



**TEXAS RACING COMMISSION**

**P. O. Box 12080**

**Austin, TX 78711-2080**

**(512) 833-6699**

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Texas Racing Commission  
Tuesday, June 14, 2016  
10:30 a.m.  
John H. Reagan Building  
105 W. 15th Street  
Austin, Texas 78701

**AGENDA**

**I. CALL TO ORDER**

Roll Call

**II. PUBLIC COMMENT**

**III. GENERAL BUSINESS**

Discussion and consideration of the following matters:

A. Reports by the Executive Director and Staff regarding Administrative Matters

- 1) Budget and Finance Update
- 2) Report on Wagering Statistics
- 3) Inspection and Enforcement Reports

Discussion and consideration on the following matter:

B. Report by the Ad Hoc Committee on Finance

Discussion, consideration and possible action on the following matter:

C. Strategic Plan for Fiscal Years 2017-2021

**IV. PROCEEDINGS ON RACETRACKS**

Discussion and consideration on the following matter:

A. Discussion of Renewal Criteria for Inactive Racetrack Licenses under Commission Rule 309.52

Discussion, consideration and possible action on the following matter:

- B. Review and Renewal under Commission Rule 309.52 of the Inactive Racetrack License held by Longhorn Downs

**V. PROCEEDINGS ON OCCUPATIONAL LICENSES**

Discussion, consideration and possible action on the following matter:

- A. The Proposal for Decision in SOAH No. 476-16-1728; *In Re: The Appeal of Edward Paul Webb from Stewards' Ruling No. RETA2526*

**VI. PROCEEDINGS ON RULEMAKING**

Discussion, consideration and possible action on the following matter:

- A. Proposal to Amend Rule 319.110, Health Certificate  
If approved by the Commission, this proposal will be published in the *Texas Register* for public comment.

**VII. EXECUTIVE SESSION**

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

- A. Under Government Code Sec. 551.071(1), the Commission may open an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Government Code Sec. 551.071(2), the Commission may open 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 Texas Racing Act, Tex. Rev. Civ. Stat. Ann. art. 179e, Sec. 6.03, 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**

### **III. GENERAL BUSINESS**

- A. Reports by the Executive Director and Staff regarding Administrative Matters
  - 1) Budget and Finance Update
  - 2) Report on Wagering Statistics
  - 3) Inspection and Enforcement Reports

# Texas Racing Commission

FYE 08/31/2016  
Operating Budget Status  
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 04/30/2016	FY 2016 Unexpended Bal 8/31/2016	With 66.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	- FTE's = 4.50 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	360,810.39	240,291.54	120,518.85	66.60%
\$ 359,315.00	1002 Other Personnel Cost	9,891.51	6,489.46	3,402.05	65.61%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 8,218.11	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 367,533.11	2005 Travel	9,250.00	2,587.31	6,662.69	27.97%
Budgeted =	2006 Rent Building	-	-	-	
\$ 387,021.32	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	7,069.42	3,200.98	3,868.44	45.28%
19,488.22	CB Computer Equipment	-	-	-	
5.42%	<b>Total Strategy A.1.1.</b>	<b>387,021.32</b>	<b>252,569.29</b>	<b>134,452.03</b>	<b>65.26%</b>
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
	ATB Money Expended	3,475,000.00	2,017,424.68	1,457,575.32	58.06%
3,475,000.00	<b>Total Strategy A.2.1.</b>	<b>3,475,000.00</b>	<b>2,017,424.68</b>	<b>1,457,575.32</b>	<b>58.06%</b>
<i>Appropriated</i> A.3.1.	(1.80) FTE's = 7.50 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	457,864.27	304,239.19	153,625.08	66.45%
\$ 690,724.00	1002 Other Personnel Cost	56,923.82	23,593.23	33,330.59	41.45%
Sup Appr =	2001 Prof Fees and Services	15,000.00	9,210.02	5,789.98	61.40%
\$ 9,178.35	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 699,902.35	2005 Travel	53,000.00	20,539.66	32,460.34	38.75%
Budgeted =	2006 Rent Building	-	-	-	
\$ 596,551.21	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	13,763.12	2,450.05	11,313.07	17.80%
(103,351.14)	CB Computer Equipment	-	-	-	
-14.96%	<b>Total Strategy A.3.1.</b>	<b>596,551.21</b>	<b>360,032.15</b>	<b>236,519.06</b>	<b>60.35%</b>
<i>Appropriated</i> A.3.2.	- FTE's = 3.30 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	182,183.65	112,584.13	69,599.52	61.80%
\$ 245,602.00	1002 Other Personnel Cost	18,218.37	11,258.45	6,959.92	61.80%
Sup Appr =	2001 Prof Fees and Services	1,000.00	70.00	930.00	7.00%
\$ -	2003 Consumables	2,500.00	-	2,500.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 245,602.00	2005 Travel	38,199.98	16,226.11	21,973.87	42.48%
Budgeted =	2006 Rent Building	-	-	-	
\$ 245,602.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	3,500.00	567.40	2,932.60	16.21%
\$ (0.00)	CB Computer Equipment	-	-	-	
0.00%	<b>Total Strategy A.3.2.</b>	<b>245,602.00</b>	<b>140,706.09</b>	<b>104,895.91</b>	<b>57.29%</b>
<i>Appropriated</i> A.4.1.	0.05 FTE's = 3.15 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	225,269.80	138,808.72	86,461.08	61.62%
\$ 340,949.00	1002 Other Personnel Cost	12,939.49	7,801.54	5,137.95	60.29%
Sup Appr =	2001 Prof Fees and Services	85,000.00	9,816.48	75,183.52	11.55%
\$ 5,293.32	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 346,242.32	2005 Travel	24,100.00	11,869.10	12,230.90	49.25%
Budgeted =	2006 Rent Building	-	-	-	
\$ 353,653.59	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,344.29	1,972.54	4,371.75	31.09%
\$ 7,411.26	CB Computer Equipment	-	-	-	
2.17%	<b>Total Strategy A.4.1.</b>	<b>353,653.59</b>	<b>170,268.38</b>	<b>183,385.21</b>	<b>48.15%</b>

# Texas Racing Commission

FYE 08/31/2016  
Operating Budget Status  
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 04/30/2016	FY 2016 Unexpended Bal 8/31/2016	With 66.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	(0.55) FTE's = 3.75 <u>Administer Drug Testing</u>				
Base Appr =	1001 Salaries and Wages	205,374.80	138,488.95	66,885.85	67.43%
\$ 283,998.00	1002 Other Personnel Cost	21,778.37	21,282.34	496.03	97.72%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 4,917.68	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 288,915.68	2005 Travel	23,500.00	6,385.48	17,114.52	27.17%
Budgeted =	2006 Rent Building	-	-	-	
\$ 257,369.42	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	6,716.25	1,008.23	5,708.02	15.01%
\$ (31,546.26)	CB Computer Equipment	-	-	-	
<b>-11.11%</b>	<b>Total</b> Strategy A.4.2.	257,369.42	167,165.00	90,204.42	64.95%
<i>Appropriated</i> B.1.1.	- FTE's = 7.10 <u>Occupational Licensing</u>				
Base Appr =	1001 Salaries and Wages	259,474.00	165,256.89	94,217.11	63.69%
\$ 512,164.00	1002 Other Personnel Cost	9,537.37	10,010.98	(473.61)	104.97%
Sup Appr =	2001 Prof Fees and Services	-	250.00	(250.00)	
\$ 6,325.58	2003 Consumables	5,000.00	258.56	4,741.44	5.17%
Total Appr =	2004 Utilities	-	-	-	
\$ 518,489.58	2005 Travel	26,954.43	14,376.32	12,578.11	53.34%
Budgeted =	2006 Rent Building	-	-	-	
\$ 496,884.54	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	4,000.00	2,327.30	1,672.70	58.18%
\$ (21,605.04)	CB Computer Equipment	-	49,296.63	142,622.11	25.69%
<b>-4.22%</b>	<b>Total</b> Strategy B.1.1.	496,884.54	241,776.68	255,107.86	48.66%
<i>Appropriated</i> B.1.2.	- FTE's = 0 <u>Texas OnLine</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 22,500.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 22,500.00	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 22,500.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	22,500.00	8,870.00	13,630.00	39.42%
\$ -	CB Computer Equipment	-	-	-	
0.00%	<b>Total</b> Strategy B.1.2.	22,500.00	8,870.00	13,630.00	39.42%
<i>Appropriated</i> C.1.1.	(0.30) FTE's = 4.50 <u>Monitor Wagering and Audit</u>				
Base Appr =	1001 Salaries and Wages	250,217.94	163,675.75	86,542.19	65.41%
\$ 326,775.00	1002 Other Personnel Cost	16,313.26	30,016.84	(13,703.58)	184.00%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 6,102.88	2003 Consumables	1,000.00	-	1,000.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 332,877.88	2005 Travel	20,000.00	7,961.31	12,038.69	39.81%
Budgeted =	2006 Rent Building	-	-	-	
\$ 312,387.94	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	24,856.74	7,433.26	17,423.48	29.90%
\$ (20,489.94)	CB Computer Equipment	-	-	-	
<b>-6.27%</b>	<b>Total</b> Strategy C.1.1.	312,387.94	209,087.16	103,300.78	66.93%

# Texas Racing Commission

FYE 08/31/2016

Operating Budget Status  
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 04/30/2016	FY 2016 Unexpended Bal 8/31/2016	With 66.7% of Year Lapsed % of Budget Expended
<i>Appropriated</i> C.1.2.	- FTE's = 3.00 <u>Wagering &amp; Compliance Inspections</u>				
Base Appr =	1001 Salaries and Wages	146,425.23	88,698.50	57,726.73	60.58%
\$ 167,211.00	1002 Other Personnel Cost	3,912.13	2,243.22	1,668.91	57.34%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 3,571.35	2003 Consumables	1,000.00	-	1,000.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 170,782.35	2005 Travel	16,000.00	6,359.34	9,640.66	39.75%
Budgeted =	2006 Rent Building	-	-	-	
\$ 169,701.61	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	2,364.25	957.07	1,407.18	40.48%
\$ (1,080.74)	CB Computer Equipment	-	-	-	
<b>-0.65%</b>	<b>Total Strategy C.1.2.</b>	<b>169,701.61</b>	<b>98,258.13</b>	<b>71,443.48</b>	<b>57.90%</b>
<i>Appropriated</i> D.1.1.	- FTE's = 7.00 <u>Central Administration</u>				
Base Appr =	1001 Salaries and Wages	449,493.94	291,391.81	158,102.13	64.83%
\$ 742,938.00	1002 Other Personnel Cost	32,707.47	10,592.03	22,115.44	32.38%
Sup Appr =	2001 Prof Fees and Services	16,500.00	14,790.56	1,709.44	89.64%
\$ 9,190.18	2003 Consumables	12,500.00	5,328.24	7,171.76	42.63%
Total Appr =	2004 Utilities	58,000.00	27,780.99	30,219.01	47.90%
\$ 752,128.18	2005 Travel	15,500.00	5,352.46	10,147.54	34.53%
Budgeted =	2006 Rent Building	86,250.00	64,534.40	21,715.60	74.82%
\$ 751,128.18	2007 Rent Machine	-	887.34	(887.34)	
Difference	2009 Other Operating Cost	80,176.77	50,760.45	29,416.32	63.31%
\$ (1,000.00)	CB Computer Equipment	-	-	-	0.00%
<b>-0.13%</b>	<b>Total Strategy D.1.1.</b>	<b>751,128.18</b>	<b>471,418.28</b>	<b>279,709.90</b>	<b>62.76%</b>
<i>Appropriated</i> D.1.2.	- FTE's = 4.80 <u>Information Resources</u>				
Base Appr =	1001 Salaries and Wages	320,927.16	205,219.58	115,707.58	63.95%
\$ 514,024.00	1002 Other Personnel Cost	12,967.37	20,100.70	(7,133.33)	155.01%
Sup Appr =	2001 Prof Fees and Services	56,000.00	21,195.00	34,805.00	37.85%
\$ 6,322.30	2003 Consumables	12,000.00	80.81	11,919.19	0.67%
Total Appr =	2004 Utilities	1,200.00	-	1,200.00	0.00%
\$ 520,346.30	2005 Travel	3,500.00	2,335.81	1,164.19	66.74%
Budgeted =	2006 Rent Building	2,700.00	296.00	2,404.00	10.96%
\$ 521,346.29	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	112,051.76	59,357.78	52,693.98	52.97%
\$ 1,000.00	CB Computer Equipment	-	-	-	
<b>0.19%</b>	<b>Total Strategy D.1.2.</b>	<b>521,346.29</b>	<b>308,585.68</b>	<b>212,760.61</b>	<b>59.19%</b>
<i>Appropriated</i> D.1.3.	(2.60) FTE's = 48.60 <u>Other Support Services</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 7,681,200.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ 59,119.74	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 7,740,319.74	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 7,589,146.09	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	-	-	-	
\$ (151,173.65)	CB Computer Equipment	-	-	-	
<b>-1.97%</b>	<b>Total Strategy D.1.3.</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
\$ 4,265,320	Regulatory Program Operating Budget	4,114,146.09	2,428,736.84	1,685,409.25	59.03%
\$ 3,475,000	TX Bred Program Operating Budget	3,475,000.00	2,017,424.68	1,457,575.32	58.06%
\$ 7,740,320	Total M.O.F. (TXRC Acct. 597 & GR)	7,589,146.09	4,446,161.52	3,142,984.57	58.59%
	Total All Programs Operating Budget				

# Texas Racing Commission

FYE 08/31/2016  
Operating Budget Status  
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2016 Annual Budget	FY 2016 Expended Thru 04/30/2016	FY 2016 Unexpended Bal 8/31/2016	With 66.7% of Year Lapsed % of Budget Expended
\$ -	(2.60) FTE's = 48.60				
<i>Appropriated</i>	<u>Direct Expense of Regulatory Programs</u>				
	1001 Salaries and Wages	2,858,041.17	1,848,655.06	1,009,386.11	64.68%
	1002 Other Personnel Cost	195,189.16	143,388.79	51,800.37	73.46%
	2001 Prof Fees and Services	173,500.00	55,332.06	118,167.94	31.89%
	2003 Consumables	34,000.00	5,667.61	28,332.39	16.67%
	2004 Utilities	59,200.00	27,780.99	31,419.01	46.93%
	2005 Travel	230,004.41	93,992.90	136,011.51	40.87%
	2006 Rent Building	88,950.00	64,830.40	24,119.60	72.88%
	2007 Rent Machine	4,000.00	3,214.64	785.36	80.37%
	2009 Other Operating Cost	471,261.35	185,874.39	285,386.96	39.44%
	CB Computer Equipment	-	-	-	0.00%
\$ 4,265,320	Total Direct Expense of Regulatory Program	4,114,146.09	2,428,736.84	1,685,409.25	59.03%
\$ 3,475,000	FTE's = - Direct Expense of TX Bred Program	3,475,000.00	2,017,424.68	1,457,575.32	58.06%
\$ 7,740,320	(2.60) FTE's = 48.60 Total Direct Expense of All Programs	7,589,146.09	4,446,161.52	3,142,984.57	58.59%
\$ -	<u>Indirect Expense of All Programs</u>				
<i>Un-Appropriated</i>	OASI Match	218,367.69	146,008.95	72,358.74	66.86%
	Group Insurance	299,720.36	184,122.42	115,597.94	61.43%
	State Retirement	236,222.16	153,338.81	82,883.35	64.91%
	Benefit Replacement	9,700.00	7,154.64	2,545.36	73.76%
	ERS Retiree Insurance	275,000.00	217,725.09	57,274.91	79.17%
	SWCAP GR Reimburse	30,000.00	21,914.00	8,086.00	73.05%
	Unemployment Cost	10,000.00	-	10,000.00	0.00%
	Other	-	-	-	
\$ 1,079,010	Total Indirect Expense of All Programs	1,079,010.21	730,263.91	348,746.30	67.68%
\$ 8,819,330	Total Direct and Indirect Expense of All Programs	8,668,156.30	5,176,425.43	3,491,730.87	59.72%

