each charity listed, attach the following information:**

1. **The name of the charity;**
2. **the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;**
3. **a brief description of the activities or purposes of the charity; and**
4. **a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.**

**V. Coordination of Request**

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

<u>Racetrack</u>	<u>Affected?</u>		<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Gillespie County Fair & Festivals Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
**Laredo Downs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Lone Star Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Manor Downs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Retama Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Sam Houston Race Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
**Valle de los Tesoros	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**\*\* (Not Known-Race Calendar for 2021 not posted on TxRC website as of 6-28-19)**

<u>Horsemen's Organization</u>	<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Texas Horsemen's Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Fredericksburg Downs, Inc.

(Name of Racetrack)

**Requested Performances for 2021**

<b>January</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 New Year's Day	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18 Martin Luther King Jr. Day	19	20	21	22	23
24	25	26	27	28	29	30
31						

<b>February</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
Valentine's Day	President's Day					
21	22	23	24	25	26	27
28						

<b>March</b>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17 St. Patrick's Day	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4 Easter	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	

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9 Mother's Day	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31 Memorial Day					

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20 Father's Day	21	22	23	24	25	26
27	28	29	30			

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3 (M)
4 (M) Independence Day	5	6	7	8	9	10
11	12	13	14	15	16	17 (M)
18 (M)	19	20	21	22	23	24
25	26	27	28	29	30	31

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14 (M)
15 (M)	16	17	18	19	20	21
22	23	24	25	26	27	28 (M)
29 (M)	30	31				

July 4, 2019

Via Email

Ed Wilson, President  
Texas Arabian Breeders Association  
PO Box 215  
Forney, TX 75126

Dear Mr. Wilson

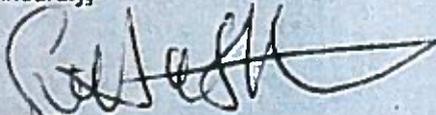
The Gillespie County Fair & Festival Association would like to thank you and the Texas Arabian Breeders Association for all of the support shown to our association this year and in past years. We are in the process of filing our application for race dates for 2020 & 2021 and would appreciate your approval of our participation in Texas pari-mutuel racing for the upcoming seasons. We, again, will prepare a condition book with a mixed meet consisting of approximately 3.5% Arabian Horses.

Our application requests the following 2020 dates: Saturday & Sunday - July 4 & 5, July 18 & 19, August 8 & 9, and August 22 & 23.

Our application requests the following 2021 dates: Saturday & Sunday - July 3 & 4, July 17 & 18, August 14 & 15, and August 28 & 29.

If you would sign and return via email or fax, I can complete my forms for the TxRC before their due date of July 16, 2019. We thank you in advance and would appreciate your favorable participation in our application. If you have any questions, please call the association at (830) 997-2359.

Sincerely,



Scott Staudt  
Assistant General Manager, Racing

Approved: Ed Wilson Ed Wilson, President, TABA

Date: 7/2/19

530 Fair Drive  
State Highway 16 South  
PO Box 526  
Fredericksburg, TX 78624

(830) 997-2359  
fax (830) 997-4923  
gcffa@ctasc.net  
www.gillespiefair.com



July 1, 2019

Via Email

Lex Smurthwaite  
Executive Director  
Texas Paint Horse Breeders Association  
PO Box 163794  
Fort Worth, TX 76161

Dear Mr. Smurthwaite:

The Gillespie County Fair & Festival Association would like to thank you and the Texas Paint Horse Breeders Association for all of the support shown to our association this year and in past years. We are in the process of filing our application for race dates for 2020 & 2021 and would appreciate your approval of our participation in Texas pari-mutuel racing for the upcoming seasons. We, again, will prepare a condition book with a mixed meet consisting of approximately 3.5% Texas Paint Horses.

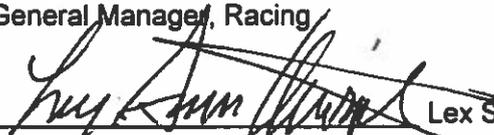
Our application requests the following 2020 dates: Saturday & Sunday - July 4 & 5, July 18 & 19, August 8 & 9, and August 22 & 23.

Our application requests the following 2021 dates: Saturday & Sunday - July 3 & 4, July 17 & 18, August 14 & 15, and August 28 & 29.

