



TEXAS RACING COMMISSION

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Austin, TX 78711-2080
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Texas Racing Commission
Tuesday, February 13, 2018
10:30 a.m.
John H. Reagan Building, Room 140
105 West 15th Street
Austin, TX 78701

AGENDA

I. CALL TO ORDER

Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

- A. Election of Vice Chair
- B. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters:
 - 1. Budget and finance
 - 2. Wagering statistics
 - 3. Enforcement

IV. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion, consideration and possible action on the following matters:

- A. The proposal for decision in SOAH No. 476-17-5681; Judd Kearn v. Texas Racing Commission
- B. The proposal for decision in SOAH No. 476-17-5682; Jose Sanchez v. Texas Racing Commission
- C. The proposal for decision in SOAH No. 476-17-5683; Brian Stroud v. Texas Racing Commission

V. PROCEEDINGS ON MATTERS RELATED TO AGENCY FUNDING

- A. Discussion and possible action to adopt amendments to Rule 309.8, Racetrack License Fees
- B. Discussion and possible action to adopt new Rule 309.13, Supplemental Fee, regarding funding of third-party economy, efficiency, and effectiveness audit
- C. Discussion and possible action regarding third-party economy, efficiency, and effectiveness audit
- D. Discussion and possible action to approve Fiscal Year 2018 operating budget

VI. OTHER PROCEEDINGS ON RULES

- A. Discussion and possible action to adopt the following rule amendments:
 - 1. Amendments to Rule 303.93, Quarter Horse Rules
 - 2. Amendments to Rule 321.30, Super Hi-Five

VII. EXECUTIVE SESSION

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

- A. Under Texas Government Code § 551.071(1), the Commission may enter an executive session to seek the advice of its attorney regarding pending or contemplated litigation, or regarding a settlement offer.
- B. Under Texas Government Code § 551.071(2), the Commission may enter an executive session to discuss all matters identified in this agenda where the commission seeks the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. This may include, but is not limited to, legal advice regarding the Open Meetings Act, the Administrative Procedures Act, and the Texas Racing Act.
- C. Under Texas Government Code § 551.074(a)(1), the Commission may enter an executive session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director.

VIII. SCHEDULING OF NEXT COMMISSION MEETING

IX. ADJOURN

III. GENERAL BUSINESS

A. Election of Vice Chair

B. Discussion and consideration of reports by the Executive Director and staff regarding administrative matters

- 1) Budget and finance
- 2) Wagering statistics
- 3) Enforcement

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Texas Administrative Code

TITLE 16	ECONOMIC REGULATION
PART 8	TEXAS RACING COMMISSION
CHAPTER 303	GENERAL PROVISIONS
SUBCHAPTER A	ORGANIZATION OF THE COMMISSION
RULE §303.6	Commission Officers

Historical

- (a) In January of even-numbered years, the commission shall elect one of the members to serve as vice-chair for a term of two years.
- (b) In the event of a vacancy in the office of vice-chair, the vacancy shall be filled for the unexpired term on majority vote of the commission at the next regular meeting of the commission.
- (c) In the absence of the chair and vice-chair from a meeting of the commission, the remaining members shall elect a pro-tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chair or vice-chair.
-

Source Note: The provisions of this §303.6 adopted to be effective November 15, 1988, 13 TexReg 5557; amended to be effective June 1, 1992, 17 TexReg 3728; amended to be effective January 1, 1999, 23 TexReg 12911

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Texas Racing Commission

FYE 08/31/2018

OBS-1

Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2018 Annual Budget	FY 2018 Expended Thru 12/31/2017	FY 2018 Unexpended Bal 8/31/2018	With 33.3% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.1.1.	- FTE's = 4.00 <u>Regulate Racetrack Owners</u>				
Base Appr =	1001 Salaries and Wages	315,108.48	93,688.76	221,419.72	29.73%
\$ 385,941.00	1002 Other Personnel Cost	27,892.54	22,849.08	5,043.46	81.92%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 385,941.00	2005 Travel	3,000.00	427.33	2,572.67	14.24%
Budgeted =	2006 Rent Building	-	-	-	
\$ 351,472.11	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	5,471.08	1,007.48	4,463.60	18.41%
(34,468.89)	CB Computer Equipment	-	-	-	
-8.93%	Total Strategy A.1.1.	351,472.11	117,972.65	233,499.46	33.57%
<i>Appropriated</i> A.2.1.	0 FTE's = 0 <u>Texas Bred Incentive</u>				
	ATB Money Expended	2,918,433.48	874,003.68	2,044,429.80	29.95%
2,918,433.00	Total Strategy A.2.1.	2,918,433.48	874,003.68	2,044,429.80	29.95%
<i>Appropriated</i> A.3.1.	- FTE's = 5.62 <u>Supervise Racing and Licensees</u>				
Base Appr =	1001 Salaries and Wages	380,006.65	130,768.66	249,237.99	34.41%
\$ 545,741.00	1002 Other Personnel Cost	21,491.01	5,636.55	15,854.46	26.23%
Sup Appr =	2001 Prof Fees and Services	11,125.00	720.00	10,405.00	6.47%
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 545,741.00	2005 Travel	68,320.00	7,460.14	60,859.86	10.92%
Budgeted =	2006 Rent Building	-	-	-	
\$ 485,148.94	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	4,206.28	1,126.52	3,079.76	26.78%
(60,592.06)	CB Computer Equipment	-	-	-	
-11.10%	Total Strategy A.3.1.	485,148.94	145,711.87	339,437.07	30.03%
<i>Appropriated</i> A.3.2.	- FTE's = 3.75 <u>Monitor Occupational Licensee Act.</u>				
Base Appr =	1001 Salaries and Wages	207,290.18	77,793.79	129,496.39	37.53%
\$ 235,247.00	1002 Other Personnel Cost	11,199.22	4,602.80	6,596.42	41.10%
Sup Appr =	2001 Prof Fees and Services	1,000.00	25.00	975.00	2.50%
\$ -	2003 Consumables	500.00	-	500.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 235,247.00	2005 Travel	42,400.00	3,319.89	39,080.11	7.83%
Budgeted =	2006 Rent Building	-	-	-	
\$ 266,317.80	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	3,928.40	998.94	2,929.46	25.43%
\$ 31,070.80	CB Computer Equipment	-	-	-	
13.21%	Total Strategy A.3.2.	266,317.80	86,740.42	179,577.38	32.57%
<i>Appropriated</i> A.4.1.	- FTE's = 3.00 <u>Inspect and Provide Emerg. Care</u>				
Base Appr =	1001 Salaries and Wages	212,985.36	70,995.12	141,990.24	33.33%
\$ 364,152.00	1002 Other Personnel Cost	9,024.93	1,314.96	7,709.97	14.57%
Sup Appr =	2001 Prof Fees and Services	88,000.00	39,320.00	48,680.00	44.68%
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 364,152.00	2005 Travel	21,500.00	4,701.87	16,798.13	21.87%
Budgeted =	2006 Rent Building	-	-	-	
\$ 335,490.14	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	3,979.85	1,446.75	2,533.10	36.35%
\$ (28,661.86)	CB Computer Equipment	-	-	-	
-7.87%	Total Strategy A.4.1.	335,490.14	117,778.70	217,711.44	35.11%

Texas Racing Commission

FYE 08/31/2018

OBS-2

Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2018 Annual Budget	FY 2018 Expended Thru 12/31/2017	FY 2018 Unexpended Bal 8/31/2018	With 33.3% of Year Lapsed % of Budget Expended
<i>Appropriated</i> A.4.2.	- FTE's = 2.80				
	<u>Administer Drug Testing</u>				
Base Appr =	1001 Salaries and Wages	160,006.30	61,734.69	98,271.61	38.58%
\$ 215,181.00	1002 Other Personnel Cost	1,120.03	408.71	711.32	36.49%
Sup Appr =	2001 Prof Fees and Services	-	500.00	(500.00)	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 215,181.00	2005 Travel	17,425.00	2,884.12	14,540.88	16.55%
Budgeted =	2006 Rent Building	-	-	-	
\$ 182,001.39	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	3,450.06	502.44	2,947.62	14.56%
\$ (33,179.61)	CB Computer Equipment	-	-	-	
-15.42%	Total Strategy A.4.2.	182,001.39	66,029.96	115,971.43	36.28%
<i>Appropriated</i> B.1.1.	- FTE's = 4.85				
	<u>Occupational Licensing</u>				
Base Appr =	1001 Salaries and Wages	197,981.42	67,323.46	130,657.96	34.00%
\$ 412,016.00	1002 Other Personnel Cost	7,588.91	2,568.65	5,020.26	33.85%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	3,500.00	-	3,500.00	0.00%
Total Appr =	2004 Utilities	-	-	-	
\$ 412,016.00	2005 Travel	22,700.00	3,191.67	19,508.33	14.06%
Budgeted =	2006 Rent Building	-	-	-	
\$ 343,562.14	2007 Rent Machine	1,400.00	1,289.80	110.20	92.13%
Difference	2009 Other Operating Cost	110,391.81	18,928.82	91,462.99	17.15%
\$ (68,453.86)	CB Computer Equipment	-	-	-	
-16.61%	Total Strategy B.1.1.	343,562.14	93,302.40	250,259.74	27.16%
<i>Appropriated</i> B.1.2.	- FTE's = 0				
	<u>Texas OnLine</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 19,185.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 19,185.00	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 17,000.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	17,000.00	3,134.00	13,866.00	18.44%
\$ (2,185.00)	CB Computer Equipment	-	-	-	
-11.39%	Total Strategy B.1.2.	17,000.00	3,134.00	13,866.00	18.44%
<i>Appropriated</i> C.1.1.	- FTE's = 5.00				
	<u>Monitor Wagering and Audit</u>				
Base Appr =	1001 Salaries and Wages	274,779.60	87,963.68	186,815.92	32.01%
\$ 373,795.00	1002 Other Personnel Cost	28,438.90	3,430.81	25,008.09	12.06%
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 373,795.00	2005 Travel	12,500.00	1,949.55	10,550.45	15.60%
Budgeted =	2006 Rent Building	-	-	-	
\$ 330,466.29	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	14,747.80	3,089.62	11,658.18	20.95%
\$ (43,328.71)	CB Computer Equipment	-	-	-	
-11.59%	Total Strategy C.1.1.	330,466.29	96,433.66	234,032.63	29.18%

Texas Racing Commission

FYE 08/31/2018

OBS-3

Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2018 Annual Budget	FY 2018 Expended Thru 12/31/2017	FY 2018 Unexpended Bal 8/31/2018	With 33.3% of Year Lapsed % of Budget Expended
<i>Appropriated</i> D.1.1.	- FTE's = 5.93 <u>Central Administration</u>				
Base Appr =	1001 Salaries and Wages	387,123.51	126,127.06	260,996.45	32.58%
\$ 753,512.00	1002 Other Personnel Cost	44,861.62	5,845.84	39,015.78	13.03%
Sup Appr =	2001 Prof Fees and Services	20,175.00	1,411.80	18,763.20	7.00%
\$ -	2003 Consumables	7,500.00	1,814.89	5,685.11	24.20%
Total Appr =	2004 Utilities	47,984.29	8,200.99	39,783.30	17.09%
\$ 753,512.00	2005 Travel	10,000.00	1,283.87	8,716.13	12.84%
Budgeted =	2006 Rent Building	103,770.00	42,740.10	61,029.90	41.19%
\$ 666,813.16	2007 Rent Machine	900.00	451.01	448.99	50.11%
Difference	2009 Other Operating Cost	44,498.75	12,471.58	32,027.17	28.03%
\$ (86,698.84)	CB Computer Equipment	-	-	-	0.00%
-11.51%	Total Strategy D.1.1.	666,813.16	200,347.14	466,466.02	30.05%
<i>Appropriated</i> D.1.2.	- FTE's = 3.80 <u>Information Resources</u>				
Base Appr =	1001 Salaries and Wages	249,187.68	83,062.52	166,125.16	33.33%
\$ 509,511.00	1002 Other Personnel Cost	13,173.00	4,289.56	8,883.44	32.56%
Sup Appr =	2001 Prof Fees and Services	127,642.82	10,525.00	117,117.82	8.25%
\$ -	2003 Consumables	1,565.00	37.37	1,527.63	2.39%
Total Appr =	2004 Utilities	-	-	-	0.00%
\$ 509,511.00	2005 Travel	3,500.00	-	3,500.00	0.00%
Budgeted =	2006 Rent Building	476.00	160.00	316.00	33.61%
\$ 505,935.00	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	110,390.50	36,642.78	73,747.72	33.19%
\$ (3,576.00)	CB Computer Equipment	-	-	-	
-0.70%	Total Strategy D.1.2.	505,935.00	134,717.23	371,217.77	26.63%
<i>Appropriated</i> D.1.3.	- FTE's = 38.75 <u>Other Support Services</u>				
Base Appr =	1001 Salaries and Wages	-	-	-	
\$ 6,732,714.00	1002 Other Personnel Cost	-	-	-	
Sup Appr =	2001 Prof Fees and Services	-	-	-	
\$ -	2003 Consumables	-	-	-	
Total Appr =	2004 Utilities	-	-	-	
\$ 6,732,714.00	2005 Travel	-	-	-	
Budgeted =	2006 Rent Building	-	-	-	
\$ 6,402,639.97	2007 Rent Machine	-	-	-	
Difference	2009 Other Operating Cost	-	-	-	
\$ (330,074.03)	CB Computer Equipment	-	-	-	
-4.90%	Total Strategy D.1.3.	-	-	-	
\$ 3,814,281	Regulatory Program Operating Budget	3,484,206.97	1,062,168.03	2,112,624.13	30.49%
\$ 2,918,433	TX Bred Program Operating Budget	2,918,433.48	874,003.68	2,044,429.80	29.95%
\$ 6,732,714	Total M.O.F. (TXRC Acct. 597 & GR)	6,402,640.45	1,936,171.71	4,157,053.93	30.24%
	Total All Programs Operating Budget				

Texas Racing Commission

FYE 08/31/2018

OBS-4

Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Program Description	FY 2018 Annual Budget	FY 2018 Expended Thru 12/31/2017	FY 2018 Unexpended Bal 8/31/2018	With 33.3% of Year Lapsed % of Budget Expended
\$ -	FTE's = 38.75				
<i>Appropriated</i>	Direct Expense of Regulatory Programs				
	1001 Salaries and Wages	2,384,469.18	799,457.74	1,585,011.44	33.53%
	1002 Other Personnel Cost	164,790.15	50,946.96	113,843.19	30.92%
	2001 Prof Fees and Services	247,942.82	52,501.80	195,441.02	21.17%
	2003 Consumables	13,065.00	1,852.26	11,212.74	14.18%
	2004 Utilities	47,984.29	8,200.99	39,783.30	17.09%
	2005 Travel	201,345.00	25,218.44	176,126.56	12.52%
	2006 Rent Building	104,246.00	42,900.10	61,345.90	41.15%
	2007 Rent Machine	2,300.00	1,740.81	559.19	75.69%
	2009 Other Operating Cost	318,064.53	79,348.93	238,715.60	24.95%
	CB Computer Equipment	-	-	-	0.00%
\$ 3,814,281	Total Direct Expense of Regulatory Program	3,484,206.97	1,062,168.03	2,422,038.94	30.49%
\$ 2,918,433	FTE's = - Direct Expense of TX Bred Program	2,918,433.48	874,003.68	2,044,429.80	29.95%
\$ 6,732,714	FTE's = 38.75 Total Direct Expense of All Programs	6,402,640.45	1,936,171.71	4,466,468.74	30.24%
\$ -	Indirect Expense of All Programs				
<i>Un-Appropriated</i>	OASI Match	182,411.89	61,951.37	120,460.52	33.96%
	Group Insurance	265,000.00	93,268.58	171,731.42	35.20%
	State Retirement	187,466.08	61,303.24	126,162.84	32.70%
	Benefit Replacement	3,178.86	1,369.57	1,809.29	43.08%
	ERS Retiree Insurance	390,000.00	130,412.26	259,587.74	33.44%
	SWCAP GR Reimburse	-	-	-	0.00%
	Unemployment Cost	17,000.00	611.00	16,389.00	3.59%
	Other	-	-	-	-
\$ 1,045,057	Total Indirect Expense of All Programs	1,045,056.83	348,916.02	696,140.81	33.39%
\$ 7,777,771	Total Direct and Indirect Expense of All Programs	7,447,697.29	2,285,087.73	5,162,609.56	30.68%

Source Of Funds	Agency Method Of Finance	FY 2018 Projected Revenue	FY 2018 Actual Revenue Thru 12/31/2017	N/A	With 33.3% of Year Lapsed % of Revenue Collected
	Regulatory Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ 44,530.00	\$ 44,530.00		n/a
Acct. 597	Live Race Day Fees	\$ -	\$ -		
Acct. 597	Simulcast Race Day Fees	\$ -	\$ -		
Acct. 597	Annual License Fees (Active & Inactive)	\$ 3,772,854.37	\$ 1,302,904.81		34.53%
Acct. 597	Outs	\$ -	\$ -		
Acct. 597	Occupational License Fees and Fines	\$ 754,999.84	\$ 181,974.00		24.10%
Acct. 597	Other Revenue	\$ 23,867.00	\$ 6,671.13		27.95%
Acct. 1	GR Funds	\$ -	\$ -		
	Sub-Total Regulatory Prgm. MOF	\$ 4,596,251.21	\$ 1,536,079.94		33.42%
	Texas Bred Program MOF:				
Acct. 597	Cash Balance Carry Forward	\$ -	\$ -		
Acct. 597	Breakage and 1% Exotic	\$ 2,918,433.48	\$ 874,003.68		29.95%
Acct. 597	Other	\$ -	\$ -		
	Sub-Total Texas Bred Prgm. MOF	\$ 2,918,433.48	\$ 874,003.68		29.95%
All Sources	Total MOF	\$ 7,514,684.69	\$ 2,410,083.62		32.07%
	MOF Estimated to Exceed or (Fall-Short of Covering) Direct & Indirect Expenses of Operating Budget	\$ 66,987.40	\$ 124,995.89		



Fiscal Year 2018 Operational Budget

Updated: January 15, 2018
Thru: December 31, 2017

Summary of Operating Revenue

By Revenue Type:	Budget	Collected	Suspended	Uncollected Balance	%
Account 597 - Racing Commission - GRD	\$ 7,514,685	\$ 2,410,084	\$ -	\$ 5,104,601	68%
Account 1 - State of Texas - GR	\$ -	\$ -	\$ -	\$ -	
TOTAL - ALL REVENUES	\$ 7,514,685	\$ 2,410,084	\$ -	\$ 5,104,601	68%

Summary of Appropriated Operating Expenses

	Budget	Expended	Encumbered	Unexpended Balance	%
1001 - Salaries and Wages:	\$ 2,384,469	\$ 799,458	\$ -	\$ 1,585,011	66%
1002 - Other Personnel Cost:	\$ 164,790	\$ 50,947	\$ -	\$ 113,843	69%
2001 - Professional Fees and Services:	\$ 247,943	\$ 52,502	\$ -	\$ 195,441	79%
2003 - Consumable Supplies:	\$ 13,065	\$ 1,852	\$ -	\$ 11,213	86%
2004 - Utilities:	\$ 47,984	\$ 8,201	\$ -	\$ 39,783	83%
2005 - Travel:	\$ 201,345	\$ 25,218	\$ -	\$ 176,127	87%
2006 - Rent Building:	\$ 104,246	\$ 42,900	\$ -	\$ 61,346	59%
2007 - Rent Machine and Other:	\$ 2,300	\$ 1,741	\$ -	\$ 559	24%
2009 - Other Operating Expense:	\$ 318,065	\$ 79,349	\$ -	\$ 238,716	75%
4000 - Grants	\$ 2,918,433	\$ 874,004	\$ -	\$ 2,044,430	70%
5000 - Capital Expenditures:	\$ -	\$ -	\$ -	\$ -	0%
TOTAL - ALL APPROPRIATED EXPENDITURES	\$ 6,402,640	\$ 1,936,172	\$ 65,000	\$ 4,466,469	70%

Unappropriated Operating Expenses

Type:	Budget	Expended	Encumbered	Unexpended Balance	%
TOTAL - ALL UNAPPROPRIATED EXPENDITURES	\$ 1,045,057	\$ 348,916	\$ -	\$ 696,141	67%
TOTAL - ALL EXPENDITURES	\$ 7,447,697	\$ 2,285,088	\$ 65,000	\$ 5,162,610	69%
OPERATING SURPLUS / (DEFICIT)	\$ 66,987	\$ 59,996			

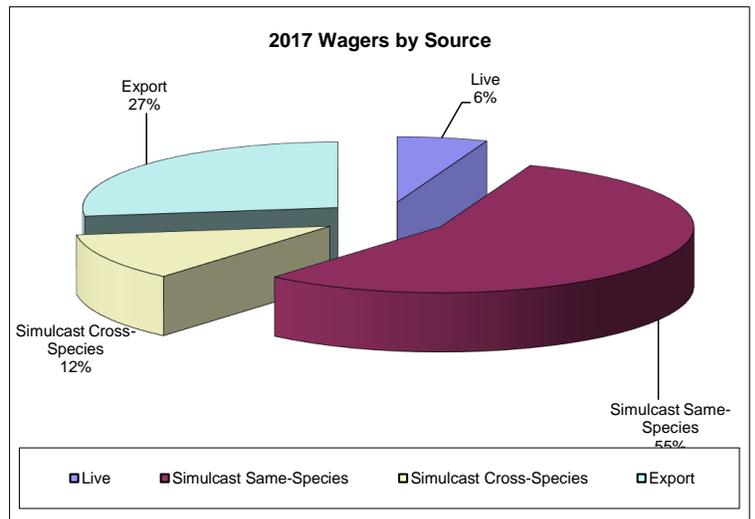
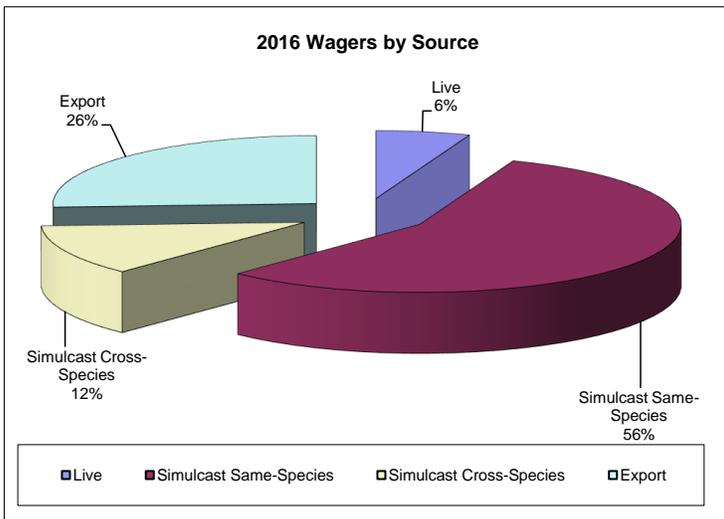
Summary of FTE's