Source Of Funds	Agency Method Of Finance	FY 2016 Projected Revenue	FY 2016 Actual Revenue Thru 04/30/2016	N/A	With 66.7% of Year Lapsed % of Revenue Collected
	<b>Regulatory Program MOF:</b>				
Acct. 597	Cash Balance Carry Forward	\$ 750,000.00	\$ 750,000.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ -	\$ -		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 4,183,750.00	\$ 2,731,653.96		65.29%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 747,458.00	\$ 434,494.25		58.13%
Acct. 597	Other Revenue	\$ 23,867.00	\$ 17,027.48		71.34%
Acct. 1	GR Funds	\$ -	\$ -		
	<b>Sub-Total Regulatory Prgm. MOF</b>	\$ 5,705,075.00	\$ 3,933,175.69		68.94%
	<b>Texas Bred Program MOF:</b>				
Acct. 597	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 597	Breakage and 1% Exotic	\$ 3,475,000.00	\$ 2,017,424.68		58.06%
Acct. 597	Other	\$ -	\$ -		
	<b>Sub-Total Texas Bred Prgm. MOF</b>	\$ 3,475,000.00	\$ 2,017,424.68		58.06%
All Sources	<b>Total MOF</b>	\$ 9,180,075.00	\$ 5,950,600.37		64.82%
	<b>MOF Estimated to Exceed or (Fall-Short of Covering) Direct &amp; Indirect Expenses of Operating Budget</b>	\$ 511,918.70	\$ 774,174.94		



## Fiscal Year 2016 Operational Budget

Updated: May 11, 2016

Thru: April 30, 2016

### Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
<b>Account 597 - Racing Commission - GRD</b>	\$ 9,180,075	\$ 5,950,600	\$ -	\$ 3,229,475	35%
<b>Account 1 - State of Texas - GR</b>	\$ -	\$ -	\$ -	\$ -	
<b>TOTAL - ALL REVENUES</b>	<b>\$ 9,180,075</b>	<b>\$ 5,950,600</b>	<b>\$ -</b>	<b>\$ 3,229,475</b>	<b>35%</b>

### Summary of Appropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
<b>1001 - Salaries and Wages:</b>	\$ 2,858,041	\$ 1,848,655	\$ -	\$ 1,009,386	35%
<b>1002 - Other Personnel Cost:</b>	\$ 195,189	\$ 143,389	\$ -	\$ 51,800	27%
<b>2001 - Professional Fees and Services:</b>	\$ 173,500	\$ 55,332	\$ -	\$ 118,168	68%
<b>2003 - Consumable Supplies:</b>	\$ 34,000	\$ 5,668	\$ -	\$ 28,332	83%
<b>2004 - Utilities:</b>	\$ 59,200	\$ 27,781	\$ -	\$ 31,419	53%
<b>2005 - Travel:</b>	\$ 230,004	\$ 93,993	\$ -	\$ 136,012	59%
<b>2006 - Rent Building:</b>	\$ 88,950	\$ 64,830	\$ -	\$ 24,120	27%
<b>2007 - Rent Machine and Other:</b>	\$ 4,000	\$ 3,215	\$ -	\$ 785	20%
<b>2009 - Other Operating Expense:</b>	\$ 471,261	\$ 185,874	\$ -	\$ 285,387	61%
<b>4000 - Grants</b>	\$ 3,475,000	\$ 2,017,425	\$ -	\$ 1,457,575	42%
<b>5000 - Capital Expenditures:</b>	\$ -	\$ -	\$ -	\$ -	0%
<b>TOTAL - ALL APPROPRIATED EXPENDITURES</b>	<b>\$ 7,589,146</b>	<b>\$ 4,446,162</b>	<b>\$ -</b>	<b>\$ 3,142,984</b>	<b>41%</b>

### Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
<b>TOTAL - ALL UNAPPROPRIATED EXPENDITURES</b>	<b>\$ 1,079,010</b>	<b>\$ 730,264</b>	<b>\$ -</b>	<b>\$ 348,746</b>	<b>32%</b>
<b>TOTAL - ALL EXPENDITURES</b>	<b>\$ 8,668,156</b>	<b>\$ 5,176,425</b>	<b>\$ -</b>	<b>\$ 3,491,730</b>	<b>40%</b>

### OPERATING SURPLUS / (DEFICIT)

	\$ 511,919	\$ 774,175			
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### Summary of FTE's

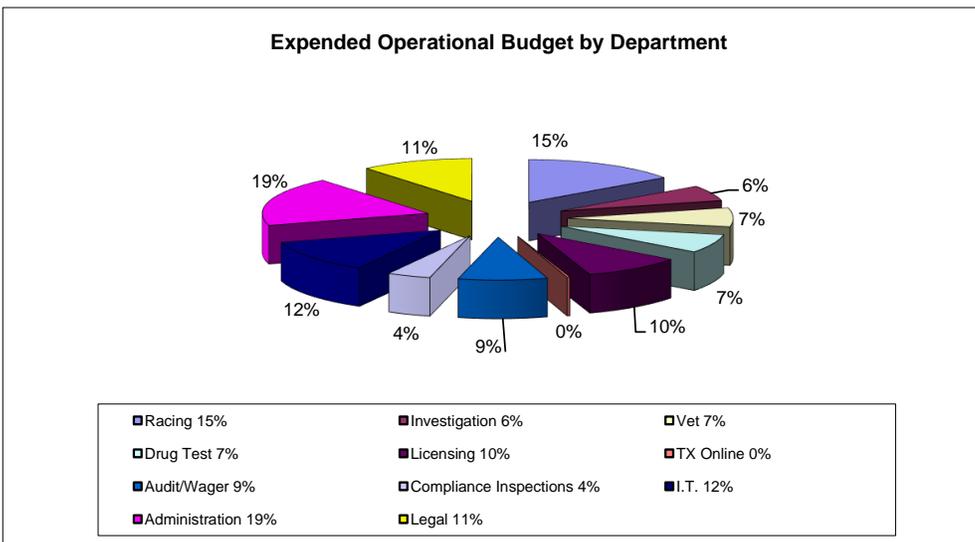
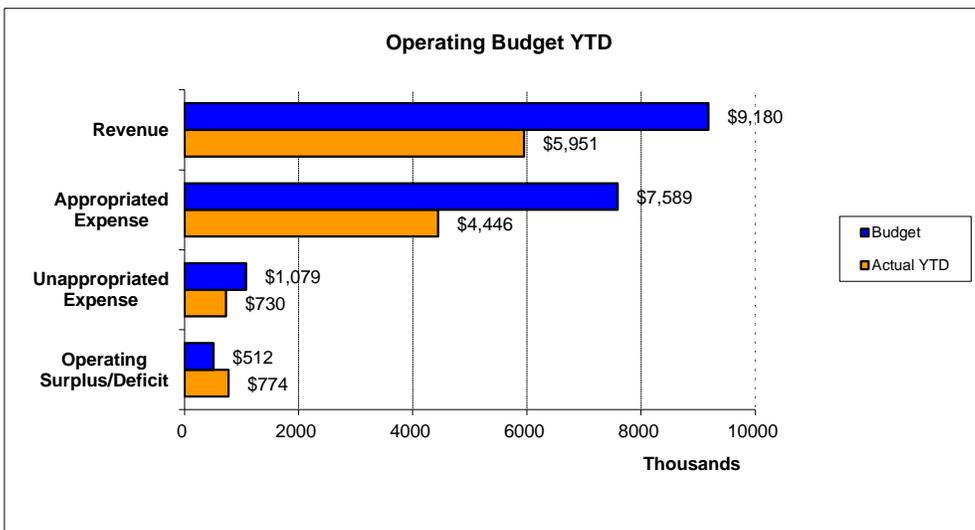
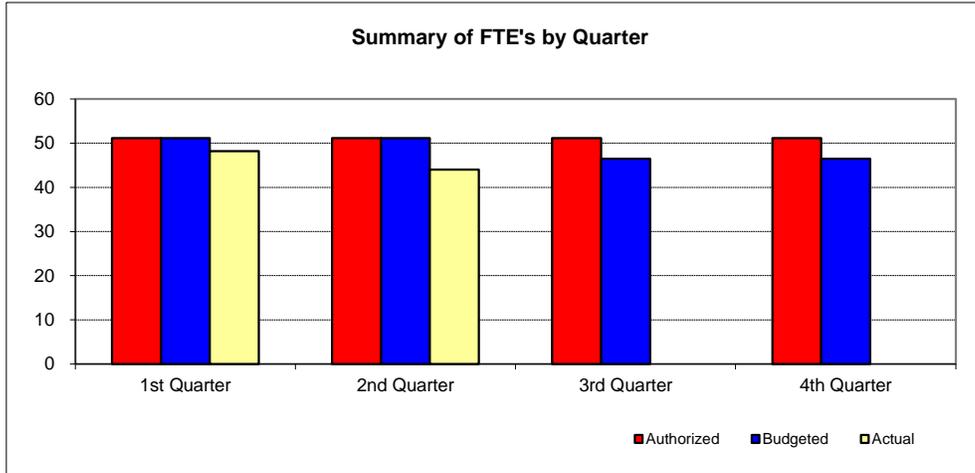
By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	51.20	51.20	51.20	51.20
Budgeted FTE's	51.20	51.20	46.50	46.50
Actual FTE's	48.20	44.00	0.00	0.00
<b>Actual FTE's Over / (Under) Budget</b>	<b>(3.00)</b>	<b>(7.20)</b>	<b>n/a</b>	<b>n/a</b>
<b>Actual FTE's Over / (Under) Authorization</b>	<b>(3.00)</b>	<b>(7.20)</b>	<b>n/a</b>	<b>n/a</b>



# Fiscal Year 2016 Operational Budget

Updated: May 11, 2016

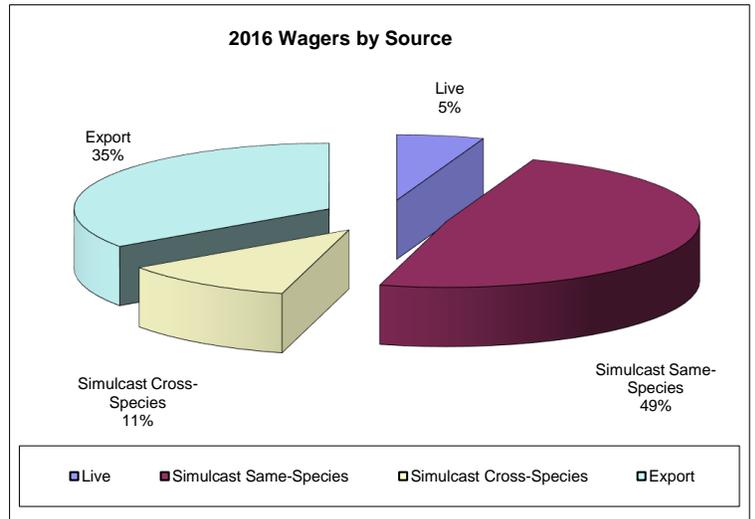
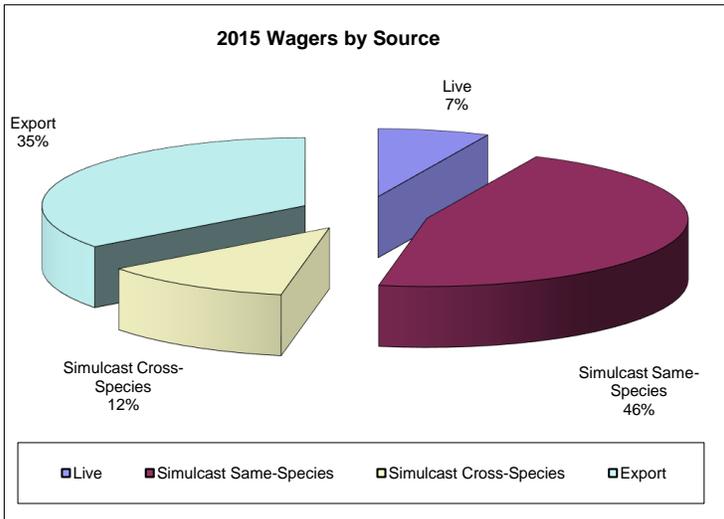
Thru: April 30, 2016





## 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 29

	Year 2015			Year 2016			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	103	\$ 2,766,304	\$ 26,857	0	\$ -	\$ -	-100.00%	-100.00%
Simulcast Same-Species	384	\$ 12,197,583	\$ 31,765	387	\$ 10,484,644	\$ 27,092	-14.04%	-14.71%
Simulcast Cross-Species	384	\$ 9,524,960	\$ 24,805	387	\$ 9,398,189	\$ 24,285	-1.33%	-2.10%
Export	103	\$ 4,627,115	\$ 44,923	0	\$ -	\$ -	-100.00%	-100.00%
<b>Total Wagers</b>		<b>\$ 29,115,962</b>			<b>\$ 19,882,833</b>		<b>-31.71%</b>	
<b>Horse Racetracks</b>								
Live	82	\$ 11,730,076	\$ 143,050	82	\$ 11,400,925	\$ 139,036	-2.81%	-2.81%
Simulcast Same-Species	533	\$ 85,292,988	\$ 160,024	534	\$ 89,953,266	\$ 168,452	5.46%	5.27%
Simulcast Cross-Species	533	\$ 15,414,405	\$ 28,920	535	\$ 13,491,083	\$ 25,217	-12.48%	-12.80%
Export	82	\$ 70,043,025	\$ 854,183	82	\$ 71,568,725	\$ 872,789	2.18%	2.18%
<b>Total Wagers</b>		<b>\$ 182,480,494</b>			<b>\$ 186,413,999</b>		<b>2.16%</b>	
<b>All Racetracks</b>								
Live	185	\$ 14,496,380	\$ 78,359	82	\$ 11,400,925	\$ 139,036	-21.35%	77.43%
Simulcast Same-Species	917	\$ 97,490,571	\$ 106,315	921	\$ 100,437,911	\$ 109,053	3.02%	2.58%
Simulcast Cross-Species	917	\$ 24,939,365	\$ 27,197	922	\$ 22,889,271	\$ 24,826	-8.22%	-8.72%
Export	185	\$ 74,670,140	\$ 403,622	82	\$ 71,568,725	\$ 872,789	-4.15%	116.24%
<b>Total Wagers</b>		<b>\$ 211,596,456</b>			<b>\$ 206,296,832</b>		<b>-2.50%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 136,926,316</b>			<b>\$ 134,728,107</b>		<b>-1.61%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 89,166,520</b>			<b>\$ 82,969,650</b>		<b>-6.95%</b>	