If you would, please sign and return via email or fax and I can complete my forms for the TxRC before their due date of July 16, 2019. We thank you in advance and would appreciate your favorable participation in our application. If you have any questions, please call the association at (830) 997-2359.

Sincerely,

Scott Staudt  
Assistant General Manager, Racing

Approved:  Lex Smurthwaite, Executive Director, TPHBA

Date: 7-1-2019

530 Fair Drive  
State Highway 16 South  
PO Box 526  
Fredericksburg, TX 78624

(830) 997-2359  
fax (830) 997-4923  
gcffa@ctesc.net  
www.gillespiefair.com



June 28, 2019

Via Email & Hard Copy Mailed

Rob Werstler  
Director of Racing  
Texas Quarter Horse Association  
14 N. Main Street, Suite B  
Elgin, TX 78621

Dear Mr. Werstler:

The Gillespie County Fair & Festival Association would like to thank you and the Texas Quarter Horse Association for all of the support shown to our association this year and in past years. We are in the process of filing our application for race dates for 2020 & 2021 and would appreciate your approval of our participation in Texas pari-mutuel racing for the upcoming seasons. We, again, will prepare a condition book with a mixed meet consisting of approximately sixty percent Quarter Horses, but feel our races will fill with approximately 72.075% as in the past.

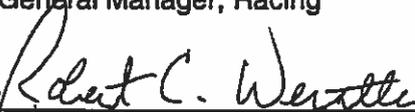
Our application requests the following 2020 dates: Saturday & Sunday - July 4 & 5, July 18 & 19, August 8 & 9, and August 22 & 23.

Our application requests the following 2021 dates: Saturday & Sunday - July 3 & 4, July 17 & 18, August 14 & 15, and August 28 & 29.

If you would, please sign and return via email or fax and I can complete my forms for the TxRC before their due date of July 16, 2019. We thank you in advance and would appreciate your favorable participation in our application. If you have any questions, please call the association at (830) 997-2359.

Sincerely,

Scott Staudt  
Assistant General Manager, Racing

Approved:  Rob Werstler, Director of Racing, TQHA

Date: 6/28/19

530 Fair Drive  
State Highway 16 South  
PO Box 526  
Fredericksburg, TX 78624

(830) 997-2359  
fax (830) 997-4923  
gcffa@ctesc.net  
www.gillespiefair.com



June 28, 2019

Via Email

Mary Ruyle  
Executive Director  
Texas Thoroughbred Association  
PO Box 14967  
Austin, TX 78761

Dear Ms. Ruyle:

The Gillespie County Fair & Festival Association would like to thank you and the Texas Thoroughbred Association for all of the support shown to our association this year and in past years. We are in the process of filing our application for race dates for 2020 & 2021 and would appreciate your approval of our participation in Texas pari-mutuel racing for the upcoming seasons. We, again, will prepare a condition book with a mixed meet consisting of approximately 20.925% Thoroughbred Horses.

Our application requests the following 2020 dates: Saturday & Sunday - July 4 & 5, July 18 & 19, August 8 & 9, and August 22 & 23.

Our application requests the following 2021 dates: Saturday & Sunday - July 3 & 4, July 17 & 18, August 14 & 15, and August 28 & 29.

If you would sign and return via email or fax, I can complete my forms for the TxRC before their due date of July 16, 2019. We thank you in advance and would appreciate your favorable participation in our application. If you have any questions, please call the association at (830) 997-2359.

Sincerely,

Scott Staudt  
Assistant General Manager, Racing

Approved: Mary Ruyle Mary Ruyle, Executive Director, TTA

Date: 6-28-19

530 Fair Drive  
State Highway 16 South  
PO Box 526  
Fredericksburg, TX 78624

(830) 997-2359  
fax (830) 997-4923  
gcffa@ctesc.net  
www.gillespiefair.com



TEXAS  
HORSEMEN'S  
PARTNERSHIP

July 15, 2019

Mr. Chuck Trout  
Executive Director  
Texas Racing Commission  
P.O. Box 12080  
Austin, TX 78711

Dear Mr. Trout:

In response to the race date applications submitted by the Class 1 race tracks, the Texas Horsemen's Partnership (Thoroughbred, Arabian, Quarter Horse and Paint) wishes to thank the tracks for requesting race days for 2020 and 2021, however, we cannot support the applications as currently submitted.