By Fiscal Quarter:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Authorized FTE's	46.40	46.40	46.40	46.40
Budgeted FTE's	38.75	38.75	38.75	38.75
Actual FTE's	40.50	0.00	0.00	0.00
Actual FTE's Over / (Under) Budget	1.75	n/a	n/a	n/a
Actual FTE's Over / (Under) Authorization	(5.90)	n/a	n/a	n/a



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

	Year 2016			Year 2017			Percentage Change	
	# Days	<u>Wagers (Handle)</u>		# Days	<u>Wagers (Handle)</u>		<u>Wagers (Handle)</u>	
		Total	Average per day		Total	Average per day	Total	Average per day
Greyhound Racetracks								
Live	16	\$ 362,805	\$ 22,675	24	\$ 506,080	\$ 21,087	39.49%	-7.01%
Simulcast Same-Species	936	\$ 23,029,353	\$ 24,604	891	\$ 21,223,840	\$ 23,820	-7.84%	-3.19%
Simulcast Cross-Species	936	\$ 19,885,212	\$ 21,245	891	\$ 16,480,706	\$ 18,497	-17.12%	-12.93%
Export	16	\$ 337,303	\$ 21,081	24	\$ 500,474	\$ 20,853	48.38%	-1.08%
Total Wagers		\$ 43,614,673			\$ 38,711,100		-11.24%	
Horse Racetracks								
Live	186	\$ 23,262,272	\$ 125,066	182	\$ 22,049,353	\$ 121,150	-5.21%	-3.13%
Simulcast Same-Species	1,300	\$ 206,938,704	\$ 159,184	1,279	\$ 197,237,228	\$ 154,212	-4.69%	-3.12%
Simulcast Cross-Species	1,298	\$ 29,303,385	\$ 22,576	1,274	\$ 29,380,180	\$ 23,061	0.26%	2.15%
Export	178	\$ 105,128,192	\$ 590,608	175	\$ 106,090,475	\$ 606,231	0.92%	2.65%
Total Wagers		\$ 364,632,553			\$ 354,757,235		-2.71%	
All Racetracks								
Live	202	\$ 23,625,077	\$ 116,956	206	\$ 22,555,433	\$ 109,492	-4.53%	-6.38%
Simulcast Same-Species	2,236	\$ 229,968,057	\$ 102,848	2,170	\$ 218,461,068	\$ 100,673	-5.00%	-2.11%
Simulcast Cross-Species	2,234	\$ 49,188,597	\$ 22,018	2,165	\$ 45,860,886	\$ 21,183	-6.77%	-3.79%
Export	194	\$ 105,465,495	\$ 543,637	199	\$ 106,590,949	\$ 535,633	1.07%	-1.47%
Total Wagers		\$ 408,247,226			\$ 393,468,335		-3.62%	
Total Wagers Placed in Texas		\$ 302,781,731			\$ 286,877,387		-5.25%	
Total Wagers Placed on Texas Races		\$ 129,090,572			\$ 129,146,381		0.04%	

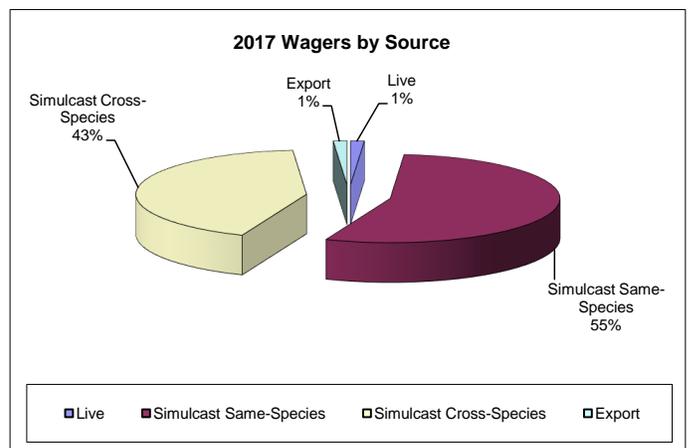
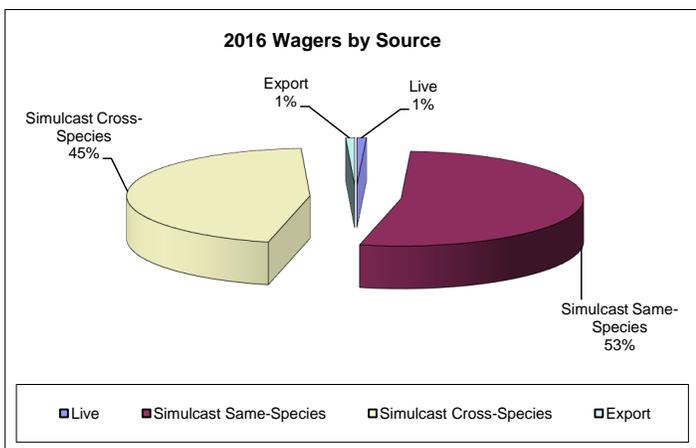




Greyhound Racetrack Wagering Statistics Comparison Report on Total Wagers Placed in Texas & on Texas Races

For the Period of January 1 through December 31

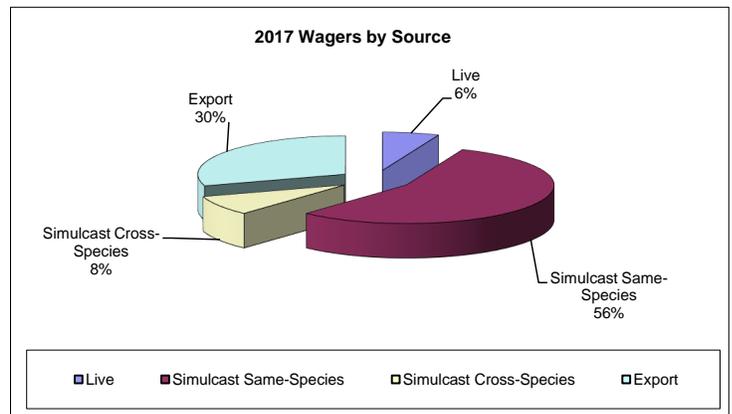
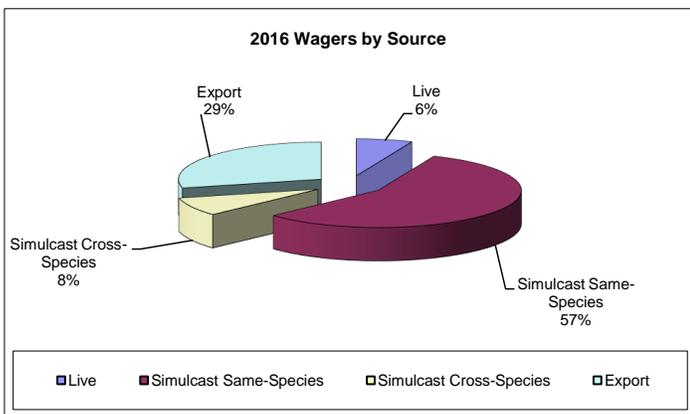
	Year 2016			Year 2017			Percentage Change	
	# Days	Wagers (Handle)		# Days	Wagers (Handle)		Wagers (Handle)	
Total		Average per day	Total		Average per day	Total	Average per day	
Gulf Coast Racing								
Live	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Simulcast Same-Species	262	\$ 6,875,634	\$ 26,243	243	\$ 6,330,840	\$ 26,053	-7.92%	-0.72%
Simulcast Cross-Species	262	\$ 3,666,456	\$ 13,994	243	\$ 3,098,866	\$ 12,753	-15.48%	-8.87%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 10,542,090			\$ 9,429,707		-10.55%	
Gulf Greyhound Park								
Live	0	\$ -	\$ -	4	\$ 88,517	\$ 22,129	NA	NA
Simulcast Same-Species	363	\$ 10,037,124	\$ 27,650	336	\$ 9,222,187	\$ 27,447	-8.12%	-0.74%
Simulcast Cross-Species	363	\$ 10,356,326	\$ 28,530	336	\$ 8,258,665	\$ 24,579	-20.25%	-13.85%
Export	0	\$ -	\$ -	4	\$ 100,790	\$ 25,197	NA	NA
Total Wagers		\$ 20,393,450			\$ 17,670,159		-13.35%	
Valley Race Park								
Live	16	\$ 362,805	\$ 22,675	20	\$ 417,563	\$ 20,878	15.09%	-7.93%
Simulcast Same-Species	311	\$ 6,116,596	\$ 19,668	312	\$ 5,670,812	\$ 18,176	-7.29%	-7.59%
Simulcast Cross-Species	311	\$ 5,862,429	\$ 18,850	312	\$ 5,123,175	\$ 16,420	-12.61%	-12.89%
Export	16	\$ 337,303	\$ 21,081	20	\$ 399,684	\$ 19,984	18.49%	-5.20%
Total Wagers		\$ 12,679,133			\$ 11,611,234		-8.42%	
All Greyhound Tracks								
Live	16	\$ 362,805	\$ 22,675	24	\$ 506,080	\$ 21,087	39.49%	-7.01%
Simulcast Same-Species	936	\$ 23,029,353	\$ 24,604	891	\$ 21,223,840	\$ 23,820	-7.84%	-3.19%
Simulcast Cross-Species	936	\$ 19,885,212	\$ 21,245	891	\$ 16,480,706	\$ 18,497	-17.12%	-12.93%
Export	16	\$ 337,303	\$ 21,081	24	\$ 500,474	\$ 20,853	48.38%	-1.08%
Total Wagers		\$ 43,614,673			\$ 38,711,100		-11.24%	
Total Wagers Placed in Texas		\$ 43,277,370			\$ 38,210,626		-11.71%	
Total Wagers Placed on Texas Races		\$ 700,109			\$ 1,006,554		43.77%	





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

	Year 2016			Year 2017			Percentage Change	
	# Days	Wagers (Handle)		# Days	Wagers (Handle)		Wagers (Handle)	
		Total	Average per day		Total	Average per day	Total	Average per day
Gillespie County Fair								
Live	8	\$ 1,123,083	\$ 140,385	7	\$ 970,082	\$ 138,583	-13.62%	-1.28%
Simulcast Same-Species	209	\$ 2,916,213	\$ 13,953	194	\$ 2,913,713	\$ 15,019	-0.09%	7.64%
Simulcast Cross-Species	209	\$ 431,441	\$ 2,064	194	\$ 450,819	\$ 2,324	4.49%	12.57%
Export	0	\$ -	\$ -	0	\$ -	\$ -	0.00%	0.00%
Total Wagers		\$ 4,470,737			\$ 4,334,614		-3.04%	
Lone Star Park								
Live	76	\$ 13,483,221	\$ 177,411	76	\$ 13,617,902	\$ 179,183	1.00%	1.00%
Simulcast Same-Species	364	\$ 103,253,625	\$ 283,664	363	\$ 102,479,560	\$ 282,313	-0.75%	-0.48%
Simulcast Cross-Species	363	\$ 5,720,210	\$ 15,758	359	\$ 6,032,036	\$ 16,802	5.45%	6.63%
Export	76	\$ 37,696,457	\$ 496,006	76	\$ 42,088,946	\$ 553,802	11.65%	11.65%
Total Wagers		\$ 160,153,513			\$ 164,218,443		2.54%	
Retama Park								
Live	46	\$ 3,194,203	\$ 69,439	42	\$ 2,665,921	\$ 63,474	-16.54%	-8.59%
Simulcast Same-Species	365	\$ 35,758,177	\$ 97,968	363	\$ 32,762,185	\$ 90,254	-8.38%	-7.87%
Simulcast Cross-Species	364	\$ 6,933,590	\$ 19,048	362	\$ 6,171,467	\$ 17,048	-10.99%	-10.50%
Export	46	\$ 13,233,314	\$ 287,681	42	\$ 11,518,049	\$ 274,239	-12.96%	-4.67%
Total Wagers		\$ 59,119,284			\$ 53,117,622		-10.15%	
Sam Houston Race Park								
Live	56	\$ 5,461,764	\$ 97,532	57	\$ 4,795,448	\$ 84,131	-12.20%	-13.74%
Simulcast Same-Species	362	\$ 65,010,689	\$ 179,588	359	\$ 59,081,770	\$ 164,573	-9.12%	-8.36%
Simulcast Cross-Species	362	\$ 16,218,144	\$ 44,802	359	\$ 16,725,858	\$ 46,590	3.13%	3.99%
Export	56	\$ 54,198,421	\$ 967,829	57	\$ 52,483,480	\$ 920,763	-3.16%	-4.86%
Total Wagers		\$ 140,889,018			\$ 133,086,556		-5.54%	
All Horse Tracks								
Live	186	\$ 23,262,272	\$ 125,066	182	\$ 22,049,353	\$ 121,150	-5.21%	-3.13%
Simulcast Same-Species	1,300	\$ 206,938,704	\$ 159,184	1,279	\$ 197,237,228	\$ 154,212	-4.69%	-3.12%
Simulcast Cross-Species	1,298	\$ 29,303,385	\$ 22,576	1,274	\$ 29,380,180	\$ 23,061	0.26%	2.15%
Export	178	\$ 105,128,192	\$ 590,608	175	\$ 106,090,475	\$ 606,231	0.92%	2.65%
Total Wagers		\$ 364,632,553			\$ 354,757,235		-2.71%	
Total Wagers Placed in Texas		\$ 259,504,361			\$ 248,666,761		-4.18%	
Total Wagers Placed on Texas Races		\$ 128,390,464			\$ 128,139,827		-0.20%	



ENFORCEMENT ACTIVITY SUMMARY

2017 Compared to 2016

	2016	2017
Claiming Violation	1	1
Conduct	13	20
Contraband	16	37
Denied	0	1
Electrical Shocking Device	0	1
Failure to Appear	0	1
Failure to Disclose	3	4
Failure to Pay Fine	8	23
Greyhound Weight Violation	1	3
Human Alcohol Violation	22	8
Human Drug Violation	18	25
Financial Obligations	30	10
Jockey - Riding	25	35
Jockey - Non Riding	23	21
Licensing	9	29
Medication Violations	79	98
Miscellaneous	2	7
Reciprocity	3	2
Trainer Infractions	33	58
Veterinary	2	0
Violation by Mgmt. or Official	<u>0</u>	<u>1</u>
TOTAL NUMBER OF RULINGS	288	384
Felony Drug Arrests	0	2

SUBSTANCES/MEDICATIONS FOUND IN RACEHORSES*

	2016	2017
Class 1 Stimulants and depressants that have the highest potential to affect performance and have no generally accepted medical use in racehorses		
<i>Meth/Cocaine/Anabolic Steroids</i>	17	0
Class 2 High potential for affecting the outcome of a race and are not generally accepted as therapeutic agents or they have therapeutic agents that have a high potential for abuse		
<i>3-Hydroxymepivacaine</i>	0	1
<i>O-desmethyltramadol</i>	0	1
Class 3 May or may not have a generally accepted therapeutic use in racehorses and have less potential for affecting the performance than Class 2 substances.		
<i>Albuterol</i>	4	1
<i>Capsaicin</i>	0	1
<i>Clenbuterol</i>	21	49
<i>Gabapentin</i>	0	1
<i>Pirbuterol</i>	0	1
<i>Pyrilamine</i>	1	1
Class 4 Therapeutic medications with a limited ability to influence performance		
<i>Dextromethorphan</i>	1	1
<i>DMSO</i>	15	5
<i>Flunixin</i>	0	5
<i>Ketoprofen</i>	0	1
<i>Phenylbutazone</i>	24	20
<i>Triamcinolone Acetonide</i>	4	1
Class 5 Therapeutic medications for which concentration limits have been established		
	0	0
Overage of a permissible medication		
<i>Furosemide</i>	0	1

*Listing does not include any substances/medications involved in rulings that have not been finalized through the appeals process.

IV. PROCEEDINGS ON OCCUPATIONAL LICENSES

Discussion, consideration, and possible action on the following matters:

A. The proposal for decision in SOAH No. 476-17-5681; Judd Kearn v. Texas Racing Commission

B. The proposal for decision in SOAH No. 476-17-5682; Jose Sanchez v. Texas Racing Commission

C. The proposal for decision in SOAH No. 476-17-5683; Brian Stroud v. Texas Racing Commission

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 07/31/2017	Violation Date: 05/22/2017	Ruling #: RETA2629
Licensee: JUDD STEVEN KEARL		Status: CLSD
License # 91094	Type OWNER-TRAINER	Status SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Ruling Type: 6 MISC.	Redistribute Purse: N
Rules Cited: 307.62 FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION	
3.16 UNLAWFUL INFLUENCES ON RACING	
Fine: \$	Fine Due Date: Fine Paid Date:

Narrative:

On July 28, 2017 a telephonic hearing was held in order to hear argument regarding Deputy General Counsel Devon Bijansky's Motion for Summary Suspension in the Matter of Judd Kearl, Jose Sanchez and Brian Stroud. Attorney Darrell Vienna appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Members of the Board of Stewards were Anne Alley, Fred Winch and Michael Pelletier.

After considering all arguments presented, the Board of Stewards hereby impose an immediate Summary Suspension on Trainer Judd Kearl's Texas Racing Commission occupational license because five post-race blood serum samples taken from four horses trained by Mr. Kearl contained the prohibited substance Nomifensine. The samples are from: "Zoomin N Celebrating" who finished second in the 10th at Sam Houston Race Park on 5/22/17, Sample #SH064401; "Million Dollar Kiss," who finished second in the 9th race at Retama Park on 6/9/17, Sample #RP043194; "Chivalri," who won the 10th race at Retama Park on 6/9/17, Sample #RP043195; "Tellem Honeys Here," who won the 10th race at Retama Park on 6/10/17, Sample #RP043216; and "Zoomin N Celebrating," who won the 6th race at Retama Park on 6/17/17, Sample #RP043248.

It is unprecedented in the State of Texas that a single trainer has incurred five Class 1 positive tests within a short timeframe for a drug that is known to be dangerous in humans, has not been tested on horses, and has been removed from the market by the F.D.A. The totality of these circumstances strongly indicate a scheme to cheat and also indicate that the drug was intentionally administered by Trainer Judd Kearl, either directly or at his instruction. Therefore, in order to protect the safety and health of race participants, both human and equine, and to protect the public from unlawful influences on the outcome of races, a summary suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 is hereby immediately imposed on Trainer Judd Kearl pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER
16 of 118

FRED WINCH JR

Texas Racing Commission
Ruling Supplements

Ruling Date: 07/31/2017 **Violation Date:** 05/22/2017

Licensee: JUDD STEVEN KEARL

Ruling#: RETA2629
Status: CLSD

License #	Type	Status
91094	OWNER-TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Rules Cited: 307.62 *FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION*
3.16 *UNLAWFUL INFLUENCES ON RACING*

Fine: \$ **Fine Due Date:** **Fine Paid Date:** **Redistribute Purse:** N

1 Created On: 09/08/2017

On September 6, 2017 a formal hearing was held in order to hear evidence, testimony, and argument regarding the Summary Suspensions issued against Trainers Judd Kearl, Jose Sanchez, and Brian Stroud. Attorney Eleanor Ruffner appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Deputy General Counsel Devon Bijansky appeared for the Texas Racing Commission. Mr. Sanchez, Mr. Stroud, TxRC Investigator Johnny Whitley, and Attorney Darrell Vienna appeared as witnesses, in person, while Mr. Kearl testified telephonically. Each trainer testified that they did not personally administer or cause to administer Nomifensine to their horses. All of the trainers involved employ the same veterinarian, a Dr. Justin Robinson. Attorney Darrell Vienna offered hearsay testimony that Dr. Justin Robinson had admitted to him that he had administered the Nomifensine to horses trained by Mr. Kearl.

The Board of Stewards considered all the evidence, testimony, and argument presented during the hearing. This Board of Stewards does not find it credible that Dr. Robinson administered Nomifensine to horses in the trainers' stables, without the trainers' knowledge and consent. However, if Dr. Robinson administered the Nomifensine without the trainers' knowledge, the trainers have still acted, because they gave the veterinarian the freedom to administer substances at his own discretion to horses in their care, custody and control.

Each of the trainers in this case is an experienced horseman, each with a knowledge of the trainer's responsibility rule, Section 311.104 of the Texas Racing Commission Rules of Racing, the Absolute Insurer Rule which states in part:

"(1) The trainer shall ensure the health and safety of each horse.....that is in the care and custody of the trainer. (2) A trainer shall ensure that a horsethat runs in a race while in the care and custody of the traineris free from all prohibited drugs, chemicals, or other substances...."

Attorneys for the trainers argue in their defense that the trainers cannot be summarily suspended under 3.16 or Section 307.62 because the trainers did not use or administer or cause to be administered the prohibited substance. However, not actively supervising and questioning each and every substance being administered to a horse in one's stable constitutes in and of itself, an act and a willful abdication of responsibility.