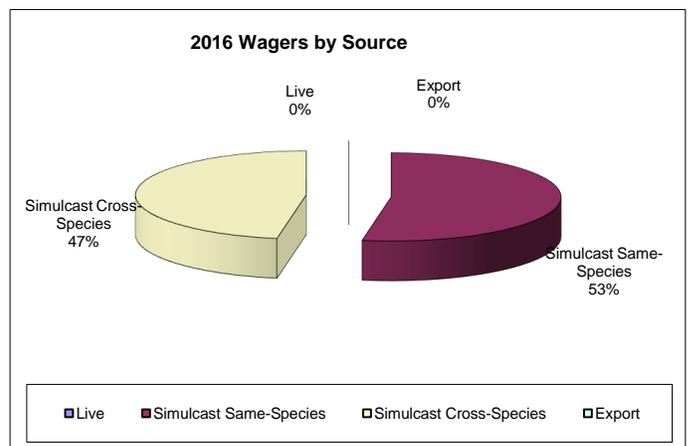
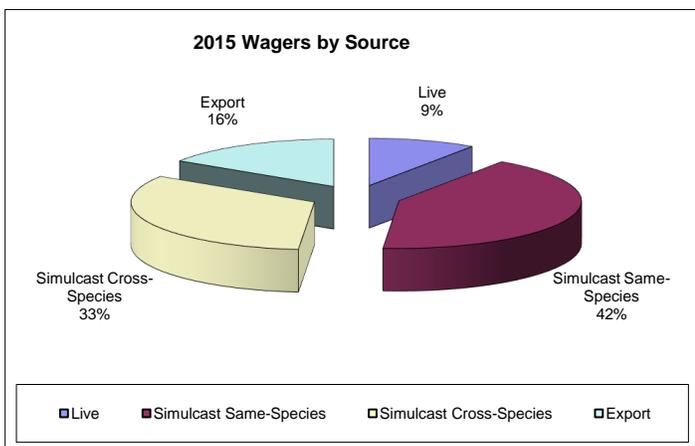




## Greyhound Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races

For the Period of January 1 through May 29

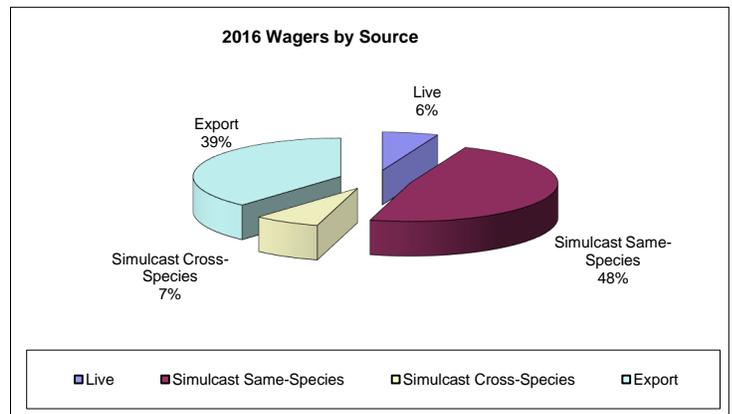
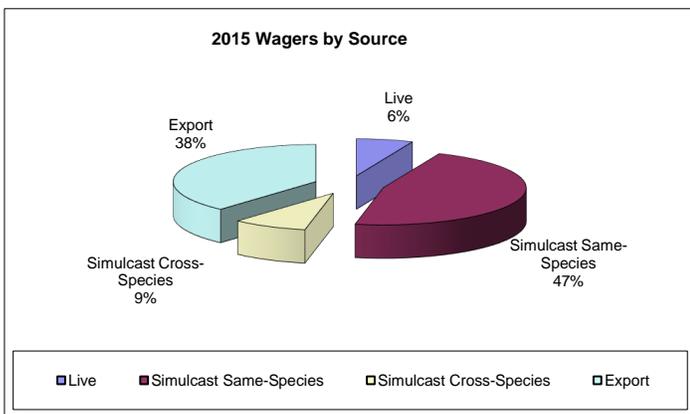
	Year 2015			Year 2016			Percentage Change	
	# Days	Wagers (Handle)		# Days	Wagers (Handle)		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
<b><u>Gulf Coast Racing</u></b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	107	\$ 3,807,895	\$ 35,588	108	\$ 3,073,576	\$ 28,459	-19.28%	-20.03%
Simulcast Cross-Species	107	\$ 1,966,346	\$ 18,377	108	\$ 1,751,003	\$ 16,213	-10.95%	-11.78%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 5,774,240</b>			<b>\$ 4,824,579</b>		<b>-16.45%</b>	
<b><u>Gulf Greyhound Park</u></b>								
Live	103	\$ 2,766,304	\$ 26,857	0	\$ -	\$ -	-100.00%	-100.00%
Simulcast Same-Species	149	\$ 4,959,097	\$ 33,283	150	\$ 4,589,474	\$ 30,596	-7.45%	-8.07%
Simulcast Cross-Species	149	\$ 5,082,785	\$ 34,113	150	\$ 4,845,595	\$ 32,304	-4.67%	-5.30%
Export	103	\$ 4,627,115	\$ 44,923	0	\$ -	\$ -	-100.00%	-100.00%
<b>Total Wagers</b>		<b>\$ 17,435,301</b>			<b>\$ 9,435,069</b>		<b>-45.89%</b>	
<b><u>Valley Race Park</u></b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	128	\$ 3,430,592	\$ 26,801	129	\$ 2,821,595	\$ 21,873	-17.75%	-18.39%
Simulcast Cross-Species	128	\$ 2,475,829	\$ 19,342	129	\$ 2,801,591	\$ 21,718	13.16%	12.28%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 5,906,421</b>			<b>\$ 5,623,186</b>		<b>-4.80%</b>	
<b><u>All Greyhound Tracks</u></b>								
Live	103	\$ 2,766,304	\$ 26,857	0	\$ -	\$ -	-100.00%	-100.00%
Simulcast Same-Species	384	\$ 12,197,583	\$ 31,765	387	\$ 10,484,644	\$ 27,092	-14.04%	-14.71%
Simulcast Cross-Species	384	\$ 9,524,960	\$ 24,805	387	\$ 9,398,189	\$ 24,285	-1.33%	-2.10%
Export	103	\$ 4,627,115	\$ 44,923	0	\$ -	\$ -	-100.00%	-100.00%
<b>Total Wagers</b>		<b>\$ 29,115,962</b>			<b>\$ 19,882,833</b>		<b>-31.71%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 24,488,847</b>			<b>\$ 19,882,833</b>		<b>-18.81%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 7,393,419</b>			<b>\$ -</b>		<b>-100.00%</b>	





## Horse Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races For the Period of January 1 through May 29

	Year 2015			Year 2016			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	86	\$ 1,754,598	\$ 20,402	86	\$ 1,290,070	\$ 15,001	-26.47%	-26.47%
Simulcast Cross-Species	86	\$ 190,125	\$ 2,211	86	\$ 154,328	\$ 1,795	-18.83%	-18.83%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 1,944,723</b>			<b>\$ 1,444,398</b>		<b>-25.73%</b>	
<b>Lone Star Park</b>								
Live	25	\$ 5,929,592	\$ 237,184	26	\$ 5,939,161	\$ 228,429	0.16%	-3.69%
Simulcast Same-Species	149	\$ 43,589,309	\$ 292,546	150	\$ 43,574,932	\$ 290,500	-0.03%	-0.70%
Simulcast Cross-Species	149	\$ 2,732,956	\$ 18,342	150	\$ 2,647,611	\$ 17,651	-3.12%	-3.77%
Export	25	\$ 14,911,249	\$ 596,450	26	\$ 17,370,304	\$ 668,089	16.49%	12.01%
<b>Total Wagers</b>		<b>\$ 67,163,106</b>			<b>\$ 69,532,008</b>		<b>3.53%</b>	
<b>Retama Park</b>								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	149	\$ 14,651,829	\$ 98,334	150	\$ 16,268,277	\$ 108,455	11.03%	10.29%
Simulcast Cross-Species	149	\$ 3,958,016	\$ 26,564	150	\$ 3,242,002	\$ 21,613	-18.09%	-18.64%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
<b>Total Wagers</b>		<b>\$ 18,609,845</b>			<b>\$ 19,510,279</b>		<b>4.84%</b>	
<b>Sam Houston Race Park</b>								
Live	57	\$ 5,800,483	\$ 101,763	56	\$ 5,461,764	\$ 97,532	-5.84%	-4.16%
Simulcast Same-Species	149	\$ 25,297,252	\$ 169,780	148	\$ 28,819,987	\$ 194,730	13.93%	14.70%
Simulcast Cross-Species	149	\$ 8,533,308	\$ 57,271	149	\$ 7,447,142	\$ 49,981	-12.73%	-12.73%
Export	57	\$ 55,131,777	\$ 967,224	56	\$ 54,198,421	\$ 967,829	-1.69%	0.06%
<b>Total Wagers</b>		<b>\$ 94,762,820</b>			<b>\$ 95,927,314</b>		<b>1.23%</b>	
<b>All Horse Tracks</b>								
Live	82	\$ 11,730,076	\$ 143,050	82	\$ 11,400,925	\$ 139,036	-2.81%	-2.81%
Simulcast Same-Species	533	\$ 85,292,988	\$ 160,024	534	\$ 89,953,266	\$ 168,452	5.46%	5.27%
Simulcast Cross-Species	533	\$ 15,414,405	\$ 28,920	535	\$ 13,491,083	\$ 25,217	-12.48%	-12.80%
Export	82	\$ 70,043,025	\$ 854,183	82	\$ 71,568,725	\$ 872,789	2.18%	2.18%
<b>Total Wagers</b>		<b>\$ 182,480,494</b>			<b>\$ 186,413,999</b>		<b>2.16%</b>	
<b>Total Wagers Placed in Texas</b>		<b>\$ 112,437,468</b>			<b>\$ 114,845,274</b>		<b>2.14%</b>	
<b>Total Wagers Placed on Texas Races</b>		<b>\$ 81,773,101</b>			<b>\$ 82,969,650</b>		<b>1.46%</b>	



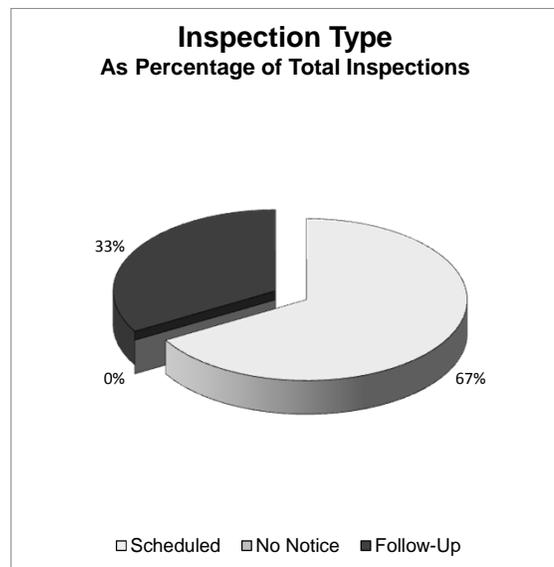
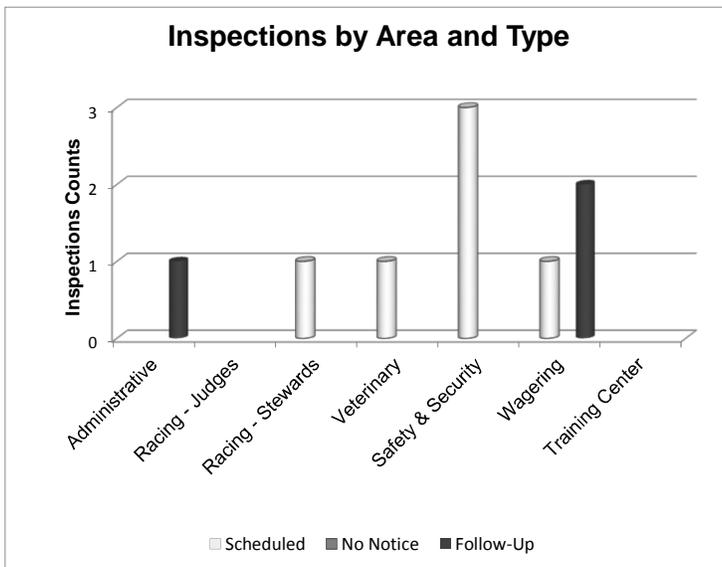
# INSPECTION REPORT

Summary of Inspections Performed For the Period of April 1, 2016 through May 31, 2016					
Track	Area of Inspection	Date of Inspection	Number of Unsatisfactory Items	Track Remediation	Remaining Unsatisfactory Items
Lone Star Park	Security	4/1/2016	0		
	Wagering	4/6/2016	0		
	Racing	4/8/2016	0		
Gulf Greyhound Park	Wagering	4/4/2016	0	1 (Follow-up from 3/31/16)	0
	Administrative	4/21/2016	0	1 (Follow-up from 3/31/16)	0
	Security	5/15/2016	0		
Sam Houston Race Park	Veterinary	4/1/2016	0		
	Wagering	4/4/2016	0	1 (Follow-up from 3/23/16)	0
Gulf Coast Racing	Security	5/12/2016	0		

Inspection Counts by Area and Type				
Area of Inspection	Scheduled	No Notice	Follow-Up	Totals
Administrative			1	1
Racing - Judges				
Racing - Stewards	1			1
Veterinary	1			1
Safety & Security	3			3
Wagering	1		2	3
Training Center				
<b>TOTAL INSPECTIONS</b>	<b>6</b>		<b>3</b>	<b>9</b>

**Important Notes Regarding Inspections at Racetracks:**

- 1) Scheduled inspections typically occur before the beginning of each race meet. No Notice inspections typically are planned to occur during the middle of a meet, but may occur at any time.
- 2) Follow-Up inspections are performed when a Scheduled or No Notice inspection identifies an unsatisfactory item. The Follow-Up inspection is performed after the association has had an opportunity to remedy any unsatisfactory item.



## ENFORCEMENT REPORT

Lone Star Park's Thoroughbred meet continues through July 17, 2016. Retama Park's Quarter Horse meet started last Friday, June 10, and runs through August 13, 2016.