Although the race tracks were required by the Texas Racing Commission to submit their requests by July 16<sup>th</sup>, the effects of HB 2463 and HB 1995 have yet to be determined.

We are hopeful that the Class 1 race tracks will submit amended race date requests for 2020 and 2021 when the allocation of funds generated by HB 2463 has been determined.

As always, please let me know if you have any questions or concerns.

Sincerely,

Marsha Rountree  
Executive Director  
Texas Horsemen's Partnership, LLP

Cc: Dwight Berube  
Steve Ross  
Bart Lang  
Val Clark  
Mary Ruyle



Steve Ross

---

**RE: Proposed Retama Park 2020 Races Dates**

1 message

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**Ed Wilson**  
To: Steve Ross

Fri, Jul 12, 2019 at 4:13 PM

Steve, these dates are ok with the Texas Arabian Breeders Association.

Ed Wilson

Sent from [Mail](#) for Windows 10

---

**From:** [Steve Ross](#)  
**Sent:** Friday, July 12, 2019 1:13 PM  
**To:** [Marsha Rountree](#); ; [Christina Martin](#); [Ed Wilson](#); [Rob Werstler](#); [Mary Ruyle](#); [Lex Smurthwaite](#); [Pam Gage](#)  
**Cc:** [Joel Speight](#); [Ricky Walker](#); [Angela Cooper](#); [Christopher McElean](#); [Scott Wells](#) ;  
[David Koepp](#); [James Leatherman](#); [Steve Ross](#)  
**Subject:** Re: Proposed Retama Park 2020 Races Dates

The attached shows the corrected September days. Racing September 4 and 5, Friday and Saturday, not September 5 and 6, Saturday and Sunday.

Sorry about that!

Thanks.

Steve







***Sally B. Briggs***  
***General Manager***

July 15, 2019

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
P. O. Box 12080  
Austin, TX 78711-2080

Via E-mail and US Mail

Re: Live Race Date Request, Gulf Greyhound Park

Dear Mr. Speight:

In accordance with Rule 303.41, Allocation of Race Dates, please find attached Gulf Greyhound Park's request for live race dates beginning January 2, 2020. This request supersedes previously approved live race dates in August of 2020.

If you have questions or need additional information, please let me know.

Yours truly,

  
Sally B. Briggs

C: Gulf Coast Racing  
Valley Race Park  
Texas Greyhound Association  
Eric L. Wilson  
Ricky Walker

P.O. Box 488 ■ La Marque, Texas 77568-0488 ■ 409-986-9500 ■ Fax: 409-986-9700

**TEXAS RACING COMMISSION  
REQUEST FOR PERFORMANCES  
GREYHOUND RACETRACKS**

**January 1, 2020 – December 31, 2020**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

**I. Schedule Requested**

Name of Racetrack: GULF GREYHOUND PARK

Opening Day: 01/02/2020 Closing Day: 02/29/2020

Number of Performances per week 4

Projected Number of Races per Performance 10

TOTAL NUMBER OF PERFORMANCES REQUESTED 36

**II. Charity Days**

A greyhound association shall conduct at least five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: January 15

Day 2: January 26

Day 3: February 5

Day 4: February 16

Day 5: February 19

Identify the charities:

**REQUIRED BY RULE**

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: Texas Greyhound Association Scholarship Fund  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: Texas A&M University Scholarship Fund  
(Name of Charity)

**ADDITIONAL CHARITIES**

Day 3 Charity: 50% TGA Scholarship Fund/50% TAMU Scholarship Fund  
(Name of Charity)

Day 4 Charity: Texas City-La Marque Chamber of Commerce  
(Name of Charity)

Day 5 Charity: Independence Village, La Marque/Texas City  
(Name of Charity)

**For each charity listed, attach the following information:**

1. The name of the charity;
2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;
3. a brief description of the activities or purposes of the charity; and
4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

**III. Dates Requested**

Indicate on the attached calendar each live race performance requested with an

"M" denoting a Matinee performance

"E" denoting an Evening performance

Include standard post time for each performance in space provided on calendar. Any exceptions, such as holidays, should be noted.