This Board does not find the trainers' denials of knowledge to be credible in light of their experience and the rules. Nevertheless, even if true, to allow a trainer to abdicate responsibility because they did not have information that they by rule should have, is inappropriate, given the very real potential danger to the health and safety of the horses and riders that participate in this sport. This active, willful ignorance endangers the public welfare in that the integrity of the wagering pools could be compromised. Also, public perception of the entire sport is compromised, if this willful ignorance is allowed as an excuse in order lift a properly imposed summary suspension. Therefore, the Summary Suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 imposed against Trainer Kearl shall continue pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER

FRED WINCH JR

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 2, 2018

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

INTER-AGENCY

RE: Docket No. 476-17-5681; *Judd Kearl 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.

Sincerely,

Holly Vandrovec
Administrative Law Judge

HV/et
Enclosures

cc: Devon Buansky, Deputy General Counsel, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**
Eleanor Ruffner, Attorney, The Law Office of Eleanor Ruffner, P.C., 1201 Spyglass Drive, Suite 100, Austin, Texas 78746 – **REGULAR MAIL**
Darrell Vienna, Attorney, Law Offices of Darrell J. Vienna, PO Box 725, Sierra Madre, CA 91025-9999 – **REGULAR MAIL**

**SOAH DOCKET NO. 476-17-5681
TXRC NO. 2017-02-03**

**JUDD KEARL,
Petitioner**

v.

**TEXAS RACING COMMISSION,
Respondent**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Judd Kearn (Petitioner), who is licensed by the Texas Racing Commission (Commission), seeks to overturn Ruling RETA2629 (the Ruling) by a Board of Stewards (the Stewards). After four horses for which Petitioner was the trainer provided blood serum specimens that tested positive for the prohibited substance Nomifensine, the Stewards found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a summary suspension of Petitioner’s occupational license. The Administrative Law Judge (ALJ) finds that the Ruling was not clearly in error.¹

I. JURISDICTION AND NOTICE

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

II. PROCEDURAL HISTORY AND APPLICABLE LAW

On July 28, 2017, the Stewards² held a telephonic hearing on Commission Deputy General Counsel Devon Bijansky’s motion for summary suspension of Petitioner’s occupational

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

² Stewards are racing officials employed by the Commission who have supervisory authority over the conduct of races and licensees. Tex. Rev. Civ. Stat. art. 179e, § 3.07(g).

license, a trainer license issued by the Commission, due to the positive test results. After the hearing, the Stewards issued the Ruling, which concluded that Petitioner's license should be summarily suspended under 16 TAC § 307.62 and Section 3.16 to protect the health and safety of human and equine race participants. The summary suspension began on July 31, 2017, the date of the Ruling. Petitioner timely appealed the Ruling, and the Commission referred the appeal to the State Office of Administrative Hearings (SOAH).

Section 3.16(c) states, in relevant part, that “[f]ollowing ... a return of a test showing the presence of a prohibited substance, a steward ... may summarily suspend a person who has used or administered the ... prohibited substance until a hearing before the stewards and judges.” 16 TAC § 307.62(i) further provides, in relevant part, that:

If the stewards ... determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards ... may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards ... suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven calendar days after the day the license is suspended.

Commission rules define a prohibited substance as including any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”³

Following the Ruling, a hearing on the summary suspension was not held within seven calendar days, as required by 16 TAC § 307.62(i). On August 30, 2017, the Travis County District Court ordered the Commission to hold an evidentiary hearing on the suspension within seven days of the court's order.⁴ A hearing on the suspension was held on September 6, 2017. A September 8, 2017 supplemental ruling upheld the summary suspension.⁵ The summary

³ 16 TAC § 319.1(b)(1).

⁴ Opposition to Motion for Summary Disposition at 6.

⁵ Opposition to Motion for Summary Disposition at 7.

suspension ended on October 26, 2017, when a final suspension of Petitioner's license (addressed subsequently) took effect.

On November 3, 2017, ALJ Holly Vandrovec convened a hearing on the summary suspension at the Austin hearing facilities of SOAH. Attorney Eleanor Ruffner represented Petitioner. Ms. Bijansky represented the Commission's staff (Staff). The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Jose Sanchez (SOAH Docket No. 476-17-5682) and Brian Stroud (SOAH Docket No. 476-17-5683) (Sanchez, Stroud, and Petitioner will be referred to as "Petitioners"). All three cases involved positive tests for Nomifensine that was allegedly injected into animals by a veterinarian shared by all three trainers and without knowledge of the trainers. All trainers' licenses were summarily suspended and all appealed the suspension rulings. Because the summary suspensions had already expired by the time the hearing convened, the ALJ inquired of the parties as to why the hearing was not moot. Petitioners persuasively argued that the summary suspensions continued to have an adverse effect on their livelihoods because they were recorded in a registry relied upon by other state licensing commissions. As of the date of the hearing, at least one of the Petitioners had been sanctioned by the state of New Mexico based on the Texas summary suspension. Petitioners asserted that if the rulings instituting their summary suspensions were found to be made in error, adverse impacts based on the summary suspensions could be mitigated even though the summary suspensions have expired. The ALJ agreed with Petitioners' arguments and concluded that the hearing on the summary suspensions was not moot. The hearing continued as scheduled, and the record closed at the end of the hearing.

In this proceeding, Petitioner has the burden to prove that the Ruling was clearly in error.⁶ In applying a clear error standard of review, the ALJ must review all of the evidence in the light most favorable to the Ruling and then determine if the Ruling was clearly erroneous. If, after reviewing all the evidence, the ALJ cannot say that the Ruling was clearly erroneous, the

⁶ 16 TAC § 307.67(c).

ALJ must uphold the Ruling even if the ALJ would have weighed the evidence differently had the ALJ been sitting as the trier of fact.⁷

Although not currently before the ALJ in this proceeding,⁸ the ALJ includes a description of the standard for the Stewards' final suspension of Petitioners' licenses (effective October 26, 2017, as stated above) because the parties refer to this standard in their arguments. The statute provides that the licensed trainer of an animal is: "(1) considered by law to be the absolute insurer that no prohibited substance has been administered to the animal; and (2) responsible for ensuring that no prohibited substance is administered to the animal."⁹ This standard is referred to in the industry as the "absolute insurer" rule.¹⁰

III. EVIDENCE AND POSITIONS OF THE PARTIES

A. Evidence

The basic facts in this case are undisputed. Petitioner is a quarter horse trainer and holds Commission license number 91094. In May and June 2017, four of Petitioner's horses produced blood serum results positive for Nomifensine as follows:

Race Date	Track	Race No.	Horse	Order of Finish	Post-Race Specimen No.
May 22	Sam Houston	10	Zoomin N Celebrating	2	SH064401
June 9	Retama Park	9	Million Dollar Kiss	2	RP043194
June 9	Retama Park	10	Chivalri (Robinson)	1	RP043195
June 10	Retama Park	10	Tellem Honeys Here	1	RP043216
June 17	Retama Park	6	Zoomin N Celebrating	1	RP043248

⁷ *Lopez v. State*, 940 S.W.2d 388, 390 (Tex. App.—Austin 1997, pet. ref'd).

⁸ Petitioners have also appealed the Stewards' final suspensions of their licenses, which cases are pending at SOAH as follows: Judd Kearl in SOAH Docket No. 476-18-1010; Jose Sanchez in SOAH Docket No. 476-18-1011; and Brian Stroud in SOAH Docket No. 476-18-1012.

⁹ Tex. Rev. Civ. Stat. art. 179e, § 3.16(i); *see also* 16 TAC § 311.104(b).

¹⁰ The ALJ notes that, although the statute uses forms of the word "ensure," Commission rules use forms of the word "insure," which is also commonly used in the industry.

As a result of the positive test results, the Stewards summarily suspended Petitioner's license. Petitioner chose to request split samples that were tested in another laboratory that confirmed the presence of Nomifensine. The parties agree that Nomifensine is not specifically listed on the Commission's list of prohibited substances, nor is it expressly permitted for use. Therefore, if Nomifensine is a prohibited substance, it would have to be characterized as such through the applicable rule's "catch-all" provision, which states that any drug "which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter," is a prohibited substance.¹¹

B. Petitioners' Position¹²

Petitioners argue that the decision to summarily suspend Petitioners' licenses should be overturned based on three categories of reasons: (1) procedural irregularities; (2) improper interpretation and application of the law; and (3) evidentiary insufficiencies.

Regarding the procedural irregularities, Petitioners argue that they were not given a full evidentiary hearing within seven days of the summary suspensions, as required by rule. Petitioners argue that this failure resulted in a violation of their due process rights. Additionally, Petitioners contend their due process rights were violated because the Commission and the Stewards departed from prior norms by summarily suspending their licenses, which had never been done before on the basis of positive test results.

Petitioners also argued that the Stewards misapplied and misinterpreted the law by applying the "absolute insurer" standard rather than the summary suspension standard. They further argued that the phrase "used or administered" in Section 3.16(c) should be interpreted to mean that the trainers personally "used or administered" prohibited substances.

¹¹ 16 TAC § 319.1(b)(1).

¹² The ALJ refers to "Petitioners' Position" here because Petitioners adopted each other's arguments at the hearing.

Finally, Petitioners argued that at the time the Stewards summarily suspended the licenses, the Stewards had the burden of proof by a preponderance of the evidence and failed to prove that Nomifensine was a prohibited drug or that it was used or administered by Petitioners.¹³ Petitioners argue that Nomifensine was not a prohibited drug under 16 TAC § 319.1(b)(1) because there was no proof that it is a stimulant, depressant, tranquilizer, local anesthetic, or other substance which could affect the health or performance of a race animal. Petitioners argue that Dr. Justin Robinson, a veterinarian hired by Petitioners, administered the substance without Petitioners' knowledge or consent, and that the Stewards were required to show actual administration of the drug to the animals by the Petitioners to justify the summary suspensions.

C. Staff's Position

Staff contends that the Ruling was proper and should be upheld. Staff argues that Nomifensine is a prohibited substance because it was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration (FDA) approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use. As such, the drug *could* affect the health or performance of the horses that tested positive in this case.

Staff also contends that the statute and rules do not require a showing that Petitioner personally administered the prohibited substance in order for the Stewards to meet the standard for a summary suspension, and that the phrase "used or administered" as used in Section 3.16(c) means that Petitioner could have directed another to administer or use the substance detected. Staff further argues that the Stewards' reference to the "absolute insurer" rule in the Ruling does not mean that the Stewards applied the wrong standard or constitute clear error on the part of the Stewards.

¹³ Petitioners are correct that the Stewards had the burden by a preponderance of the evidence to show a violation pursuant to 16 TAC § 307.62(e).

Finally, Staff argues that Petitioners' actions constituted an immediate danger to the public health, safety, or welfare because the evidence (1) shows a scheme among Petitioners and their veterinarian to cheat in racing by unlawfully influencing the outcome of races and (2) that this scheme endangered the safety and health of race participants (both human and equine) due to the unknown effects of Nomifensine on horses.¹⁴

IV. ANALYSIS AND CONCLUSION

With respect to Petitioner's argument regarding procedural irregularities, the ALJ concludes that the failure of the Stewards to hold an evidentiary hearing within seven days of the summary suspension was remedied by the intervention of the Travis County District Court. As a result of that court's order, an evidentiary hearing was held on September 6, 2017. Petitioner has since appealed the Ruling, resulting in this proceeding. Additionally, Petitioner argues that his due process rights were denied because the Stewards never previously summarily suspended a license based on positive test results. The ALJ concludes that (1) the ability to issue a summary suspension is clearly within the Stewards' powers and (2) in accordance with separation of powers, jurisdiction over constitutional questions—such as due process questions—vests exclusively in government's judicial branch.¹⁵ Thus, Petitioners failed to show that any procedural irregularities resulted in clear error on the part of the Stewards.

The ALJ turns next to Petitioner's argument that Nomifensine is not a prohibited substance. The evidence that the drug was withdrawn from the market by the manufacturer in 1986, had its FDA approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use must be reviewed in the light most favorable to the Ruling. Given this evidence and the expansive, "catch-all" definition of a prohibited substance as any drug "which could affect the health or performance of a race animal, however

¹⁴ See generally, Staff's Motion for Summary Disposition and attachments thereto.

¹⁵ *City of Dallas v. Stewart*, 361 S.W.2d 562, 579 (Tex. 2012) (noting that "the power of constitutional construction is inherent in, and exclusive to, the judiciary").

minimal,”¹⁶ the ALJ concludes that Petitioner has not shown clear error on the part of the Stewards in classifying Nomifensine as a prohibited substance.

Petitioner also argues that his actions did not constitute an immediate danger to the public health, safety, or welfare, as required by 16 TAC § 307.62(i) to justify a summary suspension. Staff argues that the Stewards determined that Petitioner used a drug on his animals with proven risks to humans and that was untested on horses. This drug use could have put both human and equine participants and spectators at risk of harm. The Stewards also determined that Petitioner’s actions were part of an effort to cheat on races, which could defraud the public. Pursuant to the Commission’s rules, the Stewards have “the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony.”¹⁷ Applying this rule, and reviewing the evidence in a light most favorable to the Ruling, the ALJ cannot say that the Stewards’ determination as to the risk of harm was clearly erroneous.

Petitioner’s argument that the Stewards were required to prove that Petitioner personally administered the Nomifensine to the animals at issue also fails. Section 3.16(c) states that the license of a person who “used or administered the ... prohibited substance” may be summarily suspended. The statute does not contain the limitation Petitioner seeks to read into it. The ALJ finds the Commission’s interpretation, that a trainer may “use” a prohibited substance on his animal by asking or allowing another to administer it, to be persuasive. Additionally, the ALJ gives weight to the Commission’s interpretation of the statute, which is not unreasonable or inconsistent with the statute’s language.¹⁸

In a related argument, Petitioner claims that the Stewards erred in referencing the “absolute insurer” rule and applying that standard rather than the standard for summary suspensions. As discussed above, the ALJ concludes that the Stewards considered and applied

¹⁶ 16 TAC § 319.1(b)(1).

¹⁷ 16 TAC § 307.62(d)(4).

¹⁸ *Cities of Austin v. Southwestern Bell Tel. Co.*, 92 S.W.3d 434, 441–442 (Tex. 2002) (“[W]e give weight to how the [Public Utility Commission of Texas] interprets its own powers, but only if that interpretation is reasonable and not inconsistent with the statute.”).

the elements comprising the standard for imposing a summary suspension by finding that Petitioner's actions resulted in the introduction of a prohibited substance into his animals, resulting in an immediate danger to the public health, safety, or welfare. The Stewards' citation to another standard not applicable at this point in the process does not constitute clear error.

In conclusion, the ALJ finds that the Ruling was not clearly in error as to the imposition of a summary suspension of Petitioner's license.

V. FINDINGS OF FACT

1. Judd Kearl (Petitioner) is a licensed owner-trainer of racehorses and holds License No. 91094 issued by the Texas Racing Commission (Commission).
2. On May 22, 2017, Petitioner was the trainer of a racehorse, Zoomin N Celebrating (Horse 1), that won second place in the tenth race at Sam Houston Racetrack, a Texas racetrack.
3. On June 17, 2017, Petitioner was the trainer of Horse 1, which won the sixth race at Retama Race Park, a Texas racetrack.
4. On or about June 9, 2017, Petitioner was the trainer of a racehorse, Million Dollar Kiss (Horse 2), which won second place in the ninth race at Retama Race Park.
5. On or about June 9, 2017, Petitioner was the trainer of a racehorse, Chivalri (Robinson) (Horse 3), which won the tenth race at Retama Race Park.
6. On or about June 10, 2017, Petitioner was the trainer of a racehorse, Tellem Honeys Here (Horse 4), which won the tenth race at Retama Race Park.
7. After each race, the horses provided a blood serum sample, which was divided into two specimens, which were tested at two laboratories. Both specimens from each race tested positive for the drug Nomifensine.
8. Nomifensine was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use.
9. Petitioner's actions resulted in the use of Nomifensine in Horse 1, Horse 2, Horse 3, and Horse 4.

10. The use of Nomifensine in Horse 1, Horse 2, Horse 3, and Horse 4 could have affected the health or performance of the horses and resulted in an immediate danger to the public health, safety, or welfare.
11. On July 28, 2017, a Board of Stewards (the Stewards) conducted a telephonic hearing, at which Petitioner appeared.
12. On July 31, 2017, the Stewards issued Ruling RETA2629 (the Ruling). In the Ruling, they found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a summary suspension of Petitioner's occupational license. Petitioner timely appealed the ruling.
13. Petitioner's appeal and Order No. 2 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 factual matters asserted.
14. On November 3, 2017, Administrative Law Judge Holly Vandrovec 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 Eleanor Ruffner represented Petitioner. The record closed at the end of the hearing that day. The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Jose Sanchez (SOAH Docket No. 476-17-5682) and Brian Stroud (SOAH Docket No. 476-17-5683).

VI. 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. Nomifensine is a prohibited substance. Tex. Rev. Civ. Stat. art. 179e, § 1.03(72); 16 TAC § 319.1(b).
4. If the Stewards find that a horse's post-race test specimen contains a prohibited substance used or administered by a licensee that results in an immediate danger to the public health, safety, or welfare, they may summarily suspend a license. Tex. Rev. Civ. Stat. art. 179e, § 3.16(c); 16 TAC § 307.62(i).
5. Petitioner has the burden of proof to show that the Stewards' Ruling was clearly in error. 16 TAC § 307.67(c).

6. Petitioner did not prove that the Ruling's finding that he violated Texas Revised Civil Statute art. 179e, § 3.16(c) and 16 TAC § 307.62(i) was clearly in error.

SIGNED January 2, 2018.

Holly Vandrovec

HOLLY VANDROVEC

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

JUDD KEARL

V.

TEXAS RACING COMMISSION

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BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On February 13, 2018, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Judd Kearn (“Appellant”), owner-trainer license number 91094, from Stewards’ Ruling RETA 2629 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about July 28, 2017, the Retama Park Board of Stewards held a hearing on a motion for summary suspension of Appellant’s license.

(b) On July 31, 2017, the stewards issued ruling RETA 2629, which found that five post-race blood serum samples taken between May 22, 2017, and June 17, 2017 from four horses trained by Appellant contained the prohibited substance nomifensine and further found that Appellant was involved in the administration of the substance, either directly or indirectly. The ruling summarily suspended Appellant’s owner-trainer license pursuant to Texas Racing Act Section 3.16 and Commission Rule 16 TAC Section 307.62 due to the risk that his continued licensure posed to the health and safety of race participants, both human and equine, and to the welfare of the public.

(c) On September 6, 2017, the Retama Park Board of Stewards held a second hearing on the summary suspension, which was upheld in a supplemental ruling shortly thereafter.

(d) Appellant timely appealed the stewards’ ruling.

(e) On or about November 3, 2017, an administrative law judge at the State Office of Administrative Hearings (SOAH) convened a hearing on the matter.

(f) On or about January 2, 2018, the administrative law judge issued a proposal for decision, incorporated by reference into this order, in which she found that the Stewards' ruling was not clearly in error as to the summary suspension of Appellant's license.

IT IS HEREBY ORDERED that Stewards' Ruling RETA 2629 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 February, 2018.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Gloria Hicks

Steven Mach or Designee

Margaret Martin

Sid Miller or Designee

Robert Schmidt, M.D.

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 07/31/2017 Violation Date: 06/10/2017

Ruling #: RETA2630

Licensee: JOSE SANCHEZ

Status: CLSD

License #	Type	Status
163028	TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Ruling Type: 6 MISC.

Redistribute Purse: N

Rules Cited: 307.62 FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION
3.16 UNLAWFUL INFLUENCES ON RACING

Fine: \$ Fine Due Date: Fine Paid Date:

Narrative:

On July 28, 2017 a telephonic hearing was held in order to hear argument regarding Deputy General Counsel Devon Bijansky's Motion for Summary Suspension in the Matter of Judd Kearl, Jose Sanchez and Brian Stroud. Attorney Darrell Vienna appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Members of the Board of Stewards were Anne Alley, Fred Winch and Michael Pelletier.

After considering all arguments presented, the Board of Stewards hereby impose an immediate Summary Suspension on Trainer Jose Sanchez's Texas Racing Commission occupational license because two post-race blood serum samples taken from horses trained by Mr. Sanchez contained the prohibited substance Nomifensine. The samples are from: "Contentious Strike," who won the 6th race at Retama Park on 6/10/17, Sample #RP043208, and from "Dancers Toast," that finished second in the 10th race at Retama Park on 6/16/17, Sample #RP043237.

This Class 1 drug is known to be dangerous in humans, has not been tested on horses, and has been removed from the market by the F.D.A. These positive tests are among eight total positives that occurred within a time period of a few weeks, by three trainers at two different tracks. The totality of these circumstances strongly indicate a scheme to cheat and also indicate that the drug was intentionally administered by Trainer Jose Sanchez, either directly or at his instruction. Therefore, in order to protect the safety and health of race participants, both human and equine, and to protect the public from unlawful influences on the outcome of races, a summary suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 is hereby immediately imposed on Trainer Jose Sanchez pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER
32 of 118

FRED WINCH JR

Texas Racing Commission
Ruling Supplements

Ruling Date: 07/31/2017 **Violation Date:** 06/10/2017

Licensee: JOSE SANCHEZ

Ruling#: RETA2630
Status: CLSD

License #	Type	Status
163028	TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Rules Cited: 307.62 *FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION*
3.16 *UNLAWFUL INFLUENCES ON RACING*

Fine: \$ **Fine Due Date:** **Fine Paid Date:** **Redistribute Purse:** N

1 Created On: 09/08/2017

On September 6, 2017 a formal hearing was held in order to hear evidence, testimony, and argument regarding the Summary Suspensions issued against Trainers Judd Kearl, Jose Sanchez, and Brian Stroud. Attorney Eleanor Ruffner appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Deputy General Counsel Devon Bijansky appeared for the Texas Racing Commission. Mr. Sanchez, Mr. Stroud, TxRC Investigator Johnny Whitley, and Attorney Darrell Vienna appeared as witnesses, in person, while Mr. Kearl testified telephonically. Each trainer testified that they did not personally administer or cause to administer Nomifensine to their horses. All of the trainers involved employ the same veterinarian, a Dr. Justin Robinson. Attorney Darrell Vienna offered hearsay testimony that Dr. Justin Robinson had admitted to him that he had administered the Nomifensine to horses trained by Mr. Kearl.