Gillespie County, Gulf Coast Racing, Gulf Greyhound Park, Sam Houston Race Park, and Valley Greyhound Park continue simulcast operations.

### Sam Houston Race Park

Rulings Activity - Quarter Horse Meet - March 26, 2016 - May 16, 2016

Trainer Infractions	8
Conduct Violations	8
Jockey – Non-Riding Infractions	6
Medication Violations	2
Human Drug Violations	2
Licensing Violations	2
Contraband Violations	2
Failure to Pay Fine	2
Financial Obligations	1
Jockey – Riding Infractions	1
<b>Total # of Rulings</b>	<b>34</b>

Outstanding Inspection Item: Security required to assist with fingerprinting licensees.

*This unresolved issue from the March inspection period will be addressed by the start of the track's next live meet.*

#### **IV. PROCEEDINGS ON RACETRACKS**

Discussion and consideration on the following matter:

- A. Discussion of Renewal Criteria for Inactive Racetrack Licenses under Commission Rule 309.52

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**

**SUBCHAPTER B. RACETRACK LICENSES**

**DIVISION 2. ACTIVE AND INACTIVE LICENSES**

**§309.52. REVIEW AND RENEWAL OF INACTIVE RACETRACK LICENSES**

(a) The Commission shall annually review each inactive racetrack license. At the conclusion of each review, the Commission may:

(1) designate the license as Active-Operating;

(2) designate the license as Active-Other;

(3) renew the license as Inactive; or

(4) refer the inactive racetrack license to the State Office of Administrative Hearings for an evidentiary hearing and Proposal for Decision as to whether the Commission should refuse to renew the license.

(b) Notice of Review. The executive secretary shall provide written notice to an inactive license holder that the license holder must file an application for renewal. Such notice must be provided by certified or registered mail no later than June 1 of each year the license remains in effect and is designated as inactive. The first such notice shall be sent by the executive secretary by June 1, 2013. The notice must specify the procedure for filing an application for renewal and the information to be included in the application. The application for renewal shall be filed on or before July 1 following the receipt of the notice. The first application for renewal shall be filed by July 1, 2013, with additional applications filed annually on July 1 thereafter. The executive secretary may extend the deadline for filing the renewal application. The timely filing of an application for renewal extends the license until the Commission renews or refuses to renew the license. If an inactive racetrack license holder does not file a timely application for renewal, the Commission may either renew the license or refer the license to the State Office of Administrative Hearings for an

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**

**SUBCHAPTER B. RACETRACK LICENSES**

**DIVISION 2. ACTIVE AND INACTIVE LICENSES**

evidentiary hearing and Proposal for Decision as to whether the Commission should refuse to renew the license.

(c) Application for Renewal.

(1) Each inactive racetrack license holder must submit an application for renewal on a form prescribed by the executive secretary.

(2) The applicant must submit one original and two copies of the application and any supplemental documents.

(3) The applicant must swear before a notary public to the truth and validity of the information in the application and its supplemental documents. If the applicant is not an individual, the chief executive officer of the applicant must swear before a notary public to the truth and validity of the information in the application and its supplemental documents.

(4) The applicant must state the name, address, and telephone number of an individual designated by the applicant to be the primary contact person for the Commission during the review and renewal process.

**(d) Renewal Criteria. In determining whether to renew an inactive racetrack license, the Commission shall consider:**

**(1) the inactive racetrack license holder's:**

**(A) financial stability;**

**(B) ability to conduct live racing;**

**(C) ability to construct and maintain a racetrack facility;**

**(D) other good faith efforts to conduct live racing;**

**and**

**(2) other necessary factors considered in the issuance of the original license.**

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

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DIVISION 2. ACTIVE AND INACTIVE LICENSES

(3) For purposes of this section, the Commission will consider actions that demonstrate good faith efforts towards conducting live racing, although live racing is not imminent. Actions the Commission may consider include, but are not limited to:

(A) securing sufficient financial commitments to fund construction of the racetrack facility;

(B) securing the real property of the designated location for which the racetrack license was granted, either by purchase or through a long-term lease of 20 years or more;

(C) entering into contracts for the construction of the simulcasting and racetrack facilities;

(D) securing Commission approval of the racing facility's construction plans;

(E) securing permits and utilities necessary for the construction of the racing facilities; and

(F) beginning and sustaining construction of the simulcasting or live racing facilities.

(e) Nonrenewal. The Commission may refuse to renew an inactive racetrack license if, after notice and a hearing, the Commission determines that:

(1) renewal of the license is not in the best interests of the racing industry or the public; or

(2) the license holder has failed to make a good faith effort to conduct live racing.

(f) For purposes of this section, the Commission will consider, but is not limited to, the following factors as evidence that

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**

**SUBCHAPTER B. RACETRACK LICENSES**

**DIVISION 2. ACTIVE AND INACTIVE LICENSES**

renewal of a license is not in the best interests of the racing industry or the public:

(1) the presence of any ground for denial, revocation, or suspension of a license under §6.06 or §6.0603 of the Act;

(2) forfeiture of any bond by an inactive racetrack license holder that was required by the Commission;

(3) failure by an inactive racetrack license holder to comply with any condition or order placed on the license by the Commission;

(4) failure to maintain the ownership or leasehold interest in the real property constituting the designated location; or

(5) any factor identified in §6.04(a) of the Act.

(g) The presence of any particular factor or factors under this section does not require the Commission to renew or refuse to renew an inactive racetrack license.

(h) Review Fees.

(1) Each inactive racetrack license must submit a review fee with its application for renewal. The review fee is composed of a variable processing charge. The processing charge is the amount needed by the Commission to cover the administrative and enforcement costs of processing the request for renewal, including any costs associated with processing a hearing at the State Office of Administrative Hearings. A license holder must pay the initial review fee contemporaneously with filing the application for renewal. The Commission shall hold the review fee in the state treasury in a suspense account. The Commission may transfer the processing funds due to the Commission to the Texas Racing Commission Fund as costs are incurred. If the actual cost to the Commission of processing the request exceeds

**CHAPTER 309. RACETRACK LICENSES AND OPERATIONS**

**SUBCHAPTER B. RACETRACK LICENSES**

**DIVISION 2. ACTIVE AND INACTIVE LICENSES**

the amount deposited for the applicable charge, the requestor shall pay the remaining amount not later than 10 business days after receipt of a bill from the Commission. If the costs of processing the request are less than the amount of the charge, the Commission shall refund the excess not later than 10 business days after the Commission's decision on the request becomes final.

(2) The initial review fee for an inactive racetrack license is \$5,000. If the Commission refers an application to the State Office of Administrative Hearings under subsection (a) of this section, the applicant for renewal shall submit an additional \$50,000 review fee within 30 days of the referral.

Discussion, consideration and possible action on the following matter:

- B. Review and Renewal under Commission Rule 309.52 of the Inactive Racetrack License held by Longhorn Downs



# Tax Clearance Letter Request for Reinstatement

In order to reinstate an entity, the Texas Secretary of State requires evidence that the entity has met certain franchise tax requirements. To provide this evidence, the Comptroller's office issues a Tax Clearance Letter, Form 05-377. This letter must be included as part of the reinstatement filing with the Secretary of State.

Information about other filing requirements with the Secretary of State is online at [www.sos.state.tx.us](http://www.sos.state.tx.us).

## Obtaining a Tax Clearance Letter

All franchise tax reports and signed Information Reports through the reinstatement date must be filed. All franchise tax, penalty and interest must be paid.

- If all required reports and payments are already on file, complete and return this request.

OR

- If all required reports and payments are not on file, send any missing reports and payments along with this request.

Taxpayer name <b>Longhorn Downs, Inc.</b>	11-digit Texas taxpayer number _____
--	---

Select how the Tax Clearance Letter should be sent. Please note that requests are processed in the order received, regardless of the format you select.

Please select only one:	
<input type="checkbox"/> Mail	Recipient: _____ Street: _____ City, state and ZIP code: _____
<input checked="" type="checkbox"/> PDF	Email address: <u><b>pierce@coveler.com</b></u>
<input type="checkbox"/> FAX	FAX number (Area code and number): _____

Mail this request and all missing reports and/or payments to:

Comptroller of Public Accounts  
P.O. Box 149348  
Austin, TX 78714-9348

Requestor name (Type or print.) <b>Nicole E. Pierce</b>	Telephone number and extension _____
sign here ▶ <i>Nicole E. Pierce</i>	Date <i>May</i> <b>March 18, 2016</b>

**FOR ASSISTANCE:** Franchise tax information is available online at [www.franchisetax.tx.gov](http://www.franchisetax.tx.gov). For additional assistance, call 1-800-252-1381.

*You have certain rights* under Chapters 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at the address or phone number listed on this form.

*XT122391*



Texas Racing Commission  
 8505 Cross Park Drive Ste 110  
 Austin, TX 78754-4594  
 Phone (512) 833-6699 Fax (512) 833-6907  
[www.txrc.texas.gov](http://www.txrc.texas.gov)

2015 JUN 29 PM 1:12

## APPLICATION FOR RENEWAL

RECEIVED  
 RACING  
 COMMISSION

Texas Racing Act § 6.0602 and Commission Rule 309.52 requires the Commission to annually review each inactive license until the Commission either designates the license as active or refuses to renew the license. When completing the form, provide the contact information for the person designated by the association as the primary contact person for the Commission during the review and renewal process. The association's chief executive officer must review and swear to the truth and validity of the information provided in the application and its supplemental documents. Submit the completed form, any supplemental documents, and the initial review of \$5,000 to the Commission at the address above on or before July 1, 2015.

ASSOCIATION NAME Longhorn Downs, Inc.			
ADDRESS OF DESIGNATED RACETRACK LOCATION Hwy 1625 and Old Lockhart Rd.	CITY Creedmoor	STATE Tx	ZIP CODE 78610
CONTACT PERSON'S FIRST NAME Bryan	CONTACT PERSON'S LAST NAME Brown		
CONTACT PERSON'S BUSINESS STREET ADDRESS 16230 Hidden View St.	CITY San Antonio	STATE Tx	ZIP CODE 78232
CONTACT PERSON'S BUSINESS PHONE # ( 210 ) 862-7131	CONTACT PERSON'S FAX # ( )		

### RENEWAL CRITERIA

Texas Racing Act § 6.0602(b) identifies the following factors as criteria the Commission shall consider in determining whether to renew an inactive license. Please provide documentation to support the association's statements for each factor.

**Describe the association's:**

**Financial stability**

The parent company of the association, KTAGS Downs Holding Company, LLC, entered into a funding agreement with Clifton L. Thomas, Jr. Mr. Thomas has substantial assets including liquid assets and has significant borrowing power. The total project costs are well within Mr. Thomas' financial means.

**Ability to conduct live racing.**

The association has engaged Bryan Brown, who served as chief executive officer for Retama Park for 15 years. Given the experience of Mr. Brown and financial backing of Mr. Thomas, the association has the ability to not only conduct a live race meet, but also will insure that race meets will serve the public interest in a high-quality fashion.

**Ability to construct and maintain a racetrack facility.**

The association acquired (for cash) a 148 acre site in Creedmoor just off the Hwy 45 toll road south of Austin. The Creedmoor community leadership has embraced having a race track facility and would like to annex the premises into the city. These are important factors in the Austin area for development of a racetrack.

In addition, Mr. Thomas has considerable construction experience having constructed more than 40 convenience stores throughout central, south and east Texas through his Speedy Stop Stores subsidiary he formerly owned.

The association provided architectural plans to the Commission for the facility including site plans which demonstrate the knowledge necessary to develop the facility.

Other good faith efforts to conduct live racing.

*Commission Rule 309.52(d)(3) provides that the Commission will consider actions that demonstrate good faith efforts towards conducting live racing, although live racing is not imminent. Actions the Commission may consider include, but are not limited to, the items listed in section A through F below. The association should also list any other examples of good faith efforts towards conducting live racing that the association would like considered. Provide documentation to support each good faith effort.*

A. Securing sufficient financial commitments to fund construction of the racetrack facility.

Through the funding agreement executed by Mr. Thomas, the association has secured all necessary funding for construction of the racetrack facility, working capital and operations. This includes start up costs incurred prior to the opening of the racetrack. The fact that the land was purchased for cash further demonstrates ability to develop the property.

B. Securing the real property of the designated racetrack location for which the racetrack license was granted, either by purchase or through a long-term lease of 20 years or more.

The 148 acre site, was acquired for cash prior to making application for approval of the purchase of the association's stock. All specifics regarding the land purchase, including documentation, have been provided to the Commission.

C. Entering into contracts for the construction of simulcasting and racetrack facilities.

The vast experience Mr. Thomas has in construction of facilities in Texas and his financial strength make entering into contracts for the construction of simulcasting and racetrack facilities easily achievable. In addition, the application submitted to the Commission demonstrates extensive knowledge of the type of elements needs for a high quality racetrack facility.

D. Securing Commission approval of the racing facility's construction plans?

The association has not secured Commission approval of the racing facility's plans. The experienced group involved has a thorough understanding of the detailed plans needed to obtain such approvals and does not anticipate any issues arising in the approval process.

E. Securing permits and utilities necessary for the construction of the racing facility.

The association has not secured permits at this point due to the status of the litigation described in Attachment A. However, the association has stayed in contact with Creedmoor leadership and does not anticipate issues obtaining all necessary permits.

Water service remains available to the site as outlined in the application submitted to the Commission through the extension of a line running parallel to the site. Sanitary sewage treatment will either be handled onsite or through participation in a municipal utility district planned in the Creedmoor area. All other utilities are available in the immediate area.

F. Beginning and sustaining construction of the simulcasting or live racing facility.

The association has not yet initiated construction activity due to the status of the litigation described in Attachment A. However, all projects that Mr. Thomas has been involved with have been completed expeditiously and in a quality manner.

Describe any additional actions or information the association wishes to present in support of its application for renewal. Attach additional documents as needed.

G. Any other examples of good faith efforts that the association would like considered.

The purchase of the land for cash shows the commitment of the association and considerable good faith as outlined above. However, it should be noted that not only the land was purchased, an extensive selection process was undertaken to insure that the location was suitable from a public interest standpoint. The Austin MSA includes some areas that are challenging as it relates to the public's acceptance of a racetrack. The Creedmoor leadership and community appears to have strong support for the racetrack and its potential impact on the future of the area.

Please reference Attachment B for a description of how the association's plans are in the best interest of the public.

**As required by Commission Rule 309.52(c)(3), I swear that the information in this application and its supplemental documents is true and valid.**

PRINT NAME Clifton L. Thomas, Jr.	
SIGNATURE <b>X</b> <i>Clifton L. Thomas</i>	DATE 6-24-15
TITLE (CHIEF EXECUTIVE OFFICER OR EQUIVALENT) THE SOLE MANAGER OF KTAGS DOWNS MANAGEMENT COMPANY, LLC AS MANAGER OF KTAGS DOWNS HOLDING COMPANY, LLC (SEE ATTACHMENT "A")	

SWORN TO AND SUBSCRIBED before me on the 24<sup>th</sup> day of June, 2015.