**V. Coordination of Request**

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

	Affected?		Letter of Support Attached?		
	Yes	No	Yes	No	N/A
<b><u>Racetrack</u></b>					
Gulf Coast Racing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gulf Greyhound Park	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valley Race Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Letter of Support Attached?		
	Yes	No	N/A
<b><u>Greyhound Breed Association</u></b>			
Texas Greyhound Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(Name of Racetrack)

### Requested Performances for 2020

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 New Year's Day	2 E 7 PM	3	4 E 7 PM
5 M 12 PM	6	7	8 E 7 PM	9 E 7 PM	10	11 E 7 PM
12 M 12 PM	13	14	15 E 7 PM	16 E 7 PM	17	18 E 7 PM
19 M 12 PM	20 M 12 PM Martin Luther King Jr. Day	21	22 E 7 PM	23 E 7 PM	24	25 E 7 PM
26 M 12 PM	27	28	29 E 7 PM	30 E 7 PM	31	

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 E 7 PM
2 M 12 PM	3	4	5 E 7 PM	6 E 7 PM	7	8 E 7 PM
9 M 12 PM	10	11	12 E 7 PM	13 E 7 PM	14 Valentine's Day	15 E 7 PM
16 M 12 PM	17 M 12 PM President's Day	18	19 E 7 PM	20 E 7 PM	21	22 E 7 PM
23 M 12 PM	24	25	26 E 7 PM	27 E 7 PM	28	29 E 7 PM

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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 15, 2019

Sent Via Electronic Mail

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711

Dear Mr. Speight:

Valley Race Park supports the Request for Performances in 2020 submitted by Gulf Greyhound Park. These thirty-six dates requested by Gulf Greyhound Park in 2020 would be in lieu of the dates previously granted by the Commission for Valley Race Park from late December 2019 through February 2020. Valley Race Park is confident that Gulf Greyhound Park will run a safe and high quality meet that is in the best interest of the Greyhound racing industry.

Please let me know if you have any questions.

Sincerely,

Dwight Berube,  
Vice President and General Manager  
Valley Race Park

Cc: Maury Korn (Valley Race Park)  
Sally Briggs (Gulf Greyhound Park)  
David Dyal (Texas Greyhound Association)

VALLEY RACE PARK INC.  
2601 SOUTH ED CAREY DRIVE, HARLINGEN, TEXAS 78552  
(956) 412-7223 • (956) 428-0163 FAX  
[www.valleyracepark.com](http://www.valleyracepark.com)



texas greyhound association

July 19, 2019

Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
PO Box 12080  
Austin, TX 78711

Dear Mr. Speight,

The Texas Greyhound Association (TGA) understands that Valley Race Park (VRP) will not be running a 2020 meet. The TGA also understands that Gulf Greyhound Park (GGP) would be willing to run this meet in place of VRP. The TGA is in full support of GGP running the meet at GGP.

Effective, Thursday; January 2, 2020, the TGA requests that the escrowed interstate cross-species simulcast monies received under Texas Racing Act Sec 6.091(d)(2), after allowable TGA administrative expenses, be allocated only to GGP through Saturday; February 29, 2020.

The schedule for the payout will be as follows; approximately 30 days before GGP's meet, on or before December 2, 2019, the TGA will transfer, to date, all escrowed funds in the Cross-Species account to GGP's purse account. On or before the first day of racing, the TGA will transfer the remaining escrowed funds to GGP's purse account. We will then begin making weekly Cross-Species payments, upon the start of live racing.

Thank you,

David Dyal  
President

Cc: TGA Board of Directors  
Eric Wilson - GGP  
Sally Briggs - GGP

Cell: (830) 370-2070

Email: [ddyal@distinctivehomes-tx.com](mailto:ddyal@distinctivehomes-tx.com)

Website: [www.tgagreyhounds.com](http://www.tgagreyhounds.com)



July 11, 2019

Mr. Joel Speight  
Deputy Executive Director  
Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, TX 78754

via electronic mail and FedEx

Dear Mr. Speight:

Enclosed is Valley Race Park's Request for Performances for August, 2021, which dates are within the period currently pending before the Commission. Race dates in addition to or in lieu of these dates shall be requested at the appropriate time.