The Board of Stewards considered all the evidence, testimony, and argument presented during the hearing. This Board of Stewards does not find it credible that Dr. Robinson administered Nomifensine to horses in the trainers' stables, without the trainers' knowledge and consent. However, if Dr. Robinson administered the Nomifensine without the trainers' knowledge, the trainers have still acted, because they gave the veterinarian the freedom to administer substances at his own discretion to horses in their care, custody and control.

Each of the trainers in this case is an experienced horseman, each with a knowledge of the trainer's responsibility rule, Section 311.104 of the Texas Racing Commission Rules of Racing, the Absolute Insurer Rule which states in part:

"(1) The trainer shall ensure the health and safety of each horse.....that is in the care and custody of the trainer. (2) A trainer shall ensure that a horse.....that runs in a race while in the care and custody of the traineris free from all prohibited drugs, chemicals, or other substances...."

Attorneys for the trainers argue in their defense that the trainers cannot be summarily suspended under 3.16 or Section 307.62 because the trainers did not use or administer or cause to be administered the prohibited substance. However, not actively supervising and questioning each and every substance being administered to a horse in one's stable constitutes in and of itself, an act and a willful abdication of responsibility.

This Board does not find the trainers' denials of knowledge to be credible in light of their experience and the rules. Nevertheless, even if true, to allow a trainer to abdicate responsibility because they did not have information that they by rule should have, is inappropriate, given the very real potential danger to the health and safety of the horses and riders that participate in this sport. This active, willful ignorance endangers the public welfare in that the integrity of the wagering pools could be compromised. Also, public perception of the entire sport is compromised, if this willful ignorance is allowed as an excuse in order lift a properly imposed summary suspension. Therefore, the Summary Suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 imposed against Trainer Jose Sanchez shall continue pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER

FRED WINCH JR

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 2, 2018

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

INTER-AGENCY

RE: Docket No. 476-17-5682; Jose Sanchez 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.

Sincerely,

Holly Vandrovec
Administrative Law Judge

HV/et
Enclosures

cc: Devon Buansky, Deputy General Counsel, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**
Eleanor Ruffner, Attorney, The Law Office of Eleanor Ruffner, P.C., 1201 Spyglass Drive, Suite 100, Austin, Texas 78746 – **REGULAR MAIL**
Darrell Vienna, Attorney, Law Offices of Darrell J. Vienna, PO Box 725, Sierra Madre, CA 91025-9999 – **REGULAR MAIL**

**SOAH DOCKET NO. 476-17-5682
TXRC NO. 2017-02-04**

**JOSE SANCHEZ,
Petitioner**

v.

**TEXAS RACING COMMISSION,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Jose Sanchez (Petitioner), who is licensed by the Texas Racing Commission (Commission), seeks to overturn Ruling RETA2630 (the Ruling) by a Board of Stewards (the Stewards). After two horses for which Petitioner was the trainer provided blood serum specimens that tested positive for the prohibited substance Nomifensine, the Stewards found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a summary suspension of Petitioner's occupational license. The Administrative Law Judge (ALJ) finds that the Ruling was not clearly in error.¹

I. JURISDICTION AND NOTICE

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

II. PROCEDURAL HISTORY AND APPLICABLE LAW

On July 28, 2017, the Stewards² held a telephonic hearing on Commission Deputy General Counsel Devon Bijansky's motion for summary suspension of Petitioner's occupational

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

² Stewards are racing officials employed by the Commission who have supervisory authority over the conduct of races and licensees. Tex. Rev. Civ. Stat. art. 179e, § 3.07(g).

license, a trainer license issued by the Commission, due to the positive test results. After the hearing, the Stewards issued the Ruling, which concluded that Petitioner's license should be summarily suspended under 16 TAC § 307.62 and Section 3.16 to protect the health and safety of human and equine race participants. The summary suspension began on July 31, 2017, the date of the Ruling. Petitioner timely appealed the Ruling, and the Commission referred the appeal to the State Office of Administrative Hearings (SOAH).

Section 3.16(c) states, in relevant part, that “[f]ollowing ... a return of a test showing the presence of a prohibited substance, a steward ... may summarily suspend a person who has used or administered the ... prohibited substance until a hearing before the stewards and judges.” 16 TAC § 307.62(i) further provides, in relevant part, that:

If the stewards ... determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards ... may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards ... suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven calendar days after the day the license is suspended.

Commission rules define a prohibited substance as including any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”³

Following the Ruling, a hearing on the summary suspension was not held within seven calendar days, as required by 16 TAC § 307.62(i). On August 30, 2017, the Travis County District Court ordered the Commission to hold an evidentiary hearing on the suspension within seven days of the court's order.⁴ A hearing on the suspension was held on September 6, 2017. A September 8, 2017 supplemental ruling upheld the summary suspension.⁵ The summary

³ 16 TAC § 319.1(b)(1).

⁴ Opposition to Motion for Summary Disposition at 6.

⁵ Opposition to Motion for Summary Disposition at 7.

suspension ended on October 26, 2017, when a final suspension of Petitioner's license (addressed subsequently) took effect.

On November 3, 2017, ALJ Holly Vandrovec convened a hearing on the summary suspension at the Austin hearing facilities of SOAH. Attorney Eleanor Ruffner represented Petitioner. Ms. Bijansky represented the Commission's staff (Staff). The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Judd Kearl (SOAH Docket No. 476-17-5681) and Brian Stroud (SOAH Docket No. 476-17-5683) (Kearl, Stroud, and Petitioner will be referred to as "Petitioners"). All three cases involved positive tests for Nomifensine that was allegedly injected into animals by a veterinarian shared by all three trainers and without knowledge of the trainers. All trainers' licenses were summarily suspended and all appealed the suspension rulings. Because the summary suspensions had already expired by the time the hearing convened, the ALJ inquired of the parties as to why the hearing was not moot. Petitioners persuasively argued that the summary suspensions continued to have an adverse effect on their livelihoods because they were recorded in a registry relied upon by other state licensing commissions. As of the date of the hearing, at least one of the Petitioners had been sanctioned by the state of New Mexico based on the Texas summary suspension. Petitioners asserted that if the rulings instituting their summary suspensions were found to be made in error, adverse impacts based on the summary suspensions could be mitigated even though the summary suspensions have expired. The ALJ agreed with Petitioners' arguments and concluded that the hearing on the summary suspensions was not moot. The hearing continued as scheduled, and the record closed at the end of the hearing.

In this proceeding, Petitioner has the burden to prove that the Ruling was clearly in error.⁶ In applying a clear error standard of review, the ALJ must review all of the evidence in the light most favorable to the Ruling and then determine if the Ruling was clearly erroneous. If, after reviewing all the evidence, the ALJ cannot say that the Ruling was clearly erroneous, the

⁶ 16 TAC § 307.67(c).

ALJ must uphold the Ruling even if the ALJ would have weighed the evidence differently had the ALJ been sitting as the trier of fact.⁷

Although not currently before the ALJ in this proceeding,⁸ the ALJ includes a description of the standard for the Stewards' final suspension of Petitioners' licenses (effective October 26, 2017, as stated above) because the parties refer to this standard in their arguments. The statute provides that the licensed trainer of an animal is: "(1) considered by law to be the absolute insurer that no prohibited substance has been administered to the animal; and (2) responsible for ensuring that no prohibited substance is administered to the animal."⁹ This standard is referred to in the industry as the "absolute insurer" rule.¹⁰

III. EVIDENCE AND POSITIONS OF THE PARTIES

A. Evidence

The basic facts in this case are undisputed. Petitioner is a quarter horse trainer and holds Commission license number 163027. In June 2017, two of Petitioner's horses produced blood serum results positive for Nomifensine as follows:

Race Date	Track	Race No.	Horse	Order of Finish	Post-Race Specimen No.
June 10	Retama Park	6	Contentious Strike	1	RP043208
June 16	Retama Park	10	Dancers Toast	2	RP043237

As a result of the positive test results, the Stewards summarily suspended Petitioner's license. Petitioner chose to request split samples that were tested in another laboratory that confirmed the

⁷ *Lopez v. State*, 940 S.W.2d 388, 390 (Tex. App.—Austin 1997, pet. ref'd).

⁸ Petitioners have also appealed the Stewards' final suspensions of their licenses, which cases are pending at SOAH as follows: Judd Kearn in SOAH Docket No. 476-18-1010; Jose Sanchez in SOAH Docket No. 476-18-1011; and Brian Stroud in SOAH Docket No. 476-18-1012.

⁹ Tex. Rev. Civ. Stat. art. 179e, § 3.16(i); *see also* 16 TAC § 311.104(b).

¹⁰ The ALJ notes that, although the statute uses forms of the word "ensure," Commission rules use forms of the word "insure," which is also commonly used in the industry.

presence of Nomifensine. The parties agree that Nomifensine is not specifically listed on the Commission's list of prohibited substances, nor is it expressly permitted for use. Therefore, if Nomifensine is a prohibited substance, it would have to be characterized as such through the applicable rule's "catch-all" provision, which states that any drug "which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter," is a prohibited substance.¹¹

B. Petitioners' Position¹²

Petitioners argue that the decision to summarily suspend Petitioners' licenses should be overturned based on three categories of reasons: (1) procedural irregularities; (2) improper interpretation and application of the law; and (3) evidentiary insufficiencies.

Regarding the procedural irregularities, Petitioners argue that they were not given a full evidentiary hearing within seven days of the summary suspensions, as required by rule. Petitioners argue that this failure resulted in a violation of their due process rights. Additionally, Petitioners contend their due process rights were violated because the Commission and the Stewards departed from prior norms by summarily suspending their licenses, which had never been done before on the basis of positive test results.

Petitioners also argued that the Stewards misapplied and misinterpreted the law by applying the "absolute insurer" standard rather than the summary suspension standard. They further argued that the phrase "used or administered" in Section 3.16(c) should be interpreted to mean that the trainers personally "used or administered" prohibited substances.

Finally, Petitioners argued that at the time the Stewards summarily suspended the licenses, the Stewards had the burden of proof by a preponderance of the evidence and failed to prove that Nomifensine was a prohibited drug or that it was used or administered by

¹¹ 16 TAC § 319.1(b)(1).

¹² The ALJ refers to "Petitioners' Position" here because Petitioners adopted each other's arguments at the hearing.

Petitioners.¹³ Petitioners argue that Nomifensine was not a prohibited drug under 16 TAC § 319.1(b)(1) because there was no proof that it is a stimulant, depressant, tranquilizer, local anesthetic, or other substance which could affect the health or performance of a race animal. Petitioners argue that Dr. Justin Robinson, a veterinarian hired by Petitioners, administered the substance without Petitioners' knowledge or consent, and that the Stewards were required to show actual administration of the drug to the animals by the Petitioners to justify the summary suspensions.

C. Staff's Position

Staff contends that the Ruling was proper and should be upheld. Staff argues that Nomifensine is a prohibited substance because it was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration (FDA) approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use. As such, the drug *could* affect the health or performance of the horses that tested positive in this case.

Staff also contends that the statute and rules do not require a showing that Petitioner personally administered the prohibited substance in order for the Stewards to meet the standard for a summary suspension, and that the phrase "used or administered" as used in Section 3.16(c) means that Petitioner could have directed another to administer or use the substance detected. Staff further argues that the Stewards' reference to the "absolute insurer" rule in the Ruling does not mean that the Stewards applied the wrong standard or constitute clear error on the part of the Stewards.

Finally, Staff argues that Petitioners' actions constituted an immediate danger to the public health, safety, or welfare because the evidence (1) shows a scheme among Petitioners and their veterinarian to cheat in racing by unlawfully influencing the outcome of races and (2) that

¹³ Petitioners are correct that the Stewards had the burden by a preponderance of the evidence to show a violation pursuant to 16 TAC § 307.62(e).

this scheme endangered the safety and health of race participants (both human and equine) due to the unknown effects of Nomifensine on horses.¹⁴

IV. ANALYSIS AND CONCLUSION

With respect to Petitioner's argument regarding procedural irregularities, the ALJ concludes that the failure of the Stewards to hold an evidentiary hearing within seven days of the summary suspension was remedied by the intervention of the Travis County District Court. As a result of that court's order, an evidentiary hearing was held on September 6, 2017. Petitioner has since appealed the Ruling, resulting in this proceeding. Additionally, Petitioner argues that his due process rights were denied because the Stewards never previously summarily suspended a license based on positive test results. The ALJ concludes that (1) the ability to issue a summary suspension is clearly within the Stewards' powers and (2) in accordance with separation of powers, jurisdiction over constitutional questions—such as due process questions—vests exclusively in government's judicial branch.¹⁵ Thus, Petitioners failed to show that any procedural irregularities resulted in clear error on the part of the Stewards.

The ALJ turns next to Petitioner's argument that Nomifensine is not a prohibited substance. The evidence that the drug was withdrawn from the market by the manufacturer in 1986, had its FDA approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use must be reviewed in the light most favorable to the Ruling. Given this evidence and the expansive, "catch-all" definition of a prohibited substance as any drug "which could affect the health or performance of a race animal, however minimal,"¹⁶ the ALJ concludes that Petitioner has not shown clear error on the part of the Stewards in classifying Nomifensine as a prohibited substance.

¹⁴ See generally, Staff's Motion for Summary Disposition and attachments thereto.

¹⁵ *City of Dallas v. Stewart*, 361 S.W.2d 562, 579 (Tex. 2012) (noting that "the power of constitutional construction is inherent in, and exclusive to, the judiciary").

¹⁶ 16 TAC § 319.1(b)(1).

Petitioner also argues that his actions did not constitute an immediate danger to the public health, safety, or welfare, as required by 16 TAC § 307.62(i) to justify a summary suspension. Staff argues that the Stewards determined that Petitioner used a drug on his animals with proven risks to humans and that was untested on horses. This drug use could have put both human and equine participants and spectators at risk of harm. The Stewards also determined that Petitioner's actions were part of an effort to cheat on races, which could defraud the public. Pursuant to the Commission's rules, the Stewards have "the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony."¹⁷ Applying this rule, and reviewing the evidence in a light most favorable to the Ruling, the ALJ cannot say that the Stewards' determination as to the risk of harm was clearly erroneous.

Petitioner's argument that the Stewards were required to prove that Petitioner personally administered the Nomifensine to the animals at issue also fails. Section 3.16(c) states that the license of a person who "used or administered the ... prohibited substance" may be summarily suspended. The statute does not contain the limitation Petitioner seeks to read into it. The ALJ finds the Commission's interpretation, that a trainer may "use" a prohibited substance on his animal by asking or allowing another to administer it, to be persuasive. Additionally, the ALJ gives weight to the Commission's interpretation of the statute, which is not unreasonable or inconsistent with the statute's language.¹⁸

In a related argument, Petitioner claims that the Stewards erred in referencing the "absolute insurer" rule and applying that standard rather than the standard for summary suspensions. As discussed above, the ALJ concludes that the Stewards considered and applied the elements comprising the standard for imposing a summary suspension by finding that Petitioner's actions resulted in the introduction of a prohibited substance into his animals,

¹⁷ 16 TAC § 307.62(d)(4).

¹⁸ *Cities of Austin v. Southwestern Bell Tel. Co.*, 92 S.W.3d 434, 441-442 (Tex. 2002) ("[W]e give weight to how the [Public Utility Commission of Texas] interprets its own powers, but only if that interpretation is reasonable and not inconsistent with the statute.").

resulting in an immediate danger to the public health, safety, or welfare. The Stewards' citation to another standard not applicable at this point in the process does not constitute clear error.

In conclusion, the ALJ finds that the Ruling was not clearly in error as to the imposition of a summary suspension of Petitioner's license.

V. FINDINGS OF FACT

1. Jose Sanchez (Petitioner) is a licensed trainer of racehorses and holds License No. 163027 issued by the Texas Racing Commission (Commission).
2. On or about June 10, 2017, Petitioner was the trainer of a racehorse, Contentious Strike (Horse 1), that won the sixth race at Retama Race Park, a Texas racetrack.
3. After the race, Horse 1 provided a blood serum sample, which was divided into two specimens and tested at two different laboratories. Both specimens tested positive for the drug Nomifensine.
4. On or about June 16, 2017, Petitioner was the trainer of a racehorse, Dancers Toast (Horse 2), that won second place in the tenth race at Retama Race Park.
5. After the race, Horse 2 provided a blood serum sample, which was divided into two specimens and tested at two different laboratories. Both specimens tested positive for the drug Nomifensine.
6. Nomifensine was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use.
7. Petitioner's actions resulted in the use of Nomifensine in Horse 1 and Horse 2.
8. The use of Nomifensine in Horse 1 and Horse 2 could have affected the health or performance of the horses and resulted in an immediate danger to the public health, safety, or welfare.
9. On July 28, 2017, a Board of Stewards (the Stewards) conducted a telephonic hearing, at which Petitioner appeared.
10. On July 31, 2017, the Stewards issued Ruling RETA2630 (the Ruling). In the Ruling, they found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a

summary suspension of Petitioner's occupational license. Petitioner timely appealed the Ruling.

11. Petitioner's appeal and Order No. 2 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 factual matters asserted.
12. On November 3, 2017, Administrative Law Judge Holly Vandrovec 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 Eleanor Ruffner represented Petitioner. The record closed at the end of the hearing that day. The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Judd Kearn (SOAH Docket No. 476-17-5681) and Brian Stroud (SOAH Docket No. 476-17-5683).

VI. 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. Nomifensine is a prohibited substance. Tex. Rev. Civ. Stat. art. 179e, § 1.03(72); 16 TAC § 319.1(b).
4. If the Stewards find that a horse's post-race test specimen contains a prohibited substance used or administered by a licensee that results in an immediate danger to the public health, safety, or welfare, they may summarily suspend a license. Tex. Rev. Civ. Stat. art. 179e, § 3.16(c); 16 TAC § 307.62(i).
5. Petitioner has the burden of proof to show that the Ruling was clearly in error. 16 TAC § 307.67(c).
6. Petitioner did not prove that the Ruling was clearly in error.

SIGNED January 2, 2018.



HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

JOSE SANCHEZ

V.

TEXAS RACING COMMISSION

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BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On February 13, 2018, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Jose Sanchez (“Appellant”), trainer license number 163028, from Stewards’ Ruling RETA 2630 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about July 28, 2017, the Retama Park Board of Stewards held a hearing on a motion for summary suspension of Appellant’s license.

(b) On July 31, 2017, the stewards issued ruling RETA 2630, which found that post-race blood serum samples taken June 10 and June 16, 2017, from two horses trained by Appellant contained the prohibited substance nomifensine and further found that Appellant was involved in the administration of the substance, either directly or indirectly. The ruling summarily suspended Appellant’s trainer license pursuant to Texas Racing Act Section 3.16 and Commission Rule 16 TAC Section 307.62 due to the risk that his continued licensure posed to the health and safety of race participants, both human and equine, and to the welfare of the public.

(c) On September 6, 2017, the Retama Park Board of Stewards held a second hearing on the summary suspension, which was upheld in a supplemental ruling shortly thereafter.

(d) Appellant timely appealed the stewards’ ruling.

(e) On or about November 3, 2017, an administrative law judge at the State Office of Administrative Hearings (SOAH) convened a hearing on the matter.

(f) On or about January 2, 2018, the administrative law judge issued a proposal for decision, incorporated by reference into this order, in which she found that the Stewards' ruling was not clearly in error as to the summary suspension of Appellant's license.

IT IS HEREBY ORDERED that Stewards' Ruling RETA 2630 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 February, 2018.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Gloria Hicks

Steven Mach or Designee

Margaret Martin

Sid Miller or Designee

Robert Schmidt, M.D.

Texas Racing Commission
Ruling Report for Licensee

Ruling Date: 07/31/2017 Violation Date: 06/17/2017

Ruling #: RETA2631

Licensee: BRIAN WAYNE STROUD

Status: CLSD

License #	Type	Status
157702	OWNER-TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Ruling Type: 6 MISC.

Redistribute Purse: N

Rules Cited: 307.62 FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION
3.16 UNLAWFUL INFLUENCES ON RACING

Fine: \$ Fine Due Date: Fine Paid Date:

Narrative:

On July 28, 2017 a telephonic hearing was held in order to hear argument regarding Deputy General Counsel Devon Bijansky's Motion for Summary Suspension in the Matter of Judd Kearl, Jose Sanchez and Brian Stroud. Attorney Darrell Vienna appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Members of the Board of Stewards were Anne Alley, Fred Winch and Michael Pelletier.

After considering all arguments presented, the Board of Stewards hereby impose an immediate Summary Suspension on Trainer Brian Stroud's Texas Racing Commission occupational license because a post-race blood serum sample taken from a horse trained by Mr. Stroud contained the prohibited substance Nomifensine. The sample was taken from "Desdemona Rambler," who won the 8th race at Retama Park on 6/17/17, Sample #RP043252.