My commission expires:  
8/6/17



*Megan N. Suarez*  
Notary Public, State of Texas

ATTACHMENT "A"  
TO APPLICATION FOR RENEWAL OF  
LONGHORN DOWNS, INC. LICENSE

Longhorn Downs, Inc. submits the following information in connection with its submittal of Application For Renewal of its racing license:

1. The Application for Renewal (the "Application"), and this attached information, is provided by Cliff Thomas as managing general partner of KTAGS Downs Holding Company, LP ("KTAGS"), the limited partnership that is recognized by the Texas Racing Commission ("Commission") as the owner of the stock of Longhorn Downs, Inc., which in turn is the owner of a Class 2 Racing License issued by the State of Texas. KTAGS submits this information on behalf of Longhorn Downs, Inc. because Longhorn Downs, Inc. is unable at this time to submit the information directly. Longhorn Downs, Inc. is unable to submit the Application directly because the stock of Longhorn Downs, Inc. (the "Stock") is being held in escrow by the Harris County District Court, and KTAGS is therefore unable to properly exercise its rights and privileges pertaining to the Stock, including the ability to change the board of directors or appoint new officers, the ability to pass corporate resolutions and the ability to submit this form. In short, KTAGS' lack of control of the Stock prevents it from taking actions required to be designated "active." Because the Commission recognizes KTAGS as the owner of the Class 2 license involved, KTAGS is the proper entity to interact with and provide information to the Commission.
2. As the Commission is aware, Dallas City Limits Property Company, L.P. ("DCL") previously applied to the Commission for approval of the transfer of the Stock from Austin Jockey Club to DCL. That application was denied by the Commission on September 15, 2009. DCL did not exhaust any administrative remedies in connection with that denial.
3. Subsequently, DCL instituted suit in Dallas County against the Austin Jockey Club, Russell Serafin, Mike Gallagher, Phillip Adams, Galena Park Investments, Ltd. and Cliff Thomas. That suit was tried to a jury and a take nothing judgment was entered by the trial court based on the jury's verdict. That judgment was reversed, and the cause was remanded to the trial court for entry of judgment. The trial court issued a judgment in favor of DCL and the Austin Jockey Club has appealed that decision.
4. In the interim, the escrow holder of the Stock instituted suit in Harris County to determine to whom the Stock should be released.<sup>1</sup> KTAGS later intervened in the Harris County Suit, seeking a declaration that the Stock belonged to it and that the Stock should be released to it. The Harris County Suit resulted in a judgment that the Stock be released to KTAGS in accordance with the Commission's February 7, 2012

<sup>1</sup> Dallas City Limits Property Co., L.P. v. Russell Serafin, et al, Cause No. 08-11846 in the 160<sup>th</sup> District Court, Dallas County, Texas ("Dallas County Suit").

<sup>2</sup> Crady, Jewett & McCulley, LLP v. Austin Jockey Club, Ltd. and Dallas City Limits Property Co., L.P., Cause No. 2010-16733 in the 127<sup>th</sup> District Court, Harris County, Texas ("Harris County Suit")

determination approving the transfer of the Stock from Austin Jockey Club to KTAGS. In so holding, the Harris County court properly recognized that this Commission has exclusive jurisdiction over horse racing licenses in Texas and has exclusive jurisdiction over the transfer of ownership of the license owned by Longhorn Downs. That court also properly recognized that because this Commission has exclusive jurisdiction over the transfer of ownership of the Stock and the Stock cannot be transferred absent the Commission's approval. Because the Commission denied Austin Jockey Club's request to transfer the Stock to DCL, the court correctly held that DCL cannot lawfully own the Stock.

5. The Harris County Suit judgment was appealed by DCL. As a predicate to that appeal, DCL requested that the trial court allow it to post a bond superseding the court's judgment so that the Stock would remain in escrow rather than being delivered to KTAGS. The trial court denied that request. The court ruled that the Stock remain in the jurisdiction of the court. KTAGS remains unable to retrieve the Stock from the registry of the Harris County court until the supersedeas issue is resolved. On December 10, 2013, the Houston Court of Appeals reversed the Houston trial court judgment on the basis that the Dallas Court of Appeals had reversed the judgment of the Dallas trial court, as noted below. On April 25, 2014, KTAGS and Austin Jockey Club filed a petition for review by the Texas Supreme Court. On June 6, 2014, the Supreme Court directed DCL to respond to the petition for review. Accordingly, the Supreme Court may decide to allow KTAGS to appeal the judgment of the Houston Court of Appeals, which would bring the issue of this Commission's exclusive jurisdiction before the Supreme Court for resolution.
6. Another suit was filed by DCL in Travis County, and involving this Commission as a party, along with Austin Jockey Club and KTAGS.<sup>3</sup> The Travis County Suit challenged this Commission's exclusive right to determine the ownership of horse racing licenses in Texas, taking the position that this Commission can only "approve for regulatory purposes a stock transfer that had occurred by virtue of contract law." By taking that position, DCL implicitly asked the Travis County court to hold that the Commission does not have exclusive jurisdiction over the ownership of racing licenses in Texas, a position that is contrary to direct case precedent and to well-settled administrative law principles. The Travis County court ruled against DCL in the case.
7. Because the Commission denied the application to transfer the license from Austin Jockey Club to DCL, DCL never obtained any rights in the racing license itself. DCL's contractual rights under the Stock Purchase Agreement with Austin Jockey Club did not and could not circumvent this Commission's exclusive right to determine who may own the license. Accordingly, even if DCL had perfectly performed its contractual duties under its agreement with Austin Jockey Club, DCL could not claim to have any actual rights in the license unless this Commission approved a transfer to DCL. If this Commission says "no" to a transfer of the license to DCL, the Commission's decision trumps any contract rights as between DCL and Austin Jockey Club.

<sup>3</sup> Dallas City Limits Property Co., L.P. v. Robert Schmidt, M.D., Ronald F. Ederer, Scott Haywood, Gloria Hicks, Michael F. Martin, D.V.M., John T. Steen III, Vicki Smith Weinberg, Texas Racing Commission, Austin Jockey Club, Ltd., and KTAGS Downs Holding Company, LLC, Cause No. D-I-GN-12-000580 in the 353<sup>rd</sup> District Court, Travis County, Texas ("Travis

8. On July 12, 2013, the Dallas Court of Appeals handed down its opinion regarding the judgment in the Dallas County Suit. In dicta in that opinion, the Court of Appeals incorrectly suggested that "the approval of KTAGS by the Commission means nothing so long as DCL possess a superior contractual right to the Stock." While recognizing that this Commission's approval is necessary to obtaining "licensee status," the Court opined that such approval "has no direct bearing on DCL's contractual right to purchase the Stock." The Dallas Court of Appeals opinion unfortunately confuses the issue of ownership of the license itself with any remaining contractual rights that DCL might have against Austin Jockey Club. While Texas courts have the jurisdiction to determine whether DCL has any contractual remedy against Austin Jockey Club for transferring the Stock to KTAGS, the Texas Legislature has stripped Texas courts of all jurisdiction to determine whether DCL owns or could own the license itself. Instead, the Legislature gave this Commission the exclusive jurisdiction to determine the question of ownership of the license. To the extent the Dallas Court of Appeals' opinion suggests that any court in Texas could compel the Commission to approve a transfer of the Stock to DCL under any circumstances that opinion threatens the foundations of administrative law in general and threatens the exclusive province of this Commission in particular. Acting in accordance with the opinion of the Dallas Court of Appeals, the Dallas trial court entered an amended final judgment on September 30, 2013, declaring that Austin Jockey Club's termination of its stock purchase agreement with DCL was wrongful and ineffective. Austin Jockey Club is in the process of appealing that judgment.
9. In the interim, however, the Stock remains in the registry of the Harris County court, in effect hostage to the machinations of DCL. Until the Stock is released to KTAGS, and until KTAGS is able to exercise its rights as owner of the Stock and the license, Longhorn Downs, Inc. is unable to execute the Active/Inactive Designation Form on its own behalf, and is unable to take the actions necessary to be deemed an active license.
10. Accordingly, KTAGS respectfully submits this information, and executes this form, as the owner of the Stock and the license as recognized by the only entity in Texas empowered to determine such ownership, i.e., this Commission.

## **Attachment B**

In addition, the association has demonstrated good faith efforts by insuring that a significant portion of the factors outlined in the Act for determining whether the renewal of the license is in the best interest of the racing industry and public are met. Those factors are as follows:

1. The presence of any grounds for denial, revocation or suspension of a license under 6.06 or 6.0603 of the Texas Racing Act - note that no such grounds exist
2. Forfeiture of any bond required by the Commission- note that no bond has been forfeited
3. Failure to comply with any Commission condition or order - all rules and requirements of the Commission have been followed
4. Failure to maintain ownership or leasehold interest in the real property - the property was acquired prior to granting of the license and ownership continues to be maintained
5. The best interest factors taken from 6.04 (a) of the Act as follows:

(1) the applicant's financial stability - the funding agreement and financial position of Mr. Thomas give the association significant financial strength

(2) the applicant's resources for supplementing the purses for races for various breeds- while the association does not plan on supplementing purses, the eventual simulcast and live operation will bring much needed purse money to the Austin area.

Unquestionably this will result in additional purse funding for all breeds in the state.

(3) the location of the proposed track - the location of the track in a friendly area with easy access to Highway 45 and 130 and 1-35 will be a welcome addition to the Austin MSA for many that enjoy the racing industry

(4) the effect of the proposed track on traffic flow - the main arteries into the racetrack location (Hwy 45 and 1327) have ample capacity to handle traffic into the site

(5) facilities for patrons and occupational licensees - the plans submitted to the commission provide excellent facilities for patrons and licensees

(6) facilities for race animals - the plans submitted to the commission show a high quality barn area

(7) availability to the track of support services and emergency services - there is a nearby vet clinic, a fire station, sheriff's substation and hospital

(8) the experience of the applicant's employees - while the association does not

currently have employees, the plans in place call for an experienced management team as previously outlined

(9) the potential for conflict with other licensed race meetings - the association will work with other racetracks to insure conflicts in meets do not exist

(10) the anticipated effect of the race meeting on the greyhound or horse breeding industry in this state - particularly by virtue of the association's simulcast activity which is not offered currently in the Austin market, significant purse funds will accrue which will help the horse breeding industry in Texas

(11) the anticipated effect of the race meeting on the state and local economy from tourism, increased employment and other sources – the employment generated by the association will provide a positive impact on the local economy. As the association is able to attract visitors from outside the Austin MSA, a positive impact will occur with regard to tourism.

## **V. PROCEEDINGS ON OCCUPATIONAL LICENSES**

Discussion, consideration and possible action on the following matter:

- A. The Proposal for Decision in SOAH No. 476-16-1728; *In Re: The Appeal of Edward Paul Webb from Stewards' Ruling No. RETA2526*

**Texas Racing Commission**  
**Ruling Report for Licensee**

**Ruling Date:** 10/24/2015

**Violation Date:** 09/05/2015

**Ruling#:** RETA2526

**Licensee:** EDWARD PAUL WEBB

**DOB:**

**Status:** CLSD

License#	Type	Status
135094	OWNER-TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	10/25/2015	11/08/2015

**Violation Type:** 4 MEDICATION VIOLATION

**Redistribute Purse Y**

Rules Violated: 319.3 DRUG POSITIVE OR PERMITTED MEDICATION VIOLATION  
319.302 REASONABLE OVERSIGHT OF ANIMAL  
311.104 TRAINER/ABSOLUTE INSURER

Fine	Fine Due Date	Fine Paid Date
\$ 500	10/27/2015	

**Narrative:**

Owner/Trainer Edward Webb, having been duly noticed appeared in a hearing before the Lone Star Park Board of Stewards on 10/22/15. Upon consideration of the evidence and testimony presented, Edward Webb is hereby fined five hundred dollars and suspended fifteen (15) days (10/25/15 thru 11/08/15) for the Class 4 Medication Violation of Firocoxib @ 38.7 +/- 13.2 ng/ml. in the horse Cause I'm Sec Sea, Sample #RP042103 the winner of the fifth race at Retama Park on 09/05/15.

During the term of this suspension Edward Webb is denied access to all facilities under the jurisdiction of the Texas Racing Commission. Horses owned or trained by Edward Webb are denied entry pending sale or transfer to a party approved by the Board of Stewards.

First Violation in this category in 365 days.

The horse Cause I'm Sec Sea is hereby disqualified and declared unplaced in the fifth race at Retama Park on 09/05/15 with the purse to be redistributed as follows:

1. John Louis' Marq
  2. Belle of Infinity
  3. Lazer Blaze
  4. Tess's Angel
  5. Silver Spot
- Unplaced: Cause I'm Sec Sea

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

-----  
DENNIS SIDENER

-----  
TONY LANGFORD

-----  
JERRY BURGESS

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 5, 2016

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

**INTER-AGENCY**

**RE: Docket No. 476-16-1728; Edward Paul Webb 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(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Drews".

Elizabeth Drews  
Administrative Law Judge

ED/ch

Enclosures (with 1 CD; Certified Evidentiary Record)

cc: Devon Bijansky, Deputy General Counsel, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**

William T. Tschirhart, Jr., 1313 Lorenzo, No. 1, Castroville, TX 78009 **REGULAR MAIL**

**SOAH DOCKET NO. 476-16-1728**  
**TxRC NO. 2016-02-02**

<b>EDWARD PAUL WEBB,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>TEXAS RACING COMMISSION,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Edward Paul Webb (Petitioner), who is licensed by the Texas Racing Commission (Commission), seeks to overturn a portion of Ruling RETA2526 (the Ruling) by a Board of Stewards (the Stewards). After winning a race on September 5, 2015, Cause I'm Sec Sea (the horse), for which Petitioner was owner-trainer, provided a urine specimen that tested positive for a Class 4 therapeutic drug, Firocoxib, in a quantity exceeding the permissible level. The Stewards found that Petitioner had violated 16 Texas Administrative Code (TAC) §§ 311.104, 319.3, and 319.302 and imposed a 15-day suspension, a \$500 fine, and loss of purse. The Administrative Law Judge (ALJ) finds that the Ruling was not clearly in error.<sup>1</sup>

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Jurisdiction and notice were not contested and are addressed in the Findings of Fact and Conclusions of Law.

On February 11, 2016, ALJ Elizabeth Drews convened the hearing. Attorney William T. Tschirhart represented Petitioner. Deputy General Counsel Devon V. Bijansky represented the Commission's staff (Staff). The record closed on February 11, 2016, at the end of the hearing.

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<sup>1</sup> As discussed subsequently, the applicable standard of proof is whether the Ruling was clearly in error. 16 TAC § 307.67(c).