Please let me know if you have any questions.

Sincerely,

Dwight Berube,  
Vice President and General Manager  
Valley Race Park

Enclosures

Cc: Maury Korn  
Sally Briggs  
Tommy Azopardi  
David Dyal

**VALLEY RACE PARK INC.**  
2601 SOUTH ED CAREY DRIVE, HARLINGEN, TEXAS 78552  
(956) 412-7223 • (956) 428-0163 FAX  
[www.valleyracepark.com](http://www.valleyracepark.com)

**T E X A S R A C I N G C O M M I S S I O N  
R E Q U E S T F O R P E R F O R M A N C E S  
G R E Y H O U N D R A C E T R A C K S**

**January 1, 2021 – August 31, 2021**

**INSTRUCTIONS:** Print or type the information requested in each section and attach all required documents and additional sheets if necessary. The Commission will not consider an incomplete request. The request must be filed at the Commission's Austin office no later than 5:00 p.m. on July 16, 2019.

**I. Schedule Requested**

Name of Racetrack: Valley Race Park

Opening Day: 08/20/2021

Closing Day: 08/28/2021

Number of Performances per week 3

Projected Number of Races per Performance 10

TOTAL NUMBER OF PERFORMANCES REQUESTED 5

**II. Charity Days**

A greyhound association shall conduct at least five charity race days each year. The association shall pay to the charity at least 2% of the total pari-mutuel handle generated at the racetrack on the charity race day. At least one of the charity days must be conducted for a charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for a charity that primarily benefits research into the health or safety of race animals.

Indicate which days are designated as charity days:

Day 1: TBD

Day 2: TBD

Day 3: TBD

Day 4: TBD

Day 5: TBD

Identify the charities:

*REQUIRED BY RULE*

(1) A charity that directly benefits the persons who work on the backside:

Day 1 Charity: TBD  
(Name of Charity)

(2) A charity that primarily benefits research into the health or safety of race animals:

Day 2 Charity: TBD  
(Name of Charity)

*ADDITIONAL CHARITIES*

Day 3 Charity: TBD  
(Name of Charity)

Day 4 Charity: TBD  
(Name of Charity)

Day 5 Charity: TBD  
(Name of Charity)

For each charity listed, attach the following information:

1. The name of the charity;
2. the name and address of each individual who serves as an officer or director of the charity or who owns an interest in the charity of 5.0% or more;
3. a brief description of the activities or purposes of the charity; and
4. a copy of an Internal Revenue Service letter of determination that qualifies the charity as an exempt organization for purposes of federal income tax.

**III. Dates Requested**

Indicate on the attached calendar each live race performance requested with an  
"M" denoting a Matinee performance  
"E" denoting an Evening performance

Include standard post time for each performance in space provided on calendar. Any exceptions, such as holidays, should be noted.

**V. Coordination of Request**

To facilitate the Commission's consideration of each association's request, please indicate below the association's coordination efforts and the letters of support as appropriate.

<u>Racetrack</u>	<u>Affected?</u>		<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Gulf Coast Racing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gulf Greyhound Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Valley Race Park	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Greyhound Breed Association</u>	<u>Letter of Support Attached?</u>		
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Texas Greyhound Association	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

# Valley Race Park

## Requested Performances for 2021

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					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						

February						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	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						

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	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			

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				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	

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						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					

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		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			

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				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

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20 E 7:00 PM	21 E 7:00 PM
22	23	24	25 M 1:00 PM	26	27 E 7:00 PM	28 E 7:00 PM
29	30	31				

## **VII. EXECUTIVE SESSION**

The following items may be discussed and considered in executive session or open meeting, with any action taken in the open meeting:

- A. Under Texas Government Code § 551.071(1), the Commission may enter an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Texas Government Code § 551.071(2), the Commission may enter an executive session to discuss all matters identified in this agenda where the commission seeks the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. This may include, but is not limited to, legal advice regarding the Open Meetings Act, the Administrative Procedures Act, and the Texas Racing Act.
- C. Under Tex. Occ. Code § 2025.055, the Commission may open an executive session to review security plans and management, concession, and totalizator contracts.

## **VIII. SCHEDULING OF NEXT COMMISSION MEETING**

## **IX. ADJOURN**