This Class 1 drug is known to be dangerous in humans, has not been tested on horses, and has been removed from the market by the F.D.A. This positive test is among eight total positives that occurred within a time period of a few weeks, by three trainers at two different tracks. The totality of these circumstances strongly indicate a scheme to cheat and also indicate that the drug was intentionally administered by Trainer Brian Stroud, either directly or at his instruction. Therefore, in order to protect the safety and health of race participants, both human and equine, and to protect the public from unlawful influences on the outcome of races, a summary suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 is hereby immediately imposed on Trainer Brian Stroud pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER
47 of 118

FRED WINCH JR

Texas Racing Commission
Ruling Supplements

Ruling Date: 07/31/2017 **Violation Date:** 06/17/2017

Licensee: BRIAN WAYNE STROUD

Ruling#: RETA2631
Status: CLSD

License #	Type	Status
157702	OWNER-TRAINER	SUSPENDED

Actions	Begin Date	End Date
SUSPENDED	07/31/2017	

Rules Cited: 307.62 *FAILURE TO APPEAR AT HEARING OR SUMMARY SUSPENSION*
3.16 *UNLAWFUL INFLUENCES ON RACING*

Fine: \$ **Fine Due Date:** **Fine Paid Date:** **Redistribute Purse:** N

1 Created On: 09/08/2017

On September 6, 2017 a formal hearing was held in order to hear evidence, testimony, and argument regarding the Summary Suspensions issued against Trainers Judd Kearl, Jose Sanchez, and Brian Stroud. Attorney Eleanor Ruffner appeared for Mr. Kearl and Mr. Sanchez. Attorney Trent Rowell appeared for Brian Stroud. Deputy General Counsel Devon Bijansky appeared for the Texas Racing Commission. Mr. Sanchez, Mr. Stroud, TxRC Investigator Johnny Whitley, and Attorney Darrell Vienna appeared as witnesses, in person, while Mr. Kearl testified telephonically. Each trainer testified that they did not personally administer or cause to administer Nomifensine to their horses. All of the trainers involved employ the same veterinarian, a Dr. Justin Robinson. Attorney Darrell Vienna offered hearsay testimony that veterinarian Dr. Justin Robinson had admitted to him that he had administered the Nomifensine to horses trained by Mr. Kearl.

The Board of Stewards considered all the evidence, testimony, and argument presented during the hearing. This Board of Stewards does not find it credible that Dr. Robinson administered Nomifensine to horses in the trainers' stables, without the trainers' knowledge and consent. However, if Dr. Robinson administered the Nomifensine without the trainers' knowledge, the trainers have still acted, because they gave the veterinarian the freedom to administer substances at his own discretion to horses in their care, custody and control.

Each of the trainers in this case is an experienced horseman, each with a knowledge of the trainer's responsibility rule, Section 311.104 of the Texas Racing Commission Rules of Racing, the Absolute Insurer Rule which states in part:

"(1) The trainer shall ensure the health and safety of each horse...that is in the care and custody of the trainer. (2) A trainer shall ensure that a horse...that runs in a race while in the care and custody of the trainer ...is free from all prohibited drugs, chemicals, or other substances...."

Attorneys for the trainers argue in their defense that the trainers cannot be summarily suspended under 3.16 or Section 307.62 because the trainers did not use or administer or cause to be administered the prohibited substance. However, not actively supervising and questioning each and every substance being administered to a horse in one's stable constitutes in and of itself, an act and a willful abdication of responsibility.

This Board does not find the trainers' denials of knowledge to be credible in light of their experience and the rules. Nevertheless, even if true, to allow a trainer to abdicate responsibility because they did not have information that they by rule should have, is inappropriate, given the very real potential danger to the health and safety of the horses and riders that participate in this sport.

This active, willful ignorance endangers the public welfare in that the integrity of the wagering pools could be compromised. Also, public perception of the entire sport is compromised, if this willful ignorance is allowed as an excuse in order lift a properly imposed summary suspension. Therefore, the Summary Suspension under Texas Racing Act Section 3.16 and Commission Rule 307.62 imposed against Trainer Brian Stroud shall continue pending a hearing on the merits.

ANNE ALLEY

MIKE PELLETIER

FRED WINCH JR

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 2, 2018

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

INTER-AGENCY

RE: Docket No. 476-17-5683; *Brian Stroud v. Texas Racing Commission*

Dear Mr. Trout:

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

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

Sincerely,

Holly Vandrovec
Administrative Law Judge

HV/et

Enclosures

cc: Devon Buansky, Deputy General Counsel, Texas Racing Commission, 8505 Cross Park Drive, Suite 110, Austin, TX 78754 – **INTER-AGENCY**
Trent Rowell, Attorney at Law, PO Box 457, Stockdale, TX 78160 – **REGULAR MAIL**

**SOAH DOCKET NO. 476-17-5683
TXRC NO. 2017-02-05**

**BRIAN STROUD,
Petitioner**

v.

**TEXAS RACING COMMISSION,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Brian Stroud (Petitioner), who is licensed by the Texas Racing Commission (Commission), seeks to overturn Ruling RETA26310 (the Ruling) by a Board of Stewards (the Stewards). After one horse for which Petitioner was the trainer provided a blood serum specimen that tested positive for the prohibited substance Nomifensine, the Stewards found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a summary suspension of Petitioner’s occupational license. The Administrative Law Judge (ALJ) finds that the Ruling was not clearly in error.¹

I. JURISDICTION AND NOTICE

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

II. PROCEDURAL HISTORY AND APPLICABLE LAW

On July 28, 2017, the Stewards² held a telephonic hearing on Commission Deputy General Counsel Devon Bijansky’s motion for summary suspension of Petitioner’s occupational

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

² Stewards are racing officials employed by the Commission who have supervisory authority over the conduct of races and licensees. Tex. Rev. Civ. Stat. art. 179e, § 3.07(g).

license, a trainer license issued by the Commission, due to the positive test results. After the hearing, the Stewards issued the Ruling, which concluded that Petitioner's license should be summarily suspended under 16 TAC § 307.62 and Section 3.16 to protect the health and safety of human and equine race participants. The summary suspension began on July 31, 2017, the date of the Ruling. Petitioner timely appealed the Ruling, and the Commission referred the appeal to the State Office of Administrative Hearings (SOAH).

Section 3.16(c) states, in relevant part, that “[f]ollowing ... a return of a test showing the presence of a prohibited substance, a steward ... may summarily suspend a person who has used or administered the ... prohibited substance until a hearing before the stewards and judges.” 16 TAC § 307.62(i) further provides, in relevant part, that:

If the stewards ... determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards ... may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards ... suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven calendar days after the day the license is suspended.

Commission rules define a prohibited substance as including any drug “which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter.”³

Following the Ruling, a hearing on the summary suspension was not held within seven calendar days, as required by 16 TAC § 307.62(i). On August 30, 2017, the Travis County District Court ordered the Commission to hold an evidentiary hearing on the suspension within seven days of the court's order.⁴ A hearing on the suspension was held on September 6, 2017. A September 8, 2017 supplemental ruling upheld the summary suspension.⁵ The summary

³ 16 TAC § 319.1(b)(1).

⁴ Opposition to Motion for Summary Disposition at 6.

⁵ Opposition to Motion for Summary Disposition at 7.

suspension ended on October 26, 2017, when a final suspension of Petitioner's license (addressed subsequently) took effect.

On November 3, 2017, ALJ Holly Vandrovec convened a hearing on the summary suspension at the Austin hearing facilities of SOAH. Attorney Trent Rowell represented Petitioner. Ms. Bijansky represented the Commission's staff (Staff). The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Judd Kearn (SOAH Docket No. 476-17-5681) and Jose Sanchez (SOAH Docket No. 476-17-5682) (Kearn, Sanchez, and Petitioner will be referred to as "Petitioners"). All three cases involved positive tests for Nomifensine that was allegedly injected into animals by a veterinarian shared by all three trainers and without knowledge of the trainers. All trainers' licenses were summarily suspended and all appealed the suspension rulings. Because the summary suspensions had already expired by the time the hearing convened, the ALJ inquired of the parties as to why the hearing was not moot. Petitioners persuasively argued that the summary suspensions continued to have an adverse effect on their livelihoods because they were recorded in a registry relied upon by other state licensing commissions. As of the date of the hearing, at least one of the Petitioners had been sanctioned by the state of New Mexico based on the Texas summary suspension. Petitioners asserted that if the rulings instituting their summary suspensions were found to be made in error, adverse impacts based on the summary suspensions could be mitigated even though the summary suspensions have expired. The ALJ agreed with Petitioners' arguments and concluded that the hearing on the summary suspensions was not moot. The hearing continued as scheduled, and the record closed at the end of the hearing.

In this proceeding, Petitioner has the burden to prove that the Ruling was clearly in error.⁶ In applying a clear error standard of review, the ALJ must review all of the evidence in the light most favorable to the Ruling and then determine if the Ruling was clearly erroneous. If, after reviewing all the evidence, the ALJ cannot say that the Ruling was clearly erroneous, the

⁶ 16 TAC § 307.67(c).

ALJ must uphold the Ruling even if the ALJ would have weighed the evidence differently had the ALJ been sitting as the trier of fact.⁷

Although not currently before the ALJ in this proceeding,⁸ the ALJ includes a description of the standard for the Stewards' final suspension of Petitioners' licenses (effective October 26, 2017, as stated above) because the parties refer to this standard in their arguments. The statute provides that the licensed trainer of an animal is: "(1) considered by law to be the absolute insurer that no prohibited substance has been administered to the animal; and (2) responsible for ensuring that no prohibited substance is administered to the animal."⁹ This standard is referred to in the industry as the "absolute insurer" rule.¹⁰

III. EVIDENCE AND POSITIONS OF THE PARTIES

A. Evidence

The basic facts in this case are undisputed. Petitioner is a quarter horse trainer and holds Commission license number 157702. In June 2017, one of Petitioner's horses produced blood serum results positive for Nomifensine as follows:

Race Date	Track	Race No.	Horse	Order of Finish	Post-Race Specimen No.
June 17	Retama Park	8	Desdemona Rambler	1	RP043252

As a result of the positive test results, the Stewards summarily suspended Petitioner's license. Petitioner chose to request split samples that were tested in another laboratory that confirmed the presence of Nomifensine. The parties agree that Nomifensine is not specifically listed on the

⁷ *Lopez v. State*, 940 S.W.2d 388, 390 (Tex. App.—Austin 1997, pet. ref'd).

⁸ Petitioners have also appealed the Stewards' final suspensions of their licenses, which cases are pending at SOAH as follows: Judd Kearn in SOAH Docket No. 476-18-1010; Jose Sanchez in SOAH Docket No. 476-18-1011; and Brian Stroud in SOAH Docket No. 476-18-1012.

⁹ Tex. Rev. Civ. Stat. art. 179e, § 3.16(i); *see also* 16 TAC § 311.104(b).

¹⁰ The ALJ notes that, although the statute uses forms of the word "ensure," Commission rules use forms of the word "insure," which is also commonly used in the industry.

Commission's list of prohibited substances, nor is it expressly permitted for use. Therefore, if Nomifensine is a prohibited substance, it would have to be characterized as such through the applicable rule's "catch-all" provision, which states that any drug "which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter," is a prohibited substance.¹¹

B. Petitioners' Position¹²

Petitioners argue that the decision to summarily suspend Petitioners' licenses should be overturned based on three categories of reasons: (1) procedural irregularities; (2) improper interpretation and application of the law; and (3) evidentiary insufficiencies.

Regarding the procedural irregularities, Petitioners argue that they were not given a full evidentiary hearing within seven days of the summary suspensions, as required by rule. Petitioners argue that this failure resulted in a violation of their due process rights. Additionally, Petitioners contend their due process rights were violated because the Commission and the Stewards departed from prior norms by summarily suspending their licenses, which had never been done before on the basis of positive test results.

Petitioners also argued that the Stewards misapplied and misinterpreted the law by applying the "absolute insurer" standard rather than the summary suspension standard. They further argued that the phrase "used or administered" in Section 3.16(c) should be interpreted to mean that the trainers personally "used or administered" prohibited substances.

Finally, Petitioners argued that at the time the Stewards summarily suspended the licenses, the Stewards had the burden of proof by a preponderance of the evidence and failed to prove that Nomifensine was a prohibited drug or that it was used or administered by

¹¹ 16 TAC § 319.1(b)(1).

¹² The ALJ refers to "Petitioners' Position" here because Petitioners adopted each other's arguments at the hearing.

Petitioners.¹³ Petitioners argue that Nomifensine was not a prohibited drug under 16 TAC § 319.1(b)(1) because there was no proof that it is a stimulant, depressant, tranquilizer, local anesthetic, or other substance which could affect the health or performance of a race animal. Petitioners argue that Dr. Justin Robinson, a veterinarian hired by Petitioners, administered the substance without Petitioners' knowledge or consent, and that the Stewards were required to show actual administration of the drug to the animals by the Petitioners to justify the summary suspensions.

C. Staff's Position

Staff contends that the Ruling was proper and should be upheld. Staff argues that Nomifensine is a prohibited substance because it was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration (FDA) approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use. As such, the drug *could* affect the health or performance of the horses that tested positive in this case.

Staff also contends that the statute and rules do not require a showing that Petitioner personally administered the prohibited substance in order for the Stewards to meet the standard for a summary suspension, and that the phrase "used or administered" as used in Section 3.16(c) means that Petitioner could have directed another to administer or use the substance detected. Staff further argues that the Stewards' reference to the "absolute insurer" rule in the Ruling does not mean that the Stewards applied the wrong standard or constitute clear error on the part of the Stewards.

Finally, Staff argues that Petitioners' actions constituted an immediate danger to the public health, safety, or welfare because the evidence (1) shows a scheme among Petitioners and their veterinarian to cheat in racing by unlawfully influencing the outcome of races and (2) that

¹³ Petitioners are correct that the Stewards had the burden by a preponderance of the evidence to show a violation pursuant to 16 TAC § 307.62(e).

this scheme endangered the safety and health of race participants (both human and equine) due to the unknown effects of Nomifensine on horses.¹⁴

IV. ANALYSIS AND CONCLUSION

With respect to Petitioner's argument regarding procedural irregularities, the ALJ concludes that the failure of the Stewards to hold an evidentiary hearing within seven days of the summary suspension was remedied by the intervention of the Travis County District Court. As a result of that court's order, an evidentiary hearing was held on September 6, 2017. Petitioner has since appealed the Ruling, resulting in this proceeding. Additionally, Petitioner argues that his due process rights were denied because the Stewards never previously summarily suspended a license based on positive test results. The ALJ concludes that (1) the ability to issue a summary suspension is clearly within the Stewards' powers and (2) in accordance with separation of powers, jurisdiction over constitutional questions—such as due process questions—vests exclusively in government's judicial branch.¹⁵ Thus, Petitioners failed to show that any procedural irregularities resulted in clear error on the part of the Stewards.

The ALJ turns next to Petitioner's argument that Nomifensine is not a prohibited substance. The evidence that the drug was withdrawn from the market by the manufacturer in 1986, had its FDA approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use must be reviewed in the light most favorable to the Ruling. Given this evidence and the expansive, "catch-all" definition of a prohibited substance as any drug "which could affect the health or performance of a race animal, however minimal,"¹⁶ the ALJ concludes that Petitioner has not shown clear error on the part of the Stewards in classifying Nomifensine as a prohibited substance.

¹⁴ See generally, Staff's Motion for Summary Disposition and attachments thereto.

¹⁵ *City of Dallas v. Stewart*, 361 S.W.2d 562, 579 (Tex. 2012) (noting that "the power of constitutional construction is inherent in, and exclusive to, the judiciary").

¹⁶ 16 TAC § 319.1(b)(1).

Petitioner also argues that his actions did not constitute an immediate danger to the public health, safety, or welfare, as required by 16 TAC § 307.62(i) to justify a summary suspension. Staff argues that the Stewards determined that Petitioner used a drug on his animals with proven risks to humans and that was untested on horses. This drug use could have put both human and equine participants and spectators at risk of harm. The Stewards also determined that Petitioner's actions were part of an effort to cheat on races, which could defraud the public. Pursuant to the Commission's rules, the Stewards have "the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony."¹⁷ Applying this rule, and reviewing the evidence in a light most favorable to the Ruling, the ALJ cannot say that the Stewards' determination as to the risk of harm was clearly erroneous.

Petitioner's argument that the Stewards were required to prove that Petitioner personally administered the Nomifensine to the animals at issue also fails. Section 3.16(c) states that the license of a person who "used or administered the ... prohibited substance" may be summarily suspended. The statute does not contain the limitation Petitioner seeks to read into it. The ALJ finds the Commission's interpretation, that a trainer may "use" a prohibited substance on his animal by asking or allowing another to administer it, to be persuasive. Additionally, the ALJ gives weight to the Commission's interpretation of the statute, which is not unreasonable or inconsistent with the statute's language.¹⁸

In a related argument, Petitioner claims that the Stewards erred in referencing the "absolute insurer" rule and applying that standard rather than the standard for summary suspensions. As discussed above, the ALJ concludes that the Stewards considered and applied the elements comprising the standard for imposing a summary suspension by finding that Petitioner's actions resulted in the introduction of a prohibited substance into his animals,

¹⁷ 16 TAC § 307.62(d)(4).

¹⁸ *Cities of Austin v. Southwestern Bell Tel. Co.*, 92 S.W.3d 434, 441-442 (Tex. 2002) ("[W]e give weight to how the [Public Utility Commission of Texas] interprets its own powers, but only if that interpretation is reasonable and not inconsistent with the statute.").

resulting in an immediate danger to the public health, safety, or welfare. The Stewards' citation to another standard not applicable at this point in the process does not constitute clear error.

In conclusion, the ALJ finds that the Ruling was not clearly in error as to the imposition of a summary suspension of Petitioner's license.

V. FINDINGS OF FACT

1. Brian Stroud (Petitioner) is a licensed owner-trainer of racehorses and holds License No. 157702 issued by the Texas Racing Commission (Commission).
2. On or about June 17, 2017, Petitioner was the trainer of a racehorse, Desdemona Rambler (the Horse), that won the eighth race at Retama Race Park, a Texas racetrack.
3. After the race, the Horse provided a blood serum sample, which was divided into two specimens and tested at two different laboratories. Both specimens tested positive for the drug Nomifensine.
4. Nomifensine was withdrawn from the market by the manufacturer in 1986, had its Food and Drug Administration approval revoked in 1992 due to incidence and risk of hemolytic anemia, and has never been tested on or approved for equine use.
5. Petitioner's actions resulted in the use of Nomifensine in the Horse.
6. The use of Nomifensine in the Horse could have affected the health or performance of the horse and resulted in an immediate danger to the public health, safety, or welfare.
7. On July 28, 2017, a Board of Stewards (the Stewards) conducted a telephonic hearing, at which Petitioner appeared.
8. On July 31, 2017, the Stewards issued Ruling RETA2631 (the Ruling). In the Ruling, they found that Petitioner had violated 16 Texas Administrative Code (TAC) § 307.62 and Texas Revised Civil Statutes article 179e § 3.16 (Section 3.16) and imposed a summary suspension of Petitioner's occupational license. Petitioner timely appealed the Ruling.
9. Petitioner's appeal and Order No. 2 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 factual matters asserted.

10. On November 3, 2017, Administrative Law Judge Holly Vandrovec 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 Trent Rowell represented Petitioner. The record closed at the end of the hearing that day. The hearing in this case was consolidated with the hearings on appeals filed by two other trainers, Judd Kearl (SOAH Docket No. 476-17-5681) and Jose Sanchez (SOAH Docket No. 476-17-5682).

VI. 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. Nomifensine is a prohibited substance. Tex. Rev. Civ. Stat. art. 179e, § 1.03(72); 16 TAC § 319.1(b).
4. If the Stewards find that a horse's post-race test specimen contains a prohibited substance used or administered by a licensee that results in an immediate danger to the public health, safety, or welfare, they may summarily suspend a license. Tex. Rev. Civ. Stat. art. 179e, § 3.16(c); 16 TAC § 307.62(i).
5. Petitioner has the burden of proof to show that the Ruling was clearly in error. 16 TAC § 307.67(c).
6. Petitioner did not prove that the Ruling was clearly in error.

SIGNED January 2, 2018.



HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

BRIAN STROUD

V.

TEXAS RACING COMMISSION

§
§
§
§
§

BEFORE THE

TEXAS RACING COMMISSION

ORDER OF THE COMMISSION

On February 13, 2018, the Texas Racing Commission (“Commission”) considered in open meeting the appeal of Brian Stroud (“Appellant”), owner-trainer license number 157702, from Stewards’ Ruling RETA 2631 (“the ruling”). The Commission hereby makes the following findings based on the record of this matter:

(a) On or about July 28, 2017, the Retama Park Board of Stewards held a hearing on a motion for summary suspension of Appellant’s license.

(b) On July 31, 2017, the stewards issued ruling RETA 2631, which found that a post-race blood serum sample taken on June 17, 2017, from a horse trained by Appellant contained the prohibited substance nomifensine and further found that Appellant was involved in the administration of the substance, either directly or indirectly. The ruling summarily suspended Appellant’s trainer license pursuant to Texas Racing Act Section 3.16 and Commission Rule 16 TAC Section 307.62 due to the risk that his continued licensure posed to the health and safety of race participants, both human and equine, and to the welfare of the public.

(c) On September 6, 2017, the Retama Park Board of Stewards held a second hearing on the summary suspension, which was upheld in a supplemental ruling shortly thereafter.

(d) Appellant timely appealed the stewards’ ruling.

(e) On or about November 3, 2017, an administrative law judge at the State Office of Administrative Hearings (SOAH) convened a hearing on the matter.

(f) On or about January 2, 2018, the administrative law judge issued a proposal for decision, incorporated by reference into this order, in which she found that the Stewards' ruling was not clearly in error as to the summary suspension of Appellant's license.

IT IS HEREBY ORDERED that Stewards' Ruling RETA 2631 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 February, 2018.

John T. Steen III, Chair

Ronald F. Ederer, Vice Chair

Gloria Hicks

Steven Mach or Designee

Margaret Martin

Sid Miller or Designee

Robert Schmidt, M.D.