## II. PETITIONER'S CONTENTIONS

Petitioner does not dispute the finding that he committed the violation or the 15-day suspension, which he has already served. He requests that the fine be reduced to \$250 and contests the loss of purse. His contentions are summarized below:

- The Stewards did not consider as mitigating factors that: (1) in 35 years of training racehorses, Petitioner had no previous violation involving medication of a horse (medication violation); and (2) a licensed veterinarian had prescribed the Firocoxib to the horse to treat a medical condition.
- Firocoxib is a non-steroidal anti-inflammatory drug (NSAID). The veterinarian prescribed Firocoxib instead of another NSAID, phenylbutazone (bute), because bute has side effects that were counter-indicated given the horse's medical history.
- Petitioner withdrew the horse from Firocoxib more than 50 hours before the race. According to him, he and veterinarians he asked considered 24 hours a sufficiently long period of withdrawal to avoid a non-compliant test result (withdrawal period).
- The penalty imposed on Petitioner should be a \$250 fine and no loss of purse. That is the penalty for a first offense involving bute recommended in the Medication Penalty Guidelines and the Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule (the ARCI Guidelines), which is published by the Association of Racing Commissioners International (ARCI).<sup>2</sup> Staff's witnesses were unable to explain why penalties should be harsher for Firocoxib than for bute.
- Petitioner waived testing of the split sample because he thought it would cost more than the penalty he expected, which was a \$250 fine and no loss of purse. He had never used Firocoxib before and the prescribing veterinarian had described Firocoxib as like bute but without certain harmful side effects. The \$500 fine and loss of purse imposed in the Ruling is the penalty for a first offense involving Firocoxib prescribed in the Equine Medication Classification Policy and Penalty Guidelines (the Medication Penalty Guidelines).<sup>3</sup> Petitioner, however, was not aware of that document, which is not posted on the Commission's website.

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<sup>2</sup> Resp. Ex. K.

<sup>3</sup> Resp. Ex. J at 131-71.

### III. APPLICABLE LAW

The Commission has authority to implement the Texas Racing Act (the Act).<sup>4</sup> Stewards are racing officials employed by the Commission who have supervisory authority over the conduct of races and licensees.<sup>5</sup> In support of its position that the Ruling should be upheld, Staff cites the Act, Commission rules, and Commission policies incorporated in its rules.<sup>6</sup> In this proceeding, Petitioner has the burden to prove that the Stewards' Ruling was clearly in error.<sup>7</sup>

#### A. Law Regarding the Violation

The Act provides that a horse's trainer is the absolute insurer that the horse is free from prohibited substances while racing.<sup>8</sup> Pursuant to the Commission's rules, a positive finding by a chemist that a prohibited substance is in a horse's urine after a race is *prima facie* evidence that the substance was in the horse's body during the race.<sup>9</sup> Levels of drugs that are therapeutic and necessary to treat illness or injury in race animals are permissible if: (1) the drug is listed in a memorandum (the Permissible Medication Level Memo) that is approved by the Commission's Executive Secretary and maintained by the Commission Veterinarian; and (2) the maximum permissible urine concentration of the drug does not exceed a limit stated in the Permissible

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<sup>4</sup> Tex. Rev. Civ. Stat. art. 179e. All law discussed in the Proposal for Decision is the law in effect on September 5, 2015, when the violation occurred.

<sup>5</sup> Tex. Rev. Civ. Stat. art. 179e, § 3.07(g) (providing that a steward may exercise supervisory authority granted to stewards under the Act or a Commission rule, including supervisory acts requiring the exercise of discretion).

<sup>6</sup> Because, as discussed in Sections III.A and III.B of the Proposal for Decision, those policies are expressly referenced in the Commission's rules, 1 TAC § 155.419 (regarding a SOAH ALJ's consideration of policy not incorporated in an agency's rules) does not apply.

<sup>7</sup> 16 TAC § 307.67(c).

<sup>8</sup> Tex. Rev. Civ. Stat. art. 179e, § 3.16(h); *see also* 16 TAC §§ 311.104(b)(2), 319.3(a). A prohibited substance is a drug that is reasonably capable of influencing or affecting a race's outcome and is prohibited by a Commission rule regulating the unlawful influence of a race. Tex. Rev. Civ. Stat. art. 179e, § 1.03(72). 16 TAC § 319.1(b) defines "prohibited drugs, chemicals, or other substances" to include (1) any drugs or drug metabolites that could have an effect, however minimal, on a racehorse's health or performance, except as expressly permitted by 16 TAC chapter 319; and (2) a drug permitted by that chapter but in excess of its maximum restrictions.

<sup>9</sup> 16 TAC § 319.3(e).

Medication Level Memo.<sup>10</sup> The Commission's rules specify that the Permissible Medication Level Memo is posted in the office of the Commission Veterinarian and is also available from veterinarians that the Commission employs at each racetrack.<sup>11</sup> The Permissible Medication Level Memo classifies Firocoxib as a therapeutic drug with a permissible level in post-race samples of 20 nanograms per milliliter (ng/ml) or less.<sup>12</sup>

## **B. Law Regarding Penalties**

As provided in the Act, if stewards find that a test specimen from a horse that participated in a race contains a prohibited substance, they may disqualify the horse and order the purse redistributed, impose a fine of not more than \$25,000, and suspend a license for up to five years.<sup>13</sup> By rule, the Commission has authorized its Executive Secretary to promulgate a schedule for recommended disciplinary action for use by stewards and the Commission in assessing penalties for violations.<sup>14</sup> The schedules are set forth in Enforcement Policy and Guidelines for Stewards/Racing Judges (the Enforcement Guidelines) and the Medication Penalty Guidelines.<sup>15</sup>

The Enforcement Guidelines indicate that stewards should strive to be as consistent as possible but review each violation according to individual circumstances.<sup>16</sup> Considerations include the purpose of the rule, the seriousness of the violation based on its category, whether the violation resulted in actual harm or mere potential for harm, unique facts, the number of times in the last 12 months the licensee has committed the same type of violation, and the penalty best

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<sup>10</sup> 16 TAC § 319.3(c); *see also* 16 TAC § 319.304(b) (referencing the list that the Proposal for Decision refers to as the Permissible Medication Level Memo).

<sup>11</sup> 16 TAC §§ 319.3(c), 319.4(b), (f)(5). Staff witness Ricky Walker testified that the Permissible Medication Level Memo is also on the Commission's website.

<sup>12</sup> Resp. Ex. I at 118-19.

<sup>13</sup> Tex. Rev. Civ. Stat. art. 179e, § 3.07(b); 16 TAC §§ 307.64, 319.304(a).

<sup>14</sup> 16 TAC § 319.304(b).

<sup>15</sup> Resp. Ex. J at 122, 131. The Enforcement Guidelines are Resp. Ex. J at 122-30; the Medication Penalty Guidelines are Resp. Ex. J at 131-71.

<sup>16</sup> Resp. Ex. J at 122.

suited to penalize the licensee and to deter future similar violations.<sup>17</sup> Mitigating factors that may be considered to reduce the penalty include no intent to commit the violation, no previous discipline, and admission of error.<sup>18</sup> For medication violations, mitigating and aggravating circumstances also include how many times a trainer has been penalized, legal availability of the drug, whether the Food and Drug Administration has authorized the drug's use in horses, and whether the trainer was acting on the advice of a licensed veterinarian.<sup>19</sup> The purpose of the Enforcement Guidelines is to provide general guidance on the seriousness of types of violations and factors to consider when deciding penalties.<sup>20</sup> The Enforcement Guidelines specify, however, that for medication violations, the Medication Penalty Guidelines should be followed.<sup>21</sup>

The Medication Penalty Guidelines classify Firocoxib and other NSAIDS as Class 4 substances.<sup>22</sup> Class 4 substances "are therapeutic medications routinely used in race horses" that "may influence performance, but generally have a more limited ability to do so."<sup>23</sup> A medication violation is a first offense if the violator had no violations within the same class of substances during the preceding 365 days.<sup>24</sup> The penalties for a first offense involving a Class 4 substance are a \$500 fine, a 15-day suspension, and loss of purse.<sup>25</sup>

The substances classification and recommended penalties provided in the Medication Penalty Guidelines are based largely on the ARCI Guidelines.<sup>26</sup> The substances classification reflects the substance's pharmacology, its ability to influence the outcome of a race, whether it

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<sup>17</sup> Resp. Ex. J at 130.

<sup>18</sup> Resp. Ex. J at 124-25. Because no aggravating circumstances were listed in the Ruling or alleged in this case, the ALJ has not discussed law relating to them.

<sup>19</sup> Resp. Ex. J at 125.

<sup>20</sup> Resp. Ex. J at 123.

<sup>21</sup> Resp. Ex. J at 125.

<sup>22</sup> Resp. Ex. J at 134, 145.

<sup>23</sup> Resp. Ex. J at 133.

<sup>24</sup> Resp. Ex. J at 135.

<sup>25</sup> Resp. Ex. J at 137.

<sup>26</sup> Resp. Ex. J at 132, 135.

has a legitimate therapeutic use in a racehorse, and other evidence that it may be used improperly.<sup>27</sup> Stewards have discretion to impose the penalty that best accomplishes the Commission's enforcement goals, which are: (1) to protect the health and safety of the racing participants, including licensees, patrons, and race animals; and (2) to ensure that pari-mutuel racing is conducted honestly and fairly.<sup>28</sup> Stewards should consider what penalty would best punish the violator for harm caused by the violation and deter future similar violations by the violator and other licensees.<sup>29</sup> Stewards should avoid blindly assessing "consistent" penalties without regard to the specifics of each case.<sup>30</sup> The Medication Penalty Guidelines reference the Enforcement Guidelines for guidance regarding mitigating and aggravating factors.<sup>31</sup> The penalties recommended in the Medication Penalty Guidelines, however, "should be followed in all cases in the absence of persuasive, credible evidence of mitigating circumstances justifying a lesser penalty or aggravating circumstances justifying an enhanced penalty."<sup>32</sup> If stewards deviate from the recommended penalty, the ruling should include an explanation of the mitigating and aggravating circumstances that support the modification.<sup>33</sup>

Petitioner's exhibits include two decisions in which Commission stewards imposed a \$250 fine and no loss of purse for a first offense involving bute levels in a racehorse.<sup>34</sup>

#### IV. EVIDENCE

At the hearing, Petitioner testified and presented testimony by his wife, Sherry Webb, and the horse's veterinarian, Robert Ball, DVM. Staff presented testimony by Commission

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<sup>27</sup> Resp. Ex. J at 132.

<sup>28</sup> Resp. Ex. J at 135.

<sup>29</sup> Resp. Ex. J at 134.

<sup>30</sup> Resp. Ex. J at 134.

<sup>31</sup> Resp. Ex. J at 135.

<sup>32</sup> Resp. Ex. J at 135.

<sup>33</sup> Resp. Ex. J at 135.

<sup>34</sup> Pet. Exs. 7 (Official Ruling No. GCF587 (Aug. 9, 2015) involving a bute level of 3.0 ±0.2 mg/ml) and 8 (Official Ruling No. RETA2509 (Sep. 7, 2015) involving a bute level of 3.0 ±0.7 mg/ml).

investigator Johnny Whitley and Commission Chief Steward Ricky Walker. Dr. Ball testified as an expert witness; the other witnesses were fact witnesses. Eight exhibits by each party were admitted into evidence.<sup>35</sup>

#### A. Uncontested Background Facts

Petitioner holds Commission License No. 135094. He is the owner-trainer of the horse, a four-year-old thoroughbred filly. On September 5, 2015, the horse won the fifth race at Retama Race Park. After the race, she provided urine sample #RP042103, which the barn staff divided into two specimens. One specimen was sent to the Texas Veterinary Medical Diagnostic Laboratory, where it tested positive for Firocoxib at  $38.7 \pm 13.2$  ng/ml, exceeding the permissible level of 20 ng/ml.<sup>36</sup> On September 23, 2015, Petitioner was notified of the positive result and the opportunity to have the other specimen (the split sample) tested. On September 25, 2015, he signed a document waiving testing of the split sample.<sup>37</sup>

After holding a hearing at which Petitioner appeared, the Stewards issued the Ruling on October 24, 2015.<sup>38</sup> They found that Petitioner had violated 16 TAC §§ 311.104 (trainer/absolute insurer), 319.3 (drug positive or permitted medication violation), and 319.302 (reasonable oversight of animal). Noting that Petitioner's violation was the first of its type in 365 days, the Stewards imposed a 15-day suspension, a \$500 fine, and loss of purse. The purse was \$7,000.<sup>39</sup>

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<sup>35</sup> Pet. Exs. 1-8; Resp. Exs. B-C, E, I-L, and Q. Staff did not redact social security numbers from some pages in its exhibits, as 1 TAC § 155.413 requires. In the record copy, the ALJ has substituted copies of those pages with the social security number redacted.

<sup>36</sup> Resp. Exs. B, E; Resp. Ex. I at 118. At the hearing before the ALJ, the parties stipulated that the test produced a positive result as stated in Staff's pleadings. Petitioner did not contest proper chain of custody and handling of the specimen, which Staff proved through Resp. Ex. E and Mr. Whitley's testimony.

<sup>37</sup> Resp. Ex. E. The split sample waiver signed by Petitioner is Resp. Ex. E at 21.

<sup>38</sup> Resp. Ex. B.

<sup>39</sup> Resp. Ex. E at 22.

**B. Petitioner's Evidence**

**1. Testimony by Robert Ball, DVM**

Dr. Ball received a degree in veterinary medicine from Texas A&M University in 1981. Since then, he has had an equine-only practice in the San Antonio area. He treats all types of horses, not just racehorses. He does not practice at the racetrack and is more familiar with drug standards for horses such as show jumpers, which are less stringent than for racehorses. He testified that he tells clients he cannot advise them on racing regulations and that, when asked about withdrawal periods, he refers them to a veterinarian who practices at a racetrack.

Dr. Ball stated that he has treated Petitioner's horses for several years. Dr. Ball examined the horse for chronic lameness at his clinic on June 30, 2015, and in an arena on July 2, 2015. Based on those examinations and diagnostic tests, he prescribed Firocoxib in 57-milligram tablets, three tablets per day initially, then one per day for about three weeks, then a half tablet per day. At the time, the horse was not going to be raced again soon; the goal was to get her back in training. Dr. Ball was not sure whether, during those two examinations, he advised Petitioner to confirm the withdrawal period with a racetrack veterinarian. Dr. Ball testified that he "almost always" does so and was certain he had so advised Petitioner at some point before the September 5, 2015 race.

Dr. Ball described Firocoxib as an NSAID that is in the same class as bute and has similar pharmaceutical benefits but indisputably has less toxic effects on a horse's kidneys and colon. Asked whether Firocoxib was performance-enhancing for racehorses, Dr. Ball responded "not completely." He explained that, although Firocoxib is not a pain blocker, by reducing inflammation and relieving pain it might allow a horse to perform at its optimum level.

Dr. Ball testified that before the horse's non-compliant test, he did not know, and believes Petitioner did not know, that racing jurisdictions require a withdrawal period for Firocoxib as long as two weeks. He stated that Firocoxib would not mask mild lameness more

than would bute, which has a much shorter withdrawal period. He did not know why a racing jurisdiction would allow a higher level of bute than of Firocoxib.