V. PROCEEDINGS ON MATTERS RELATED TO AGENCY FUNDING

- A. Discussion and possible action to adopt amendments to Rule 309.8, Racetrack License Fees
- B. Discussion and possible action to adopt new Rule 309.13, Supplemental Fee, regarding funding of third-party economy, efficiency, and effectiveness audit
- C. Discussion and possible action regarding third-party economy, efficiency, and effectiveness audit
- D. Discussion and possible action to approve Fiscal Year 2018 operating budget

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

1 309.8. Racetrack License Fees

2 (a) (No change.)

3 (b) Fees for State Fiscal Year Beginning September 1, 2017.

4 (1) Annual License Fee. A licensed racing association
5 shall pay an annual license fee. The annual license fee for each
6 license type is as follows:

7 (A) for a Class 1 racetrack, \$714,650 [~~\$500,000~~];

8 (B) for a Class 2 racetrack, \$127,600 [~~\$230,000~~];

9 (C) for a Class 3 or 4 racetrack, \$35,725 [~~\$70,000~~];

10 and

11 (D) for a Greyhound racetrack, \$204,175 [~~\$360,000~~].

12 (2) [~~(e)~~] Adjustment of Fees. Annual fees are calculated
13 using a projected base of 68 [~~143~~] days of live horse racing and
14 36 [~~270~~] performances of live greyhound racing per fiscal
15 [~~calendar~~] year. To cover the additional regulatory cost in the
16 event additional days or performances are requested by the
17 associations the executive secretary may:

18 (A) recalculate a horse racetrack's annual fee by
19 adding \$6,313 [~~\$3,750~~] for each live day added beyond the base;

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

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

25 (3) Payment of Fee. Beginning on March 9, 2018, and on the
26 first day of each remaining month of the 2018 fiscal year, each
27 association shall pay its annual license fee by remitting to the
28 Commission 1/6th of the fee remaining due as of March 5, 2018.

29 (c) Unless the Commission Amends These Provisions, Fees for
30 State Fiscal Years Beginning September 1, 2018, and Thereafter:

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

1 (1) Annual License Fee. A licensed racing association shall
2 pay an annual license fee. The annual license fee for each
3 license type is as follows:

4 (A) for a Class 1 racetrack, \$500,000;

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

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

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

8 (2) Adjustment of Fees. Annual fees are calculated using a
9 projected base of 143 days of live horse racing and 270
10 performances of live greyhound racing per calendar year. To
11 cover the additional regulatory cost in the event additional
12 days or performances are requested by the associations the
13 executive secretary may:

14 (A) recalculate a horse racetrack's annual fee by
15 adding \$3,750 for each live day added beyond the base;

16 (B) recalculate a greyhound racetrack's annual fee by
17 adding \$750 for each live performance added beyond the base; and

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

21 (3) Payment of Fee.

22 (A) An association that is conducting live racing or
23 simulcasting shall pay its annual license fee by remitting to
24 the Commission 1/12th of the fee on the first business day of
25 each month.

26 (B) An association that is not conducting live racing
27 or simulcasting shall pay its annual license fee in four equal
28 installments on September 1, December 1, March 1, and June 1 of
29 each fiscal year.

30 ~~[(2) If at any point the executive secretary determines the~~
31 ~~total revenue from the annual fees is insufficient to pay the~~

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

1 ~~Commission's costs during a fiscal year, the executive secretary~~
2 ~~shall recommend to the Commission a supplemental fee, in~~
3 ~~addition to the license fee, that each association would be~~
4 ~~required to pay to generate the necessary revenue to pay the~~
5 ~~Commission's costs.]~~

6 (d) [(+3)] If the executive secretary determines that the total
7 revenue from the annual fees exceeds the amount needed to pay
8 those costs, the executive secretary may order a moratorium on
9 all or part of the annual license fees remitted monthly by any
10 or all of the associations. Before entering a moratorium order,
11 the executive secretary shall develop a formula for providing
12 the moratorium in an equitable manner among the associations. In
13 developing the formula, the executive secretary shall consider
14 the amount of excess revenue received by the Commission, the
15 source of the revenue, the Commission's costs associated with
16 regulating each association, the Commission's projected receipts
17 for the next fiscal year, and the Commission's projected
18 expenses during the next fiscal year.

19

Summary of Public Comments on Proposed Rule changes to 16 TAC §309.8, Racetrack License Fees, and 16 TAC §311.5, License Categories and Fees.

Two proposed rule changes were published in the Texas Register for a 30-day public comment period on Oct. 6, 2017. Through the close of business on Nov. 5, a total of 150 comments were received in the form of letters, emails, and faxes. All of the comments were in opposition to the proposed changes to 16 TAC §309.8; only four of the comments specifically referenced 16 TAC §311.5, also all in opposition. Please see below for examples and totals.

From TTA president (4 pages):



October 12, 2017

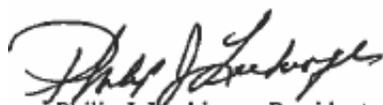
Mr. John T. Steen III
Chairman
Texas Racing Commission
PO Box 12080
Austin, TX 78711

Dear Chairman Steen,

This letter is to inform you, the Texas Racing Commission, Governor Abbott, Lt. Governor Patrick and Texas Legislators of our Association's complete disagreement with the actions taken at the Texas Racing Commission (TRC) meeting on September 20, 2017, regarding the publication of proposed rules to implement fee changes to both racetrack and individual licenses. There is a better way forward and we ask that the TRC consider an alternative plan, which is outlined on the following pages.

It is important to explain in detail why the plan adopted by the TRC will ultimately lead to the further erosion or possible collapse of the industry. We believe there has been a crisis created to better serve a few, at the expense of the entire horse racing industry, which will ultimately cost Texas thousands of jobs and tens of millions of dollars in economic activity. It will also deny the citizens of Texas access to horse racing and pari-mutuel wagering, both of which were overwhelmingly supported at the ballot box.

Respectfully,


Philip J. Leckinger, President
Texas Thoroughbred Association

**Texas Thoroughbred Association Position Paper on Proposed Changes
to
Texas Racing Commission Rules, Sections 309.8 and 311.5**

Texas Racing Commissions Budgetary Shortfall

- Industry aware of TRC budget issues for several years.
- Industry officially notified in June 2017 of potential budgetary shortfall for calendar year 2018.
- Notified that TRC would look inward to see what could be done to bring costs in line with the available revenue.

Comparisons with Other State Racing Commissions

- TRC has one of the largest staff and budgets in the nation.
- While regulating far fewer days than California, Kentucky and New York, the Commission, in our opinion, is not operating in a cost effective manner.

Proposal to Increase License Fees

- Indicates that at current budget levels, the TRC, with a multi-million dollar budget of \$8,500,000 and 42.9 FTE's *, can only regulate 68 days of live racing annually.
- Additional race days may be "purchased" at a cost of \$6,313 per day to cover regulatory costs.

*Source: TRC Budget and Finance Update as presented at September 20, 2017 TRC meeting.

Effect of Proposed License Fee Increases

- If the cost for additional race days reduces the amount of available purse funds, there is less incentive for Texas horsemen to participate.
- The majority of Texas-bred horses attain their highest value and earnings potential by racing in Texas; with reduced racing opportunities and lower purses, there is little incentive to breed a Texas-bred.

Stop Gap Proposal

- The proposal developed by Sam Houston Race Park and the owners of the inactive licenses to immediately reduce the TRC budget shortfall was in response to a perceived immediate crisis.
- Class 1 tracks, including Sam Houston Race Park, all take significant increases in licensing fees, while fees for the inactive licenses are significantly reduced.

Detrimental Effects of Proposal

- Providing relief for inactive licenses further marginalizes the Commission's ability to spur the development of these facilities.
- Reducing fees for inactive licenses comes at direct cost to the operating racetracks, saddling them with an unfair burden.

- It has long been the position of the TTA that these inactive licenses represent a valuable asset to the holders for more than just permitted racing. Allowing licenses to remain inactive indefinitely is one of the things that has hindered the development of our industry in the state, and kept Texas from gaining the full benefit of pari-mutuel wagering.

Alternative Proposal

The TTA would propose the following licensing fee structure be considered and adopted by the TRC:

Sam Houston Race Park	\$700,000 *
Lone Star Park	\$700,000 *
Retama Park	\$700,000 *
Gillespie County Fair	\$ 35,000
Gulf Greyhound Park	\$200,000
Gulf Coast Racing	\$200,000
Valley Race Park	\$200,000
Laredo Downs	\$220,000
Manor Downs	\$220,000
Valle De Los Tesoros	\$220,000
Total	\$3,395,000

*Provides for keeping the total number of live race dates at 185 - - the same as in 2017.

The above proposal takes into account the fee increase to the Class I tracks that they have agreed to and returns the inactive license fees to previous levels. Individual license fees would also increase as approved.

Current Status of Horse Industry Participants

- Increasingly cost prohibitive to breeders, owners and trainers to participate in Texas. Further reducing racing opportunity will only accelerate the decline.

Adapting to Change

- Over the past several years, the Class 1 tracks, breeders, owners and trainers have all had to make deep cuts and adjust their business plans in order to operate in Texas.
- In looking at some of the line items in the budget, there appear to be several areas that could be addressed with regard to personnel and spending. One line item in particular, software maintenance costs, appears to be among the highest in the country.
- The Texas Racing Commission has been aware of their budget issues for quite some time prior to June of 2017, but has not taken the action necessary to bring expenses in line with income, other than to raise fees for industry participants.

The appropriate solution is for the agency to immediately reduce expenses to match income levels (prior to proposed fee increases).

Time Limitations on Inactive Licenses

- Enforceable rules should be implemented for inactive licenses to become active within a reasonable amount of time.
- For too long these license holders have simply paid their license fees with no intention of ever operating until other forms of gaming are allowed by the Texas Legislature. During this time they have done nothing to positively impact the racing industry. It is time to end the sham.
- If unwilling to take action to become active operating racetracks, the industry may be better served by those inactive licenses being surrendered and offered to others.



September 26, 2017

Texas Racing Commission
Chairman John Steen
P.O. Box 12080
Austin, TX 78711-2080

Honorable Commissioners:

As leaders of the City of Grand Prairie, we have enjoyed a long and mutually beneficial relationship with our partners at Lone Star Park. The benefits derived from the track and from its two horse racing seasons are numerous, and play a key role in making Grand Prairie a dynamic and growing community.

It should therefore come as no surprise that the Texas Racing Commission's proposed plan to reduce the number of live horse racing dates at Lone Star Park is deeply troubling to us. During the peak of each horse racing season, Lone Star Park employs as many as 900 people, and many of those are Grand Prairie residents. The wages earned by these employees support the well-being of our community and flow directly into the local economy.

As the premier destination for horse racing in Texas, each season also brings an influx of out-of-area and out-of-state visitors to Grand Prairie, including many fans who visit to enjoy the races. As these fans arrive in our city, they patronize our local businesses, pumping additional funds into our economy.

Further, each racing season naturally brings hundreds of horsemen to Grand Prairie. As they set up shop for the season, we see the positive economic impact on our hotels and shops. A reduction in race dates would have serious and negative repercussions: Less wages and earnings for Lone Star Park employees, fewer visits by racing fans, and less time and money spent in the city by horsemen. Any one of these in isolation would be problematic, but all taken together would strike a great blow to the vitality of our city.

We urge all Texas officials involved to consider a new course of action – one that would not be punitive toward Lone Star Park. If the commission faces budgetary issues, the solution should be one that is equitable for all stakeholders, where all share the burden proportionately.

We ask that this matter is given the utmost consideration, as the repercussions for the city of Grand Prairie cannot be understated.

Respectfully,

A handwritten signature in black ink, appearing to read "Ron Jensen", written in a cursive style.

Ron Jensen
Mayor



September 26, 2017

Texas Racing Commission
Chairman John Steen
P.O. Box 12080
Austin, TX 78711-2080

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We ask that this matter is given the utmost consideration, as the repercussions for the city of Grand Prairie cannot be understated.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Hart", written in a cursive style.

Tom Hart
City Manager

From TTA executive director (2 pages):



November 1, 2017

Chuck Trout
Texas Racing Commission
PO Box 12080
Austin, TX 78711

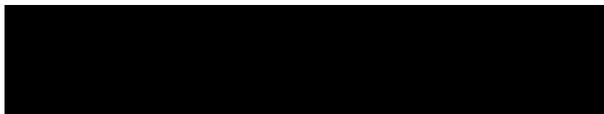
Dear Mr. Trout,

On behalf of the directors and members of the Texas Thoroughbred Association, I would like to state our opposition to the proposed amendments to TRC Rules 309.8 and 311.5.

The 40% increase in fees being imposed on the Class 1 tracks is exorbitant and only covers 20 days of race day regulation at each track. We understand that additional days can be "purchased" at a cost of \$6,313 per day. Even more egregious, because those 20 days of regulation are based on the TRC's fiscal year instead of the calendar year, the current Thoroughbred meet at Retama Park and the ongoing Quarter Horse meet at Lone Star Park count toward those 20 days of regulation. Therefore, Lone Star and Retama will have to pay the \$6,313 "premium" for every 2018 race day through August 31. Furthermore, each of the Class 1 tracks has now submitted race day requests for calendar year 2018 that reflect a loss of 14.5 Thoroughbred days and 21.5 Quarter Horse days.

A reduction in race days will be devastating to the Texas breeding industry. Texas-bred incentive awards for owners, breeders and stallion owners are paid for eligible horses placing 1, 2, or 3 IN TEXAS RACES ONLY. In today's market, Texas-breds are not worth as much as other state-breds where they have much higher purses and more lucrative incentive programs. Every lost race day results in lost racing opportunities for Texas-bred horses, along with opportunities to earn ATB funds. That translates to NO incentive to continue to breed in Texas, and the Texas bred horses already on the ground will have greatly reduced commercial value. While our surrounding states continue to thrive, there have been less and less reasons for our horsemen and breeders to remain in Texas. This plan may be the final straw.

Even though it is struggling mightily, the Texas racing industry currently provides thousands of jobs and contributes millions of dollars in general revenue to the state. This includes not only the Class 1 racetracks, which have invested 10's of millions, but





extends to the thousands of small farms and small businesses that support the entire industry. Regardless of size, each has had to adjust to remain solvent and competitive.

Over the years, the TTA has reduced our budget as necessary, downsizing staff from 13 to 2 ½, eliminating some benefits, moving to smaller, less expensive quarters, outsourcing some tasks and insourcing others to achieve savings, and eliminating all non-essential expenditures. The first step in that process is determining what our revenues will be, and then reducing our expenses to match revenue. That is just good business practice, and the exact opposite of the TRC's approach.

As our members and their businesses have made the necessary sacrifices to remain in business, the Racing Commission has not. While the TRC has developed some cost saving initiatives, we are certain that significant savings can still be found, and urge Commissioners to immediately put pressure on staff to do so.

Respectfully Submitted,

A handwritten signature in black ink that reads "Mary Ruyle". The signature is written in a cursive, flowing style.

Mary Ruyle
Executive Director

“Cut your budget, not race days” letters and emails (97)

September 24, 2017

2017 OCT -3 PM 12: 47

Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

RECEIVED
TEXAS RACING
COMMISSION

Dear Chairman Steen and Commissioners:

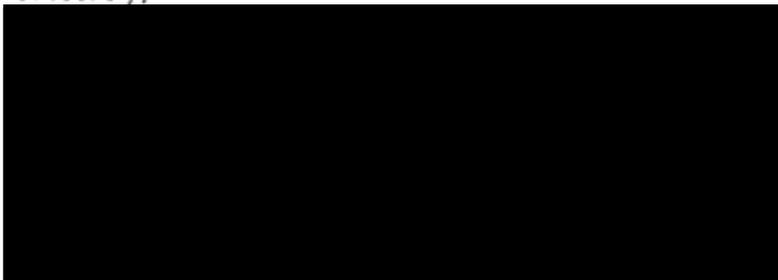
The purpose of this letter is to provide you with public comment and opinion of a proposed action by the Texas Racing Commission.

The breeding and racing industry in Texas is hanging on by a slim thread and can't afford to lose race tracks, race dates or purse money. The proposed amendment to Rule 309.8- Racetrack License Fees will result in a loss of all three. This will lead to more horsemen leaving the state, more patrons losing interest in Texas racing, and the decimation of our breeding industry. This is not simply an empty platitude but a statement of fact.

The participants in our industry fund the Texas Racing Commission, and we can no longer support funding this agency at the cost of our livelihoods.

I am adamantly opposed to the proposed rule amendment and request that you **cut your budget, not race days!**

Sincerely,



Miscellaneous letters and emails opposed (49):

Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

Dear Chairman Steen and Commissioners:

I humbly submit this letter to you for your perusal and thoughtful consideration. The purpose of this letter is to provide you with a personal and public comment and opinion of a proposed action by the Texas Racing Commission.

As you are well aware, the breeding and racing industry in Texas is barely hanging on - and cannot afford to lose race tracks, race dates or purse money. Over the past 13 years, the Texas job sector has been deeply impacted by the changes in Texas racing, while other states bordering Texas continue to prosper greatly, as well as their racing industry! Not only is Texas being injured by money going out of our great State, but with unity of all parties in Texas, a shared vision, and negotiated process and procedures by all parties, could and should develop Texas into the Crown Jewel of Quarter Horse Racing in the United States!! Achieving this goal would bring greatly increased revenue into the State and as importantly, preserve one of the most sacred heritages of Texas – that of ranching families, whose ancestors as well as themselves are committed to the business of horse breeding, and racing the finest quarter horses in the country.

As a third generation horse racing owner, (with fourth and fifth generations currently working alongside our family business), watching our industry fall into demise year after year is no longer acceptable. Our children and grandchildren, who work diligently on our ranch, and whose work ethic is greatly due to this great industry, share my concern as to where our business is headed, and question if living in Texas, breeding our mares and foaling out in Texas, and yes, even racing in Texas will even be a possibility in the near future. This cannot be allowed to happen!

It is my belief the proposed amendment to Rule 309.8- Racetrack License Fees will result in additional loss of race tracks, race dates, and even more purse money. This will deal a death blow to the horse racing industry in Texas, which is already performing poorly compared to other states. I could understand this and even perhaps accept this if it were any other State than Texas! Texas is the greatest State in the Union, and especially in the area of livestock, horses, breeding and racing, should outshine all other states. Keeping our current race tracks, race dates, and providing purse money to draw horsemen and women from other states into Texas, is critical to the growth of our industry and must be functioning healthily in order to draw more interest and open up even more job opportunities for people in our great State.

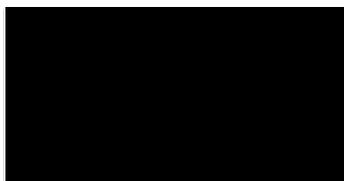
Passing the proposed amendment to Rule 309.8, will lead to continued horsemen leaving the state with their money for breeding, and racing their horses – while other States are standing by, hoping that Texas will not be able to rise to the occasion to solve the issues we are currently facing within our own State and industry. This places all of us in an embarrassing situation. Texans are known for our Pioneering Spirit, and ability to creatively problem solve.

With all being evaluated, in order to preserve and protect, as well as provide additional tens of thousands of jobs in Texas, continue to bring important revenue into the State, preserve this great heritage of our State, and continue to build great heritages of the Texas ranch families, we must find a way to work together to negotiate and surround a common vision that we are all committed to. As it currently stands, the participants in our industry fund the Texas Racing Commission, and with the current situation, truly, we can no longer support funding this agency at the cost of our livelihoods, and the hope of our future as Texans involved in the breeding and racing industry.

After thoroughly reading through the minutes of the last few meetings, studying the current and past budgets, I stand currently opposed to the proposed rule amendment and request that you re-evaluate and decrease your budget, not race days!

Sincerely,

Ron and Terri Hussey



Congratulations



John Larson [REDACTED]



Reply all | v

Yesterday, 5:54 AM

info v

to the State of Texas for continuing to drive racing industry participants out of the state. Increase the burden on the Texas horse industry, you say. I say, must be a lot of money being contributed in Texas to politicians from contiguous states.

Please reconsider and find ways to support the industry. If legal costs are the problem, increase the fees on lawyers. Forget Shakespeare.

Rule changes



Wall, Bruce [REDACTED]



Reply all | v

Yesterday, 8:41 AM

info v

To Whom it may concern,

Please reconsider the rule change you are voting on as it is not in the best interest to the horse owners of this state!

Thank you
Bruce

Bruce Wall

Cell [REDACTED]
Fax [REDACTED]

“You inspire excellence You don’t coerce it “ Dwight D. Eisenhower

Amendment to Rule 309.8



Margaret White [REDACTED]



Reply all | v

Wed 10/4, 1:50 PM

info v

TO WHOM IT MAY CONCERN:

As a Texas resident and voter for 59 years and a racehorse owner in the State of Texas for 48 years, I would like to express my opposition to the captioned proposed amendment. No other state can boast such fine race tracks as we are fortunate to have in our state; however, this amendment would place yet another burden for race horse owners to bear.

Sincerely,
Margaret White

Racing Days and Proposal to Cut Days



Betty Knox [REDACTED]



Reply all | v

Fri 10/6, 3:23 PM

info v

Dear Chairman Steen and Members of the Commission:

This correspondence is intended to be public commented in opposition to cutting racing days at the major Texas horse racing tracks. The commission should be in support of the horse racing industry in Texas, not the executioner. Cutting racing days will adversely impact tracks forcing eventual closure which will have the domino effect of job loss and forcing participants at all levels of the industry to other neighboring states. Is this really what you want to do? Think about trimming your own budget. Seek input from horse racing industry leader on the importance of maintaining the current number of racing days. Your past efforts are appreciated. However your proposal to cut racing days does not benefit the industry.

Thank you for considering this request.

Betty Knox

Admendment to rule 309.8



William reeder [REDACTED]



Reply all | v

Thu 9/28, 11:32 AM

info v

To : Texas Racing Commission Chairman John Steen - By this letter I am requesting you not to adopt the proposed amendment to rule 309.8, as will it lead to the demise of horse racing in Texas. I am and have been a breeder of American Quarter Horses and Thoroughbreds for almost 40 years. I am now down to breeding only 2 of my mares this year because of the competition from tracks in near by states. (that have gaming.) The entire horse industry is being devastated by this, and now your commission wants to raise the licence fees , cut race days. This will put our few remaining tracks out business

Do you not understand that you are killing an entire industry in Texas? Do you not understand that many Texans **depend** on the horse industry for their lively hood? And it seems that you are bound and determined Kill it. Why do you not cut your staff by about 2/3rds that would help a lot..

Best Regards

I oppose the new rule change. If you pass the new rule your going to kill quarter racing in Texas. It's going to effect thousands of life's inTexas. Now we don't want that do we?



AOL <chitohinojosa> [REDACTED]



Reply all | v

Tue 9/26, 10:37 PM

info v

Sent from my iPhone

Rule 309.8 Ammendment



Cathy Farmer [REDACTED]



Reply all | v

Thu 9/28, 3:58 PM

info v

The proposed Rule 309.8 ammendment would reduce the days of live racing here in Texas. This just hurts everyone involved with breeding and racing horses here in Texas. We are struggling to keep the racing business going already. As a Texas breeder and owner of racing quarter horses I strongly object to this ammendment.

Please figure out a way to help us instead of hurting our business at every opportunity!

Cathy Farmer

Sent from my iPhone

Rule 309.8 - Racetrack License Fees

Tue 9/26, 12:15 PM

CHARLES AND PAM FARNSWORTH



September 25, 2017

Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

RE: **Rule 309.8- Racetrack License Fees**

To Chairman Steen and the Commissioners:

The breeding and racing industry in Texas is hanging on by a slim thread. **It cannot afford to lose race tracks, race dates or purse money.**

This proposed amendment will result in a loss of all three. It will lead to more horsemen leaving the state, more patrons losing interest in Texas racing, and the decimation of our breeding industry. The parking lots at Oklahoma and New Mexico tracks are predominantly filled with Texas licensed vehicles reflecting revenue leaving Texas on a large scale.

The participants in our industry fund the Texas Racing Commission, and we can no longer support funding this agency at the cost of our livelihoods.

We strongly oppose the proposed rule ammendment!

Charlie Farnsworth
Charles Farnsworth

Pam Farnsworth
Pam Farnsworth

Amendment to 305.8



Santos Martinez [REDACTED]



Reply all | v

Mon 9/25, 3:56 PM

info v

I strongly oppose this amendment! This is a time to find ways to help Texas racing, not to continue to deter!! Texas horse people contribute to the economy! Politicians should help the horse industry and not themselves! Respectfully,

Santos R. Martinez. Owner/Trainer

License fees

Norbert Cancino [REDACTED]

Mon 9/25, 12:26 PM

...

I am 75 years old , I have been breeding , training , and running Quarter horses here in Texas for over 50 years . I realize the cost and effort that it takes to run any business . The ultimate goal is to serve a purpose while making a Profit in the long Run . I have been licensed since the begining of Pari Mutual . I have seen All the tracks struggle , in spite of Their whole hearted efforts to Make a go of it . It is very difficult to compete against Our Neighboring states New Mexico , Oklahoma , and Louisiana , and now Iowa , and other states that Have Casinos to boost Their Purses for the Horsemen . That is not going to change until We can be on the same level Playing Ground . My Father used to say that You can not cover the sun with one Hand , You are trying to cover it with One Finger . Yes participation at the Active tracks have dwindled 50 % , So Why are You trying to burden Them with an even More drastic Fee Increase . Use some of Your overbudgeted Funds to Get Slot Machines approved for the race Tracks and Resort Areas of Texas . I remember When Some Well known Texas Retailers would not sell Beer in Their stores , till They found out , there was Big profit to be Made . They quickly changed Their Minds . Most of My friends buy Horses in Louisiana and Oklahoma to Run Them There , because of the Bigger Money . Lets get something done here and then You will not have to worry about Breaking This Tracks , There will be More Money for Everyone . The Horseman and His Horses is what Makes this Industry Exist , You can not sit back and Say " That is not my Problem " . We All have to do Our Share . I pay \$35.00 for My license in New Mexico and Louisiana . I have to pay \$100.00 here in Texas . In Louisiana Everyone from Ass't trainers to grooms and stable hands are Under Workman's Comp . and Insurance . How 'Good is That . Here in the Rio Grande Valley Three fourths of all Horsemen go Run in Louisiana . Raise the Fees for inactive tracks , They are using the Loop Hole to have a foot in the door When We Finally Get Casino Entertainment in Texas . People are going to Caxinos any way , Some Where . Keep Them at Home . It is saer and The Tax Dollar Stays Here .



Mon 9/25/2017 10:49 AM

omar vela [REDACTED]

To who it concerns ,as a horse owner don't think

To info

This new rules is good as owner & breeder i feel like if U don't want our relationship with this implements and fees.

[Sent from Yahoo Mail on Android](#)

Twenty day proposal



Tom Hutchins [REDACTED]



Reply all | v

Mon 9/25, 8:24 AM

info v

Dear Chairman Steen: The proposal to allow the tracks to run only 20 days of live racing will devastate an already devastated industry. As an owner I cannot afford for my horse to have only one or no racing opportunity while she stands in the barn at 60 dollars a day. We need more race days not less. This proposal is insane as a business proposition. Why don,t you cut your bloated budget like we all do to live within our means .This will be the final nail in the coffin.By the way the TRC has more employees than the Kentucky Commission which oversees a thriving industry not like ours. Please vote no when the time comes. Sincerely Lane M Hutchins [REDACTED]
Texas [REDACTED]

Lisa Jester [REDACTED]

Reply all |
Sun 9/24, 4:34 PM

info

...

We, Scott Brumley and myself, Lisa Jester, are Acacia Racing LLC, located in Lexington, KY, is the sole owner of Thoroughbred stallion Silentio, now standing at Double Infinity Ranch, TX, owned by entrepreneur and businessman Wes Melcher. Acacia Racing LLC, has also become further invested in the Texas Thoroughbred industry through owning and training Texas bred.

We are not voting citizens in Texas, but we are invested in the Texas Thoroughbred industry. Lisa's family is in Texas, and are highly influential, powerful, and successful generational Texans. The Jester, Bostick, and Deaver families are heavily invested in Texas, and have been historically so. We believe, for those reasons, we have a voice.

Silentio is the best raced and best bred Thoroughbred stallion standing in Texas. He is the son of Silent Name, by Sunday Silence, both top stallions with high success and great influence on the breed worldwide. Silentio is a multi graded stakes winner and participant in both the 2013 and 2014 Breeders Cup races, where he placed 3rd. He stood his first breeding season in 2017, and every mare he bred is in a healthy pregnancy, progressing normally.

Following research, communication with leaders in the Texas Thoroughbred industry, and speaking to those actually in touch with the industry, we chose to stand Silentio in TX, because we believed that he and his huge assets could help TX Thoroughbred breeding and racing move to the next level, and be embraced by the long established, highly successful Thoroughbred community, which they do not now have. There was much interest in him.

Rather than embracing this necessary diversity in racing, which would increase the fan base, related revenue, and bring higher purses, Texas stuck to their tradition of dirt sprinters. That is Quarter Horse racing. It is a death blow. The recent ruling is an actual decapitation of the industry. We must now consider what is best for Silentio, making unneeded difficulties for him, us, our staff, the farm where he now stands, and those who have bred mares to him. We have invested thousands of dollars, to watch the TX government turn away from all cries of help from all of us who are invested in the Texas Thoroughbred industry. Lisa is disheartened as a former longtime Texas resident.

Thoroughbred racing's biggest races and highest purses are distance dirt and turf races. They draw more horse entries and fans, which increase revenue in multiple ways. It is the Thoroughbred industry that has a history of bringing in huge revenue to a state. The other types of horse racing cannot do that.

The Texas industry would only need state help for a short period of time. If slots were allowed, the tracks in TX would have high purses while contributing much to the Texas budget. They would earn their own way, and contribute greatly to rectifying state expenses.

In order to do that, TX must give legislative help now through passing slots, it must diversify its Thoroughbred breeding to include distance, turf Thoroughbreds. Doing one thing alone, as the industry has been doing, is a recipe for failure. Can TX afford that many former jobs to be lost, and that much more dependence on government assistance? I think not.

Silentio is a stallion who can help the Texas industry. His sire has changed Thoroughbred breeding and racing in Canada. His grand sire single-handily changed the industry in Japan. We believe lightning will strike thrice. However, it now will not happen in Texas. We are disheartened.

We understand the situation that forced the changes the TRC put through last week. We do not understand the lack of support by the legislature and governor in the past. It highlights the lack of understanding and vision of those in power and those who campaign and fight against the kind of gaming (historical racing slots) that have brought huge revenue into the states that support them. At a time when religious diversity is embraced, Texas clings to the past in this matter, while embracing the religious changes we now experience. It is hypocrisy on a massive scale.

Texas needs the Thoroughbred industry, and it needs the state's help to thrive and become a large contributor to the state budget. Everything is not "bigger and better in Texas, as this latest ruling proves. That can be changed, with compassion and vision.

Our request is that if the Texas legislature and governor cannot bring about the changes necessary to help the industry thrive, not just survive, that it not drag us along with false hope and promises. Either help our industry or let us know that

we need to consider it dead in Texas, and that there will be no further rescue. We deserve that info and the chance to recoup losses. Texas has failed Acacia Racing LLC, and so many countless others in the Thoroughbred industry. Prepare yourselves for the many who will need government assistance to survive until they can find other employment. We remain disgusted with the lack of concern and compassion. Most of us are far from wealthy and cannot afford the losses we are now incurring. We have lost faith in Texas.

Sent from my iPhone
Sincerely,
Lisa

Changes in license fees



Tom BRADFIELD [REDACTED]



Reply all | v

Sun 9/24, 11:09 AM

info; +1 more ↕

I am a Texas Veterinarian that has been involved in the horse industry for over 40 years. And racing horses for almost that long.

As the years progressed it has seemed that many in the Texas gov have more and more tried to do whatever they could to eliminate the horse industry in Texas. Especially horse racing.

The racing industry funds the Texas Racing Commission .After comparing all the other state commissions and there budgets and number of employees I strongly feel that instead of raising the license fees to fund an already bloated budget the commission needs to look internally for a solution.

Please know that I am a vocal Texan that is very much opposed to what this rule does to our fees.

It's hard enough to raise foals, pay trainers ,and all the other expenses and keep my head above water.

Thank you for your consideration,

Thomas Bradfield DVM

Sent from my iPhone

Live Racing Schedule



Jeff Nors [REDACTED]



Reply all | v

Sun 9/24, 1:41 PM

info v

Gentlemen,

As a horse breeder, owner and trainer, please do not reduce our live racing days! Texas has been slowly decaying due to horsemen and horses moving to other states that support racing. Reducing the live racing days will force many of the few still left to leave as well. I feel this will contribute to smaller live fields. I also feel it will cause the tracks to go under as well. This is not what Texas racing needs, we need to find ways to improve our racing and bring more horsemen and horses back to Texas. The surrounding states that are growing horse racing are requiring the horses to be state bred horses. This pulls dollars being spent in other states to their own, which increases their tax dollars. So, while Texas can lose jobs at race tracks and horse people, we will also be losing money that is spent to raise and care for the horses. Please do the right thing and do not reduce the live racing days.

Sincerely,

Jeff Nors

No fees on racetrack leases



Daniel White [REDACTED]



Reply all | v

Sun 9/24, 1:51 PM

info v

As a voter and horse breeder and owner, I urge Texas racing commission to not raise but reduce race track leasing fees.

Texas racers are being paid 1500 per horse to race at Santa Anita in California because of the favorable breeding of Texas throughbreds.

I urge the racing commission to adopt a similar proactive approach to promote not deter participation not reduce Texas breeder and racers to breed and race in other states.

Texas has world class horsemanship. Promote don't discourage racing please

Dan White-ceo
Secure Commerce Systems
[REDACTED]

License fees



Ward Williford



Reply all | v

Yesterday, 9:51 AM

info v

I am opposed at increasing liscense fees because Texas Racing has already sunk to the lower one- half of the racing industry and this increase will be another blow. If the purpose is to continue the efforts to remove Texas from horse racing the legislature should do it not the commission.

Ward Williford

Opposition to Proposed Changes in License Fees



Laird Morgan



Today, 1:30 PM

info v



Reply all | v

Inbox

Dear Commission,

I want to add my personal opposition to the proposed changes to the fee structure. As a license holder, my opposition to the fee change is based on the increase in the Texas owner license fee resulting in my Texas license costing as much as Florida, West Virginia and Arkansas combined.

My opposition to the track license fee proposal is based on the circumstances driving the proposal and the propriety of how this matter is being addressed. The association fee proposal will have an immediate impact on racing in Texas. There will be less racing and the Texas racing community will suffer the consequences while out of state track association interests will gain advantages. Texans will look elsewhere to race and Texas breeding will decline. The "deal" to resolve the track association litigation has not been made public and I can only speculate the commission is taking what is perceived to be the path of least resistance to remain in operation. I am disappointed that we have reached such a point and would object to any agreement adopted under these circumstances.

Sincerely,

Laird Morgan





Mon 10/30/2017 11:08 PM

Amanda Miller

Opposed to Rule change 309.8"

To info

My name is Amanda Miller and this proposed rule change will devastate the Texas horse racing industry and cost me my job. I implore you not to adopt it. Please think of all the little people who'll lose their jobs.

Sincerely,

Amanda Miller

Milam county

Proposed Fee Increase and Racing Days Cuts

To info

Cc

You replied to this message on 10/31/2017 11:33 AM.

[Bing Maps](#)

+ Get more a

I want to voice my strong opposition to proposed action by the Texas Racing Commission.

The Thoroughbred and Quarter Horse breeding and racing industry in Texas are on the verge of financial collapse. The proposed amendment to Rule 309.8- Racetrack License Fees will accelerate this industry's demise. Horsemen are leaving the state every day. Mr. Jorge Haddad, one of Texas' most well funded and established Quarter Horse breeders just announced on Saturday, October 28, 2017 that he is moving his best two breeding stallions to Louisiana.

The participants in our industry fund the Texas Racing Commission, and we can no longer support funding this agency at the cost of our livelihoods. As a small independent breeder, I am opposed to your proposed rule amendment that is clearly intended to be **PUNITIVE**.

I have copied Ms. Anita Fernandez, Chief of Staff for Representative Diego Bernal, my Representative. Please do not ignore my concerns that I have addressed herein. I formally request the courtesy of your prompt written request.

Respectfully,

James ("Jimmy") G. Murry, Jr.,
Managing Member

Espuela Advisors, LC

This letter is to protest the proposed rule for funding the Texas Racing Commission. In its present form, the proposed rule is not in the best interests of the State of Texas, the Texas Racing Industry, and the citizens of the State of Texas. Rather it favors and protects the interests of an out of state casino company and real estate speculators at the expense of Texas horsemen, Texas agriculture, the breeding industry, industry suppliers and the many small businesses currently participating in or supporting the racing industry. I understand the current proposal as presented does not have the support of the horsemen's organizations including THP, TTHBPA, AQHA, TQHA, and the TTA

I recognize the Racing Commission is funded by the industry it regulates. However, the current proposal, particularly the punitive assessments for running over a meager number of live racing performances, creates the impression that the Racing Commission is trying to kill Texas Racing. The result of implementing this proposal will be a drastic reduction in live performances leading to a continuation of the exodus to Texas horsemen and a decline in Texas Agriculture. This is unacceptable. Instead, the proposal should be modified to promote an increase in live race days.

There is reportedly a fear that if the current proposal is not passed the commission will run out of money. However, I also understand that the commission can borrow from the general fund to operate until a solution acceptable to all parties is developed.

I urge the commissioners to reject the current rule proposal and work with all interests to develop an acceptable rule which supports and grows Texas racing.

Respectfully,

C. E. "Chuck" Wright



RE: Cut in Days for Texas Racing



Thomas Shinder

Thu 10/26, 9:37 AM

info



Reply all



Dear Texas Racing Commission –

Please considering alternative options to cutting the days of Thoroughbred racing. The industry is trying to right itself, and is showing progress at Lone Star Park. If at all possible please find ways to cut the budget instead of the day allocated to thoroughbred racing.

Thank you –

Thomas W. Shinder, M.D.



Sat 10/28/2017 8:43 AM

Paul Garcia

Racing

To info

Apparently you are not reading the preamble. Racing makes a giant impact on the economy. Shortening the race days hurts people that have invested in buying, maintaining, training, insurance, breeding (It's disgusting how the breeding has changed in the state with the largest horse population) and the list just goes on & on. Maintaining a horse takes in so many many businesses & people. Think of job losses. Cutting the days will have a giant impact on everything horse related. I can't even to begin to see where you're coming from.

Sent from my iPhone

The upcoming November 8th vote on the proposed Rules amendment will deliver to current government leaders exactly what they want, the demise of the racing industry.

It's an old tactic, long used by city governments. A proposed business, offering hundreds of new jobs, but doesn't quite fit into city leaders current vision of what is best for the citizens, wants to locate in town. So city leaders make it too expensive for the perceived blight to build. They require additional impact fees, architectural requirements, environmental studies and other over the top expenses, to the point that initial cost recovery will make the venture economically unsound, so it moves elsewhere. Rather than an authoritarian approach of straight denial, this leads the citizenry to believe the business itself killed it's plan, and all is well with city leadership. A homicide, staged to appear as suicide.

The proposed amendment requiring racetrack license holders to pay additional exorbitant fees for race dates has the same effect. So to control costs, days are cut, with less days income will most likely decrease. As income decreases, more days will be cut and so it will go until the downward spiral becomes uncontrollable and as they tell us in business school, continuing to throw money at a failing endeavor is just plain stupid. These are not stupid people that hold the racetrack licenses. Texas tracks go away and state leaders appear squeaky clean to the general public. So the business of breeding, owning and training in Texas is no longer viable and more profitable jurisdictions must be sought.

Which brings us to the commission's statement that "...This amendment will have no adverse economic effect on small or micro-businesses" Proof that they have no idea what constitutes a small business. Each and every licensed owner and trainer in the state is a de facto business. Each and every one has assets and liabilities, fixed and variable expenses and hopefully enough income to turn a profit. However unlike a government entity, a business facing lower income has to reduce costs in order to survive. One of the most controllable cost in any business is payroll, (..... "There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.".....) so that is where cost cutting begins. Costs can also be controlled by lowering held inventory. In the racing industry, inventory is the animal. So breeders disperse breeding stock and owners buy and race fewer athletes, so not as many trainers can continue in business. Ancillary businesses such as feed stores, hay suppliers, transportation companies, veterinarians, farriers, are all affected. So these two statements in particular show the disconnection of the commission from reality.

If the intention is to destroy the opportunity for Texas racing to continue, then by all means this amendment should be passed as written. However if the commission is truly following it's own guidelines this should be tabled and reconsidered. From the Texas Racing Act 3.02 The commission, in adopting rules and in the supervision and conduct of racing, shall consider the effect of a proposed commission action on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

Thank You
Johnny Johnston
Breeder, Owner, Trainer



Scott Davis [REDACTED]
 Opposed to rule change 309.8

To info

If you pass the rule change, horse racing in Texas is dead. As a horse owner, I am adamantly opposed to this rule change. Please don't ruin our sport. I don't want to have to race in Louisiana or Oklahoma.

Scott Davis
 Licensed race horse owner in Texas

Reduction of racing days

To info; ABI@mail.vresp.com

This letter is to communicate my opposition to the proposal to the Texas Racing Commission to reduce racing days.

Atkinson Cameron Farm, Atkinson Thoroughbreds LLC

Forch Richard Atkinson

Amendment to Rule 309.8

To info

This proposed amendment concerns me very much. I have a current owners license in California, Oklahoma , New Mexico and Texas. I have kept a broodmare in Louisiana for three years to raise babies because of the breeders program they have and the purses they offer in their races. Too much of Texans money crosses state lines now, I am very much opposed to cutting down the number of race days in Texas. We need to keep days and increase our purses. Let's try to keep our money in the great state of Texas.

Sincerely,
 Dave Brian
 Weatherford, Texas

Texas Horwemen

To info

You forwarded this message on 10/31/2017 12:00 PM.

I wish to protest the continued Texas government efforts to destroy an important part of the agricultural life of Texas. The newly proposed facing fees and dates will only further increase the decline of horse breeding, performance, and racing in the state of Texas. I do not know what the politics behind these decisions may be, but from a conservative voting citizen's perspective, I will only express my displeasure and hope for future congresspeople who understand the importance of horses to Texas. Further, I will lobby diligently to have them elected. Linda Tobias

OPPOSED to Rule Change 309.8

To info

Cut your budget! Do not cut race days!!!

Once again, horse racing in Texas gets hammered! You are cutting the number of racing days allowed in Texas by half!!!! Government over regulation of an industry that is struggling to survive by our elected Republicans who supposedly support small business! Texas of all places -where you would think horse related businesses should thrive! We expect more from the Texas Racing Commission!!!!

You are killing my business!!!

Cathy Farmer

Racing Quarter Horses Owner and Breeder
TQHA -AQHA

racing days

To info

I know that this doesn't ever get anywhere in Texas, but I would like to beg and plead for the THRC to please benchmark the other states and try some of the other VERY successful ways to generate money for the horse industry in TX.

I am not political. I am just a horseman trying to find a way to continue to support my most favorite pastime of horse racing. It is becoming clearer and clearer each year that our days are very sadly numbered. I love Texas and Horse racing. Many would think that would be a easy pairing to support in the great cowboy state. But, it is proving to not to be the case.

Humbly,

Desi Schlansky

Reduced dates for 2018

To info

[Bing Maps](#)

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Please vote against the reduced number of racing dates at Texas Horse Racing tracks. There are many jobs provided there that WILL be impacted with less dates. If you have been to the tracks lately you will see there are good crowds attending to enjoy a sport that has been around for decades. As a fan, I would like to see at least the same number of races in 2018 as in 2017. If the number of opportunities are less, Texas horsemen will be forced to seek races in surrounding states and there will be less motivation to raise Texas bred horses, affecting yet another area of the industry.