## 2. Testimony by Sherry Webb

Ms. Webb is married to Petitioner and co-owns the horse (with him and another person).<sup>40</sup> She described their racehorse business as “very small.”

Ms. Webb testified that, after finishing a race at another racetrack, the horse drew up and began not eating well and losing weight. The horse was treated for gastric and colonic ulcers and not raced for a time. When she recommenced training, the horse seemed sore and stiff. Given the horse’s history, Dr. Ball did not want to prescribe bute, which is known to cause gastrointestinal ulcers and kidney problems. He prescribed Firocoxib, which he described as very similar to bute but without those side effects. Ms. Webb did not recall Dr. Ball telling her and Petitioner to discuss the withdrawal period with a racetrack veterinarian. She said, however, that a week before the race Petitioner asked racetrack veterinarian Richard Mays, DVM, who said that a 24-hour withdrawal period would be sufficient. She testified that Petitioner withdrew the horse from Firocoxib at least 50 hours before the September 5, 2015 race. The horse caught the other horses “at the wire” and won.

Ms. Webb explained that she and Petitioner did not request a split sample test because: (1) they knew the horse had been administered Firocoxib; (2) they had been told that split sample tests almost never produced a different result; and (3) they thought the split sample test would cost more than the penalty. Their understanding was that a split sample test would cost \$750 and would not be refunded even if the result was negative and that the penalty for a first offense involving an NSAID was a \$250 fine and no loss of purse.

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<sup>40</sup> Resp. Ex. E at 22.

Ms. Webb thought the penalty should reflect that Petitioner had no past medication violation, the Firocoxib had been prescribed by a veterinarian, Petitioner had asked a racetrack veterinarian about the withdrawal period, and there was no suspicious betting pattern. She stated that the purse was comparatively small and that she and Petitioner did not bet on the race.

### 3. Testimony by Petitioner

Petitioner testified that he has worked in horse-training since 1980. From the ages of 17 to 39, he worked for trainer Pat Doyle, as a groom until 1989, then as an assistant trainer until 2002. During those 22 years, he “handled everything” for Pat Doyle, whose only medication violation was a filly’s positive test in 1983 for a substance that Pat Doyle did not give to her. The penalties were a fine, a suspension, and loss of purse. After that, Pat Doyle had Petitioner stay with the horses every night to keep “anyone from getting to them.” In April 2002, Pat Doyle retired and Petitioner took over the business. He has been a licensed trainer since 2002.<sup>41</sup> Since then, his horses have run more than 600 races and he had no medication violation.

Petitioner has had two other violations. In 1993, he was fined \$25 because a sample cough medicine with no prescription label, which his doctor had given him for asthma, was found in his truck during a search at a racetrack. Also “a long time ago,” he was fined \$100 for having a large plastic syringe (with no needle) in his trailer. He used the syringe to rinse out horses’ mouths and had forgotten about it.<sup>42</sup>

Petitioner testified that the withdrawal period for bute was 24 hours but he usually withdrew it 32 hours before a race. He had never used or heard of Firocoxib before it was prescribed to the horse. According to Petitioner, Dr. Ball told him that a 24-hour withdrawal period for Firocoxib should be fine. Petitioner thought Dr. Ball might not remember that

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<sup>41</sup> Consistent with Petitioner’s testimony, Commission records show that he held licenses as a groom/walker from 1989 to 1990, as an assistant trainer from 1989 to 2003, as an authorized agent from 1997 to 2005, as a trainer from 2002 to 2007, and as an owner-trainer from 2007 to the present. Resp. Ex. E at 35.

<sup>42</sup> Commission records show that Petitioner was fined twice, a \$25 fine on October 17, 1991, and a \$100 fine on June 15, 2007. Resp. Ex. E at 33.

conversation because he had so many clients. Petitioner testified that Dr. Mays also told him that a 24-hour withdrawal period would be sufficient.

Petitioner stated that the horse was on Firocoxib all of July and August 2015. His understanding was that she was receiving a “minimum amount” that would not “kill all pain.” He did not want to switch to bute because it causes ulcers, which the horse had already had. He withdrew her from Firocoxib “well over” 50 hours before the September 5, 2015 race. For that race, the odds on her were 3 to 1 and betters picked her second or third in the field. She is no longer on Firocoxib and in her four races since September 5, 2015, she has not done well, which he attributed to jockey mistakes.

Petitioner said that this is a first offense and a mistake he will never repeat. He is concerned about the impact to his good reputation as a trainer, in which he takes considerable pride. He has already served the 15-day suspension. He has paid the fine but would like it reduced to \$250. He does not want to lose the purse.

#### **4. Letters of Support**

The evidence includes letters of support for Petitioner by three veterinarians who did not testify. The letters are summarized below.

In a January 8, 2016 letter,<sup>43</sup> Richard Mays, DVM, stated that he has practiced for 50 years and provides veterinary services at Retama Race Park. He said he has known Petitioner for more than 20 years, knows him to be a good and honest man, and believes his violation was “an honest mistake and oversight, while under the supervision and instruction of Dr. Ball.” Dr. Mays described Firocoxib as a therapeutic medication that is not performance-enhancing. He considered the penalties the Stewards imposed to be excessive, given Petitioner’s long career

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<sup>43</sup> Pet. Ex. 3.

without a medication violation and the fact that the penalty for a first offense involving bute is a \$250 fine.

In a January 21, 2016 letter,<sup>44</sup> R. Jerry Black, DVM, stated that he has practiced in the horse-racing industry since 1973 and has treated many horses for Petitioner. Dr. Black described Firocoxib as a non-performance-enhancing NSAID that is probably safer than bute in terms of avoiding harm to a horse's gastrointestinal tract and kidneys. Commenting that Petitioner is meticulous and careful regarding medications administered to his horses under Dr. Black's care, Dr. Black expressed confidence that the violation was not intentional but instead the result of an oversight or mistake. Noting that it is Petitioner's first medication violation in his many years as a licensed trainer, Dr. Black thought the penalties should be reduced to those for a first offense involving bute.

In a January 15, 2016 letter,<sup>45</sup> Michael F. Martin, DVM, said that he has known Petitioner for more than 20 years and always found him to be honest, hard-working, and conscientious. Dr. Martin stated that this is Petitioner's first medication violation and resulted from "some bad information from an off-track veterinarian." Dr. Martin expressed hope that the Commission will consider those factors in making a final decision on the penalty.

### **C. Staff's Evidence**

#### **1. Testimony by Johnny Lynn Whitley**

Mr. Whitley has been a Commission investigator for 15 years. He explained that reasons the Commission requires drug-testing of racehorses include the safety of the animal tested (because drugs can mask an injury), other horses, and jockeys. He did not know why the Commission treats Firocoxib differently than bute. He knew of no suspicious circumstances involving the horse's September 5, 2015 race; she was tested because she won. Mr. Whitley did

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<sup>44</sup> Pet. Ex. 5.

<sup>45</sup> Pet. Ex. 6.

not know Petitioner and was not familiar with his reputation but saw no sign that he was being disingenuous or dishonest. According to Mr. Whitley, when told about the non-compliant test, Petitioner and Ms. Webb appeared to be “in shock.”

## 2. Testimony by Ricky Walker

Mr. Walker has been a Commission steward for 18 years and Chief Steward for five years. Previously, he was a jockey.

Mr. Walker testified about a document on the Racing Medication & Testing Consortium (RMTC) website that is entitled RMTC-Approved Controlled Therapeutic Medications.<sup>46</sup> The document provides withdrawal period guidelines of 14 days for Firocoxib (20 ng/ml threshold) and 24 hours for bute (2 micrograms per milliliter (mcg/ml) threshold).<sup>47</sup> According to Mr. Walker, the list of permissible substance thresholds is the only part of the RMTC document the Commission has adopted; the Commission has not adopted any withdrawal period guidelines. He testified that trainers can only rely on advice from veterinarians and consult the RMTC guidelines. He stated that the Commission veterinarians, who are at the racetrack every racing day and conduct the horses’ pre-race examinations, know the withdrawal periods and provide that information to trainers who ask for it.

In the Medication Penalty Guidelines, the maximum penalties for a first offense involving Class 4 NSAIDs (including Firocoxib) are a 15-day suspension, a \$500 fine, and loss of purse.<sup>48</sup> The exception is that for a first-time bute violation, the penalties are:<sup>49</sup>

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<sup>46</sup> Resp. Ex. L.

<sup>47</sup> Resp. Ex. L at 219-20.

<sup>48</sup> Resp. Ex. J at 137.

<sup>49</sup> Resp. Ex. J at 138. In addition, if the bute level was 10.0 mcg/ml or more, the horse must pass a Commission-approved examination before being eligible to run. Because Petitioner is the horse’s owner-trainer, the penalties imposed on a trainer and on an owner are combined in the Proposal for Decision.

<b>Bute Level</b>	<b>Penalty</b>
2.1 to 9.9 mcg/ml	No loss of purse; minimum \$250 fine absent mitigating circumstances
10.0 mcg/ml or more	Loss of purse; minimum \$500 fine absent mitigating circumstances

Mr. Walker did not know why the penalties are harsher for Firocoxib than for bute but said the Commission has maintained that distinction throughout his 18 years as a steward.

Mr. Walker testified that the purse for the September 5, 2015 race had not yet been released. Noting that the second-place horse did not fail its drug test, he considered loss of purse appropriate in order to avoid an unfair advantage. He agreed that stewards have discretion to consider mitigating circumstances but has never known them to be used as a basis not to impose loss of purse. He discussed an example in which, after racing, a horse tested positive for caffeine. A medication administered to the horse contained caffeine but the manufacturer had made a mistake in testing its drug and did not list caffeine on the label. In that instance, the stewards imposed loss of purse but no suspension or fine.

Mr. Walker stated that the ARCI Guidelines are not binding on the Commission but about 98 percent of them have been adopted in the Medication Penalty Guidelines. The ARCI Guidelines classify Firocoxib as a Class 4 drug, for which an offense is a Class C violation, and recommend a minimum \$1,000 fine (absent mitigating circumstances) and loss of purse as the penalty for a first offense.<sup>50</sup> For a first offense involving bute, the ARCI Guidelines penalty is:<sup>51</sup>

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<sup>50</sup> Resp. Ex. K at 177, 185, 210. For Firocoxib and bute violations, the ARCI Guidelines also recommend that the horse pass an examination before being eligible to run. Mr. Walker stated that the ARCI Guidelines are posted on ARCI's website.

<sup>51</sup> Resp. Ex. K at 177, 185, 210.

Bute Level	Penalty
>2.0 to 5.0 mcg/ml	No loss of purse; penalty ranging from a written warning to a \$500 fine (a warning with no fine is recommended if the bute level is < 3.0 mcg/ml, the trainer has at most one violation in the last two years, and there are no aggravating circumstances)
>5.0 mcg/ml	Loss of purse; minimum \$1,000 fine absent mitigating circumstances

Mr. Walker testified that he has known Petitioner for many years, had no doubt about his good character and reputation, and believes he does not risk his horses' health and safety.

### V. ANALYSIS

Applying the law discussed in Section III of the Proposal for Decision to the evidence discussed in Section IV, the ALJ finds that the Ruling is not clearly in error.

Regarding a preliminary matter, whether the Commission should post on its website or adopt by rule any policies applied in the Ruling is beyond the scope of the ALJ's review in this case. The evidence shows that public information was available to Petitioner to anticipate the permissible level of Firocoxib, the withdrawal period needed to produce that level, and the penalty. Commission rules specify that the Permissible Medication Level Memo is posted in the Commission Veterinarian's office and available from Commission veterinarians at each racetrack on racing days;<sup>52</sup> it is also posted on the Commission's website. That memorandum identifies the permissible level of Firocoxib as 20 ng/ml or less. Although not adopted by the Commission, an RMTTC document on RMTTC's website lists a 14-day withdrawal period for that level of Firocoxib. Withdrawal period information can also be obtained from Commission veterinarians at each racetrack on racing days. A Commission rule indicates that the

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<sup>52</sup> 16 TAC §§ 319.3(c), 319.4(b), 319.304(b).

Commission and stewards use the Medication Penalty Guidelines in setting penalties.<sup>53</sup> The Medication Penalty Guidelines are based on, but not identical to, the ARCI Guidelines, which are posted on ARCI's website. For a first offense involving Firocoxib, the ARCI Guidelines recommend a minimum \$1,000 fine (absent mitigating circumstances) and loss of purse. Regarding the penalty the Stewards imposed, Petitioner does not contest his 15-day suspension; his \$500 fine is half that recommended by ARCI; and loss of purse is recommended by ARCI. Ultimately, acquiring and acting on such information was Petitioner's responsibility as the trainer who is the absolute insurer that the horse was free from prohibited substances while racing.

Petitioner did not contest the Stewards' finding that he violated 16 TAC §§ 311.104, 319.3, and 319.302. The evidence supports that finding. Petitioner did not prove the Stewards' finding that he violated those rules was clearly in error.

The Medication Penalty Guidelines state that a violation involving a positive urine test is a first offense absent violations within the same class of substances in the preceding 365 days. The Ruling recites that Petitioner's violation met that definition. The evidence shows, and the parties did not dispute, that such was the case. The Stewards' finding that this was Petitioner's first offense was not clearly in error.

The Medication Penalty Guidelines, not the ARCI Guidelines, apply in this case. The evidence shows, and the parties did not dispute, that the violation involved Firocoxib, not bute. The Medication Penalty Guidelines (like the ARCI Guidelines) impose harsher penalties for Firocoxib than for bute. Staff's witnesses could not explain that distinction but the Commission has maintained it for many years. Whether the Medication Policy Guidelines should be amended

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<sup>53</sup> 16 TAC § 319.304(b). The notice of hearing issued by Staff on January 6, 2015 (five weeks before the hearing) was not challenged. Among other things, the notice stated that: (1) 16 TAC § 319.304(b) authorizes the Commission's Executive Secretary to promulgate the Medication Penalty Guidelines; (2) the Medication Penalty Guidelines are based on ARCI Guidelines and establish the penalty for a first offense involving Firocoxib as a 15-day suspension, a \$500 fine, and loss of purse; (3) the Medication Penalty Guidelines provide stewards discretion to decrease the penalty based on mitigating circumstances; and (4) under 16 TAC § 307.67(c), Petitioner has the burden to prove that the Ruling was clearly in error.

in any respect is beyond the scope of the ALJ's review. Petitioner did not prove the Stewards' decision to apply the Medication Policy Guidelines that relate to a first offense involving Firocoxib was clearly in error.

The Stewards imposed the penalty that the Medication Penalty Guidelines prescribe for a first offense involving Firocoxib. Those guidelines specify that the prescribed penalties should be followed in all cases absent persuasive, credible evidence of mitigating circumstances justifying a lesser penalty. The Medication Penalty Guidelines reference the mitigating factors described in the Enforcement Guidelines. Relevant mitigating factors are discussed below.

The Stewards imposed the lower penalty prescribed for a first offense as that term is defined in the Medication Penalty Guidelines (no similar violation within the previous 365 days). Petitioner did not prove through persuasive, credible evidence that the Stewards' decision not to further reduce the penalty, based on his also having no medication violation in 35 years in horse training, was clearly in error.

The Medication Penalty Guidelines prescribe lower penalties for violations involving Firocoxib than for violations involving substances in Class 1, 2, or 3 because Firocoxib is a Class 4 substance (a therapeutic medication routinely used in race horses that may influence performance but generally has a more limited ability to do so). The penalty thus already took into account whether a substance is legally available and is authorized for use in horses.

Another mitigating factor is whether the trainer was acting on the advice of a licensed veterinarian. Petitioner's violation was not that he administered Firocoxib to the horse but rather that he did not withdraw it soon enough before the race to avoid a non-compliant test result. The issue is thus whether he was acting on a veterinarian's advice about the withdrawal period. He testified that Dr. Ball advised him that a 24-hour withdrawal period would be sufficient. In his testimony, however, Dr. Ball did not admit saying that, denied being knowledgeable about or advising clients about racing regulations, and was certain he had advised Petitioner before the race to confirm the withdrawal period with a racetrack veterinarian. Petitioner testified that

racetrack veterinarian Dr. Mays also advised him that a 24-hour withdrawal period would be sufficient. Dr. Mays, however, did not testify and his letter in evidence does not mention such advice. On the contrary, his letter describes Petitioner's violation as an honest mistake and oversight while under Dr. Ball's supervision and instruction. Petitioner did not prove through persuasive, credible evidence that the Stewards' decision not to reduce the penalty based on veterinarians' advice to him about the withdrawal period was clearly in error.

Regarding another mitigating factor, Petitioner does not qualify as having no previous discipline. He had two non-medication violations.

Petitioner admitted the violation and the evidence shows that he did not intend to commit a violation. He did not, however, prove through persuasive, credible evidence that the Stewards' decision not to reduce the penalty based on those mitigating factors was clearly in error.

Finally, Petitioner did not prove that the Stewards' decision to require loss of purse despite mitigating factors was clearly in error. In addition to matters discussed above, his expert witness, Dr. Ball, acknowledged that Firocoxib could be considered performance-enhancing for a racehorse. Ms. Webb testified that the horse won the race by catching the other horses at the wire, which suggests that a small advantage might have been decisive. Noting that the second-place horse in the race did not fail its drug test, Mr. Walker stated that loss of purse is appropriate to avoid an unfair advantage. The evidence supports his statement.

In conclusion, the ALJ finds that the Ruling was not clearly in error as to the violation and the penalties.

## VI. FINDINGS OF FACT

1. Edward Paul Webb (Petitioner) is a licensed owner-trainer of racehorses and holds License No. 135094 issued by the Texas Racing Commission (Commission).
2. A Commission document listing levels of therapeutic drugs, including Firocoxib, that are permissible in a horse's post-race sample is posted in the office of the Commission

- veterinarian, available from Commission veterinarians at each racetrack, and posted on the Commission website. The listed permissible level of Firocoxib is 20 nanograms per milliliter (ng/ml) or less.
3. On September 5, 2015, Petitioner was the owner-trainer of a racehorse, Cause I'm Sec Sea (the horse), that won the fifth race at a Texas racetrack, Retama Race Park.
  4. After the race, the horse provided a urine sample, which was divided into two specimens. One specimen was properly obtained, secured, stored, and transported to the Texas Veterinary Medical Diagnostic Laboratory, which found that it tested positive for Firocoxib at  $38.7 \pm 13.2$  ng/ml.
  5. On or about September 23, 2015, Petitioner was notified of the positive result and of the opportunity to request testing of the second specimen. He waived his right to such testing.
  6. Firocoxib is a non-steroidal anti-inflammatory drug. A licensed veterinarian who does not practice at racetracks prescribed it to treat chronic lameness in the horse.
  7. Petitioner withdrew the horse from Firocoxib more than 50 hours before the race.
  8. The Racing Medication & Testing Consortium (RMTC) has posted on its website an RMTC document that recommends withdrawal periods of 14 days for Firocoxib (20 ng/ml threshold) and 24 hours for bute (2 micrograms per milliliter threshold).
  9. Petitioner has a good reputation and his violation was unintentional. He had never used or heard of Firocoxib before it was prescribed to the horse. Neither he nor the prescribing veterinarian knew that the recommended withdrawal period for Firocoxib is 14 days.
  10. Petitioner's testimony that the prescribing veterinarian and a racetrack veterinarian advised him that a 24-hour withdrawal period for Firocoxib was sufficient is inconsistent with statements by those veterinarians.
  11. Petitioner's horses have run more than 600 races since 2002. In 35 years in training racehorses, Petitioner had no previous violation involving a drug administered to a horse.
  12. Petitioner has had two other violations. In 1991, he was fined \$25 because a sample cough medicine with no prescription label, which his doctor had given him for asthma, was found in his truck at a racetrack. In 2007, he was fined \$100 for having in his trailer a large plastic syringe with no needle, which he used to rinse out horses' mouths.
  13. On October 22, 2015, a board of stewards (the Stewards) conducted a hearing, at which Petitioner appeared.

14. On October 24, 2015, the Stewards issued Ruling RETA2526. In that ruling, they found that Petitioner had violated 16 Texas Administrative Code (TAC) §§ 311.104, 319.3, and 319.302 and imposed as the penalty a 15-day suspension of his license, a \$500 fine, and loss of purse. They noted that the violation was the first of its type in 365 days. Petitioner timely appealed their ruling.
15. Petitioner does not dispute that he violated 16 TAC §§ 311.104, 319.3, and 319.302 or the 15-day suspension, which he has already served.
16. On January 6, 2016, the Commission's staff (Staff) issued the notice of hearing. The notice 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 a short, plain statement of the matters asserted.
17. On February 11, 2016, Administrative Law Judge Elizabeth Drews convened the hearing on the appeal at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Deputy General Counsel Devon V. Bijansky represented Staff. Attorney William T. Tschirhart represented Petitioner. The record closed at the end of the hearing that day.

## VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter, including authority to discipline its licensees. Tex. Rev. Civ. Stat. art.179e.
2. SOAH has jurisdiction over matters relating to the hearing in this case, including authority to issue a proposal for decision. Tex. Gov't Code ch. 2003.
3. As the horse's trainer, Petitioner was the absolute insurer that the horse was free of prohibited substances while racing. Tex. Rev. Civ. Stat art. 179e § 3.16(h); 16 TAC §§ 311.104(b)(2), 319.3(a).
4. The Commission document listing the permissible level of Firocoxib is posted in the office of the Commission's veterinarian and available from Commission veterinarians at each racetrack. 16 TAC §§ 319.3(c), 319.4(b), (f).
5. Except in a quantity not exceeding the permissible level, Firocoxib is a prohibited substance. Tex. Rev. Civ. Stat. art. 179e, § 1.03(72); 16 TAC §§ 319.1(b), 319.3(c).
6. The positive finding that the prohibited substance was present in the horse's urine after the race is prima facie evidence that it was in her body during the race. 16 TAC § 319.3(e).

7. If stewards find that a horse's post-race test specimen contains a prohibited substance, they may disqualify the horse and order the purse redistributed, impose a fine of not more than \$25,000, and suspend a license for up to five years. Tex. Rev. Civ. Stat. art. 179e, § 3.07(b); 16 TAC §§ 307.64, 319.304(a).
8. The Commission has authorized its Executive Secretary to promulgate a schedule for the Commission and stewards to use in taking disciplinary action. The schedule classifies Firocoxib as a Class 4 therapeutic drug, provides that a violation is a first offense absent violations involving the same class of substances within the preceding 365 days, and prescribes as the penalty for a first offense involving Firocoxib a 15-day license suspension, a \$500 fine, and loss of the race purse. 16 TAC § 319.304(b); Equine Medication Classification Policy and Penalty Guidelines (promulgated by the Commission's Executive Secretary pursuant to 16 TAC § 319.304(b)).
9. Petitioner's violation involving Firocoxib was a first offense as defined in the schedule. 16 TAC § 319.304(b); Equine Medication Classification Policy and Penalty Guidelines.
10. The schedule provides that its prescribed penalties should be followed in all cases absent persuasive, credible evidence of mitigating circumstances justifying a lesser penalty or aggravating circumstances justifying an enhanced penalty. 16 TAC § 319.304(b); Equine Medication Classification Policy and Penalty Guidelines.
11. Petitioner has the burden of proof to show that the Stewards' ruling was clearly in error. 16 TAC § 307.67(c).
12. Petitioner did not prove that the ruling's finding that he violated 16 TAC §§ 311.104, 319.3, and 319.302 was clearly in error.
13. Petitioner did not prove through persuasive, credible evidence that mitigating circumstances justify a lesser penalty than that prescribed in the schedule and imposed in the ruling. 16 TAC § 319.304(b); Equine Medication Classification Policy and Penalty Guidelines.

SIGNED April 5, 2016.

  
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**ELIZABETH DREWS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

IN RE: THE APPEAL OF	§	
	§	BEFORE THE
EDWARD WEBB FROM	§	
	§	TEXAS RACING COMMISSION
STEWARDS RULING RETA 2526	§	

ORDER OF THE COMMISSION

On June 14, 2016, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Edward Webb (“Appellant”), owner-trainer license number 135094, from Stewards’ Ruling RETA 2526 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

- (a) On or about October 24, 2015, the Retama Park Board of Stewards issued Ruling RETA 2526 finding Appellant in violation of 16 TAC Sections 311.104, Trainer/Absolute Insurer; 319.3, Drug Positive or Permitted Medication Violation; and 319.302, Reasonable Oversight of Animal, due to a finding of firocoxib in an amount exceeding the permissible level in the horse “Cause I’m Sec Sea,” trained by Appellant, which finished first in the fifth race at Retama Park on September 5, 2015.
- (b) Appellant was fined \$500 and suspended for 15 days; the horse was disqualified and declared unplaced and the purse redistributed.
- (c) On or about October 27, 2015, Appellant filed an appeal of the ruling with the Commission and requested a stay of the suspension while the appeal was pending.
- (d) On or about October 28, 2015, the Commission’s Executive Director denied Appellant’s request for a stay of the suspension, which took effect on October 25, 2015, and ended on November 8, 2015.
- (e) On or about February 11, 2016, an administrative law judge at the State Office of Administrative Hearings (SOAH) convened a hearing on the matter.

(f) On or about April 5, 2016, the administrative law judge issued a proposal for decision in which she found the Stewards' ruling, including the suspension of Appellant's racing license for 15 days, the imposition of a \$500 fine, and the disqualification of the horse and redistribution of the purse, consistent with the Commission's medication policy guidelines. She further found that Appellant had not met his burden of proving that the Stewards' ruling was clearly in error.

IT IS HEREBY ORDERED that Stewards' Ruling RETA 2526 is upheld in full.

This order takes effect on the date it is entered. 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 June, 2016.

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Rolando Pablos, Chair

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Ronald F. Ederer, Vice Chair

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Gary P. Aber, DVM

\_\_\_\_\_  
Gloria Hicks

\_\_\_\_\_  
A. Cynthia Leon

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

\_\_\_\_\_  
Victoria North

\_\_\_\_\_  
Robert Schmidt, M.D.

\_\_\_\_\_  
John T. Steen III

## **VI. PROCEEDINGS ON RULEMAKING**

Discussion, consideration and possible action on the following matter:

- A. Proposal to Amend Rule 319.110, Health Certificate – If approved by the Commission, this proposal will be published in the *Texas Register* for public comment.

**TEXAS RACING COMMISSION  
COMMITTEE ON RULES**

Date of Request: 5/5/16

***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.

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:	Veterinary Medical Director Robert James, DVM	Phone(s):	(512) 833-6699
E-mail address:	<a href="mailto:info@txrc.texas.gov">info@txrc.texas.gov</a>	Fax number:	(512) 833-6907
Mailing address:	P.O. Box 12080, Austin, TX 78711-2080		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Racing Commission  
(Name of Organization)

Proposed Change to (if known): Chapter: 319 Rule: 110

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

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

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

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

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

Statutory Authority for Proposed Change: TRA § 3.02

## **A. Brief Description of the Issue**

Texas Racing Commission (TRC) Rule 319.110, Health Certificate, is inconsistent with Texas Animal Health Commission's (TAHC's) rules regarding the health inspection requirements for a horse to enter a racetrack facility. Also, the present rule-heading "Health Certificate" does not adequately address those additional requirements for horses entering a pari-mutuel track as required by the TAHC.

## **B. Discussion of the Issue and Problem**

TRC Rule 319.110 provides that to be admitted on to an association's grounds, a horse must have:

- (1) a current negative test for equine infectious anemia conducted in accordance with rules of the Texas Animal Health Commission; and
- (2) a health certificate issued in the 45-day period preceding the horse's arrival.

TAHC Rule 49.1 provides that equine entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

TAHC Rule 49.5 provides that equine entering a racetrack facility must have a negative Piroplasmosis test (*Theileria equi*) within the past 12 months. (TAHC policy excepts Thoroughbreds.)

TAHC Rule 51.1 provides that a Certificate of Veterinary Inspection is valid for 30 days.

TAHC Rule 51.4 provides that horses entering a pari-mutuel track from out-of-state or area of origin must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

TAHC Rule 51.4 provides that horses from in-state origin entering a pari-mutuel track from out-of-state or area of origin must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

TAHC Rule 58.2 provides that if TAHC's Executive Director determines that livestock have been exposed to or infected with a disease (with limited exceptions) and determines that an animal health emergency exists, then the executive director is authorized to exercise all the necessary authority to respond as expediently as possible, including determining the necessary requirements related to quarantine, disposal, testing, movement, inspection, and treatment.

Specifically, TRC's rule treating 45-day old health certificates as valid is inconsistent with TAHC's 30-day requirement. In addition, TRC's rule does not address piroplasmosis, nor does it address the possibility that TAHC may impose additional requirements in response to an animal health emergency. Also, TRC's rule-heading "Health Certificate" does not address other current TAHC entry requirements such as a current negative test for equine infectious anemia; and a negative Piroplasmosis test (*Theileria equi*) within the past 12 months.

## **C. Possible Solutions and Impact**

While the Commission could specifically adopt TAHC's current requirements, this approach would require TRC to amend its rules anytime TAHC amends its rules. Staff recommends instead that the rule be amended to incorporate TAHC's standards by reference. TAHC follows the same rule-making process that TRC does, so the industry will retain the ability to fully participate in the development of those rules.

## **D. Support or Opposition**

Unknown at this time.

## **E. Proposal**

See next page.

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

**§319.110. Requirements to Enter Association Grounds Health Certificate**

To be admitted on to an association's grounds, a horse must be accompanied by a current certificate of veterinary inspection and meet any other health inspection requirements established by the Texas Animal Health Commission. ~~have:~~

- ~~(1) a current negative test for equine infectious anemia conducted in accordance with rules of the Texas Animal Health Commission; and~~
- ~~(2) a health certificate issued in the 45 day period preceding the horse's arrival.~~