Maintaining the same number of dates in Texas is critical at this time to support a tradition and the jobs that accompany the industry.

Respectfully submitted,
Regina Hadlock



Thu 10/26/2017 4:42 PM

Omar Saenz [REDACTED]

To info

I am a small time race horse breeder from south Texas and selling my horses is very important to me and my family. I think that going through with the proposed changes will greatly impact my sales in a negative way. Not only will it negatively impact me, but the millions of Texans that depend on Texas racing every year as well. It is very hard for me to understand how such a big state can be lesser of a racing state than New Mexico, Oklahoma, and Louisiana. The purses here in Texas are garbage compared to purses in those states and now you will make it worse with this proposal. I am asking that you reconsider and go back to the drawing board so that you can figure out and better solution. I think that bringing up the idea of adding casinos to our race tracks will solve our problems. Texas should be superior in the horse racing industry not looking up at others.

Sincerely, your Texas Race Horse Breeder

[REDACTED] OPPOSED to Rule 309.8

To info

I am in opposition to the proposed rule amendment 309.8. The loss of days to Texas racing will be the end of the Racing horse industry in Texas. Cutting fees to minimally productive dog tracks and paper licenses that have PROVEN they have no interest in racing or simulcasting or providing any kind or economic benefit to their areas is ridiculous at best, Socialist at worst. Shame on the TXRC for entertaining, much less trying to adopt, this proposal.

Kris Fullerton

[REDACTED] OPPOSED to Rule change 309.8

To info

[Bing Maps](#)

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I am opposed to the rule change raising fees on productive tracks, cutting days of live racing for productive horsemen, while dramatically decreasing fees to unproductive paper licenses. Isn't making producers pay more for non producers one of the core principles of Communism? In Texas????
DO NOT ADOPT THIS RULE CHANGE!!!!

Arnold D. Fullerton
[REDACTED]

Opposition to New Racetrack License Fees & Race Dates!

To info

Jean Cook and Texas Racing Commission,

I am Conda Maze a racehorse owner. The purpose of this letter is to let you know that I do not support the new racetrack fee proposal. I am opposed to decreasing race dates for Quarter horses at such a severe level as proposed.

Sincerely,

Conda Maze



Santos Martinez

Proposed amendment

To info

I am a licensed owner/trainer. I am opposed to the amendment to reduce quarter horse race days and increase in license fees!! In a time when horsemen are looking to exit Texas to other states that work to improve racing which helps their economy and attract work and business, TRC should work with horsemen to grow racing, not set it back!! Work with politicians that can help and expose those that hinder horsemen's efforts to progress!

I am writing you today to voice my very real concern to the proposal to cut racing dates for Quarter Horses.

I have been breeding and racing TEXAS quarter horses since 1991. I am a single female with a small operation and have put countless hours of my time (and money) into this effort. Unless you have experienced this endeavor yourself, hands on, I seriously doubt you have any viable understanding of what it takes to engage in this business. Unless you get up to feed before dark, in the cold, or sit up all night and watch a mare preparing to foal - you just can not get it. After performing manual labor to provide and care for these TEXAS bred racing horses in early morning hours, I then don a suit to go into a criminal court room and represent this great State against crime.

In my profession, I am constantly reminded by Legislators and others to "do the right thing." And, I do that, every single day.

If this Commissions follows through with its proposal, I simply do not see how it will be possible for me to continue. The only chance I have for this small business to self-support is to be able to RUN and sell horses that can RUN. Shortening racing days does not cheapen my feed bill, my hay bill, my fence up-keep, my pasture up-keep, my barn maintenance, my equipment up-keep, horses hoofs from growing, it does nothing except keep my horses from running! What is the problem with this Commission! If you can count to three you can figure this out!

Your finding that "This amendment will have no adverse economic affect on small or micro-businesses" is so out-of-touch with reality it down right makes me bang my head on the wall, and I deal with stupid people every day. Your finding that "There are no negative impacts upon employment conditions in this state as a result of the proposed amendment" again, is so out-of-touch it is laughable.

I propose the following findings to your amendment "This amendment will have a total devastating economic impact on small or micro-businesses." "There will be negative impacts upon employment conditions in this State, and will finally cripple an already struggling industry."

You are our Commission - **DO THE RIGHT THING**. Support Texas Racing. Support the little guy.

Feel free to call me, the little guy, the one you don't think you are harming with a senseless proposal. If you need help fine-tuning your budget so that the rest of us are not harmed - I'd be happy to help.

Please, don't take this away from me I've invested too much

Sincerely,

Kathryn J. "Jody" Gilliam

Race Dates

To info

Dear Sirs,

I have raced horses in Texas since Pari Mutual racing was passed. I STRONGLY object to amending section 309.8 which would raise track license fees and reduce the amount of live racing dates. My small business would be forced to close or move to another state.

Sincerely,

Eugene Nors

TEXAS RACING COMMISSION

As a breeder of quality Racing Quarter Horses in the State of Texas, I am pleading with you to vote against this proposed rule amendment. My husband and I live in Seguin, Texas, where we live and work on our Quarter Horse Farm. We have bred champion Quarter Horses and my husband is very involved with the American Quarter Horse Association and is serving as President of The Texas Quarter Horse Association this year.

If this amendment is passed, I firmly believe it will affect our farriers, our vets, our hay suppliers, our feed stores, our business, our help here on the farm and the people who attend the races. It WILL have an adverse economic effect on small or micro-businesses.

Again, I urge you vote against this proposed amendment.

Respectfully,

Jerry Ann Gaston

RACEING LEGISLATION

To info

To whom it may concern,

In reading the reports of legislation proposed by the House and or Senate of Texas , effecting the future of Texas Horseman and in particular the Race Horse Industry, I felt I should respond by saying I have struggled in the past to justify the economics of racing in Texas. With being neighbors of La and OK and their purses, compared to Texas , it is hard to break even. Now instead of trying to support this very large industry , the state government is striking a lethal insiead.

If this present position is allowed to move forward , with cutting dates and raising cost, I will be investing in your border states programs. I am from Missouri and spend a lot of money on airplane tickets, rental cars, hotels, restaurants, horse trainers , Vets, horse haulers, breeding fees and shopping in general. This is what you will lose and the local businesses will feel this. I would ask that you reconsider and help this great irdustry compete and not destroy it.

Danny J. Miller

Racing Dates

info

[Bing Maps](#)

+ Get more ap

I profoundly object to the recently announced plan to reduce race dates in Texas, particularly the extraordinary reduction in Quarter Horse race dates. This reduction should not be approved and other options considered for balancing your operating budget. As you know, we are already on the brink of extinction.

Gary Williams

Texas racing commission funding proposal 9-5-17

o info

My name is Robert J. (Bob) Pickard my txrc lic. no. is 300, which says I have been involved in Texas from the first day. I am writing to express my opposition to the proposed changes for funding the TXRC. The preamble to the proposed amendment states in part "this amendment will have no adverse economic affect on small or micro businesses." It also states "there will be no negative impacts on employment conditions in this state as a result of this amendment". How in the world can this statement be made with a straight face, when for certain it will have a devastating effect on my business. Any loss of racing opportunities has a huge effect on the whole racing industry. Small trainers such as myself depend on racing opportunities for income, this cut in race days added to the prior cuts in race days will be the final nail in our coffins. I don't know what you are basing your statement about employment economic effect, but that info is either very incorrect or basically false. I ask you as a txrc licensee, a resident of Texas and a landowner and taxpayer, to reconsider this amendment and come up with another solution to this problem. Thank you for this opportunity to express my opposition and state categorically the statements in the preamble lack any common sense whatsoever.

Robert J. Pickard

Horse Racing in Texas

To info

I would like to address all the people that are in the Texas Government that are hell bent on destroying what should be like second nature in our great state. Yes Horse Racing. Whether it's Quarter Horse or Thoroughbred that doesn't matter. You people are an embarrassment to the sport and to all the other states that host horse racing. I myself have experienced horse racing as an employee and an owner. I love the sport I love horses. What I don't love is the dirty politics y'all are playing. Stop making love to surrounding states and take care of the people of Texas.

Gretel Wohlbiel Neff

New Racetrack License Fees & Race Dates



Walt Knorpp

Today, 3:32 PM

info ↕



Reply all | ▾

Dear Members of the Texas Racing Commission:

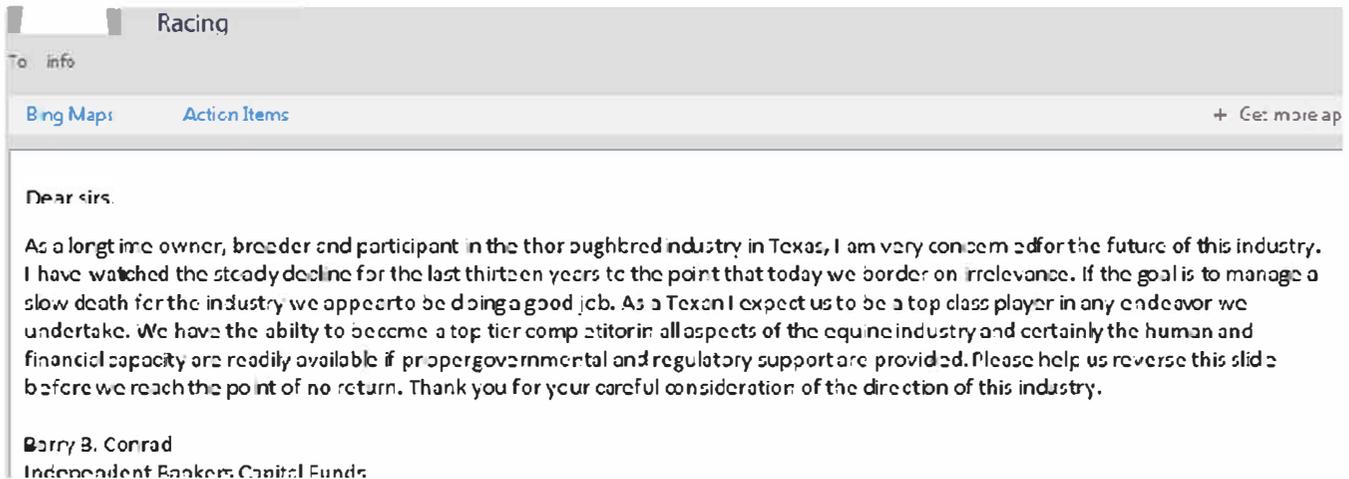
Please count this email as being in opposition to new Racetrack License Fees & Race Dates.

If this reduction of race dates is allowed the Texas Quarter Horse Industry and Texas Thoroughbred Horse Industry will in a short period of time be non-existent. The investments that many horse owners have made in the stallions, mares, foals, facilities, employees, supplies, etc. will be lost, along with the taxes paid to taxing entities throughout the State.

I am sure there are ways the Texas Racing Commission can cut regulatory costs that are better than the destruction of an industry in the State Of Texas.

Sincerely,

Walter Knorpp





Alyssa Niewiadomski

budget vs. days

To info

Please cut the budget and not the days. We just moved down from Michigan to race our horses here and its unfortunate we have to consider running them elsewhere now. Thanks for your consideration.

please don't cut racing days

To info

Action Items

+ Get more ap

I sent a letter yesterday,
But I had another thought I wanted to try to convey.
If we cut racing days, that not only cuts the budget, but it also cuts the income potential for the track. It seems like the absolute worse way to try to meet a budget shortfall, by reducing the number of days to increase the cash flow....to attempt to meet the budget. It is a self-fulfilling prophecy.
The main principal of accounting , to meet a budget, you can make more money, or spend less money.
By cutting days, we are meeting the budget by spending less, and MAKING less. It is not a sustainable model. It will only ensure the downfall by handling it this way.
Please allow the horsemen to increase their business profile in Texas. Let use other resources to make the tracks a viable income producing part of our great state! There are excellent examples all over the United States that we can use as a business model.
Please give us the power to succeed, not fail.
Desi Schlansky

Rule 309.8



Joan Tracy

Tue 10/31, 6:52 PM

info



Reply all



Chairman Steen and Commissioners

The purpose of this letter is to provide you with public comment and opinion of a proposed action by the Texas Racing Commission.

I am adamantly opposed to the proposed amendment to Rule 309.8

An increase in racetrack license fees and a reduction of race dates will only serve to further dismantle the race horse business in Texas.

The Racing Commission must be fully aware of the fatal impact this rule change will cause.

If your agenda is to end horse racing in Texas this change will most surely succeed in doing so.

Joan Tracy
Fredericksburg, Texas

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 25 October 2017

***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

Contact Information:

Name:	TxRC Staff	Phone(s):	(512) 833-6699
E-mail address:	info@txrc.texas.gov	Fax number:	(512) 833-6907
Mailing address:	8505 Cross Park Drive, Suite 110, Austin, Texas 78754		

Check appropriate box(es):

Personal Submission *OR*

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

Proposed Change to (if known): Chapter: _____ Rule: _____

Proposed Addition to (if known): Chapter: 309 Rule: 13

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

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Chapter: _____ Rule: _____

Statutory Authority for Proposed Change: §5.01

A. Brief Description of the Issue

The agency funding proposal presented to the Commission by nine of the ten licensed racing associations includes a request that the Commission undertake an independent audit of the agency's operations. This rule proposal would provide a vehicle for funding that audit.

B. Discussion of the Issue and Problem

The proposal regarding fees presented to the Commission by nine of the ten licensed racing associations includes a request that the Commission undertake an independent audit of the agency's operations. Such an audit may be performed by the State Auditor's Office (SAO), or the SAO may authorize the Commission to engage a private firm to conduct it (subject to State of Texas procurement requirements). If the Commission engages a private firm, the cost is estimated to be between \$50,000 and \$100,000 but could be as high as \$200,000. As the Commission lacks the funds to pay for this additional expense, this rule would provide authority to assess a supplemental license fee to pay for it.

C. Possible Solutions and Impact

A supplemental fee rule would provide authority to assess a supplemental license fee to pay for an outside audit. The proposal allows the Commission to charge associations an amount less than the maximum provided by the rule depending on the winning bid and provides for refunds in the event that the total cost is ultimately less than the amount collected.

D. Support or Opposition

The industry has expressed support for this proposal.

No comments were received in response to the proposal of this rule and posting for public comment.

E. Proposal

See next page.

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 2. ACTIVE AND INACTIVE RACETRACK LICENSES

1 309.13. Supplemental Fee

2 (a) Purpose of Fee. The fee in this section is necessary to pay
3 the Commission's costs to procure an independent audit of the
4 economy, efficiency and effectiveness of its operations, as
5 requested by the racing industry, and the fees collected under
6 this section shall only be used for this purpose.

7 (b) Amount of Fee. In addition to the license fees prescribed by
8 Section 309.8, Racetrack License Fees, a licensed racing
9 association shall pay a supplemental license fee to the
10 Commission in an amount that equals the total cost of the audit,
11 not to exceed \$200,000, divided by the number of racing
12 associations in good standing in Texas.

13 (c) The supplemental fee shall be due 15 days after the
14 Commission sends an invoice to the association.

15 (d) Refunds. In the event that the total amount the Commission
16 collects under this section exceeds its actual costs, any amount
17 remaining shall be refunded to paying associations in equal
18 shares not later than 60 days after the date the Commission's
19 final payment for the audit is due.



Texas Racing Commission

FY 2018

Proposed Operating Budget

FY 2018 Appropriated Operating Budget

<u>Budget by Strategy</u>	<u>Strategy Description</u>	<u>FTE's</u>	<u>Budget</u>
1.1.1.	License / Regulate Racetracks	4.00	351,472
1.2.1.	Texas Bred Incentive Program	-	2,918,433
1.3.1.	Supervise & Conduct Live Races	5.62	485,149
1.3.2.	Monitor Licensee Activities	3.75	266,318
1.4.1.	Inspect & Provide Emergency Care	3.00	335,490
1.4.2.	Adminster Drug Test	2.80	182,001
2.1.1.	Occupational Licensing Program	4.85	343,562
2.1.2.	Texas OnLine	-	17,000
3.1.1.	Monitor Wagering and Compliance	5.00	330,467
4.1.1.	Central Administration	5.93	666,813
4.1.2.	Information Resources	<u>3.80</u>	<u>505,935</u>
Total Base Appropriations		38.75	\$ 6,402,640

Total Appropriations for FY 2018 Operating Budget



Texas Racing Commission
FY 2018
Proposed Operating Budget

FY 2018 Appropriated Operating Budget by Object-of-Expense (OOE)

<u>Budget by OOE</u>	<u>Budget</u>
Salaries & Wages	2,384,469
Other Personnel Costs	164,791
Professional Fees & Services	247,943
Consumable Supplies	13,065
Utilities	47,984
Travel	201,345
Rent-Building	104,246
Rent-Machine & Other	2,300
Other Operating Expense	318,064
Grants	2,918,433
Capital Expenditures	-
Total Base Appropriations by OOE	\$ 6,402,640
Total OOE for FY 2018 Operating Budget	\$ 6,402,640



Texas Racing Commission
FY 2018
Proposed Operating Budget

FY 2018 Unappropriated Operating Budget by Object-of-Expense (OOE)

Budget by OOE

OASI Match	182,412
Group Insurance	265,000
State Retirement	187,466
Benefit Replacement	3,179
ERS Retiree Insurance	390,000
Unemployment Cost	17,000
Other	-

Total Unappropriated Operating Budget by OOE \$ 1,045,057

Total Appropriated and Unappropriated FY 2018 Operating Budget \$ 7,447,697



Texas Racing Commission
 FY 2018
 Cash Flow of Proposed Operating Budget

Regulatory Operations Budget

Appropriated Regulatory Budget by OOE	Proposed Budget	
Salaries & Wages	2,384,469	
Other Personnel Costs	164,791	
Professional Fees & Services	247,943	
Consumable Supplies	13,065	
Utilities	47,984	
Travel	201,345	
Rent-Building	104,246	
Rent-Machine & Other	2,300	
Other Operating Expense	318,064	
Grants	-	
Total Appropriated Regulatory Budget by OOE		\$ 3,484,207
Unappropriated Regulatory Budget by OOE		
OASI Match	182,412	
Group Insurance	265,000	
State Retirement	187,466	
Benefit Replacement	3,179	
ERS Retiree Insurance	390,000	
SWCAP GR Reimbursement	-	
Unemployment Cost	17,000	
Total Unappropriated Regulatory Budget by OOE		\$ <u>1,045,057</u>
Total Regulatory Budget		\$ <u>4,529,264</u> *

*Total Expenditures of \$7,447,697 less Texas Bred Incentive Program Grants of \$2,918,433 totals \$4,529,264.



Texas Racing Commission
 FY 2018
 Cash Flow of Proposed Operating Budget

		<u>Regulatory Operations Cash Flow</u>		
Beginning Cash Balance:				\$ 44,530
Annual Racetrack Fees:				
Class 1	Lone Star Park	1,030,292		
	Retama Park	859,849		
	Sam Houston Race Park	916,663		
	Sub-Total Class 1		\$ 2,806,804	
Class 2	Laredo Downs	127,600		
	Manor Downs	127,600		
	Valle de los Tesoros	127,600		
	Sub-Total Class 2		\$ 382,800	
Class 3	Gillespie County Fair	35,725		
	Sub-Total Class 3		\$ 35,725	
Greyhound	Gulf Greyhound Park	204,175		
	Gulf Coast Racing	204,175		
	Valley Race Park	204,175		
	Sub-Total Greyhound		\$ 612,525	
	Total Annual Racetrack Fees			\$ 3,837,854
Other Revenue:				
	Occupational Licensing / Finger Print	690,000		
	Other	23,867		
	Total Other Revenue			\$ 713,867
Cash Available to Fund Regulatory Budget				\$ 4,596,251
Less Total Regulatory Cost				\$ (4,529,264)
Ending Cash Balance:				\$ 66,987

VI. OTHER PROCEEDINGS ON RULES

A. Discussion and possible action to adopt the following rule amendments:

1. Amendments to Rule 303.93, Quarter Horse Rules
2. Amendments to Rule 321.30, Super Hi-Five

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 08/18/2017

***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

Contact Information:

Name:	Rob Werstler	Phone(s):	512-458-5202
E-mail address:		Fax number:	512-458-1713
Mailing address:	706 W. 11 th St. Elgin, TX 78621		

Check appropriate box(es):

Personal Submission *OR*

Submission on Behalf of Texas Quarter Horse Association
(Name of Organization)

Proposed Change to (if known): Chapter: 303 Rule: 93

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 § 9.01

A. Brief Description of the Issue

The current rule allows an Accredited Texas Bred Broodmare to leave the state but still maintain accreditation by returning to Texas no later than August 15. However, this date is too early to allow these mares to compete in some of the more prestigious races that run during September through December in other states.

B. Discussion of the Issue and Problem

By using embryo transfers and surrogate mares, breeders enable successful Quarter Horse mares to produce Texas-bred offspring while continuing to race throughout the calendar year. The TQHA believes that this activity is economically beneficial to the horse breeding industry and should be supported.

C. Possible Solutions and Impact

The proposal would change the date a Texas-bred Quarter Horse broodmare must return to Texas in order to keep its Texas-bred accreditation from August 15 to December 31.

D. Support or Opposition

This proposal is proposed and supported by the Texas Quarter Horse Association, and should have no adverse affect on any other horse breeds or breed organizations.

No comments were submitted in response to the proposal and posting for public comment.

E. Proposal

See next page.

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAMS FOR HORSES

1 303.93. QUARTER HORSE RULES

2 (a) (No change.)

3 (b) Eligibility for Accreditation.

4 (1) (No change.)

5 (2) ATB Broodmares.

6 (A)-(C) (No change.)

7 (D) A mare may leave Texas for [~~breeding, medical, or~~]
8 racing purposes without losing its accreditation provided the
9 mare returns to Texas each year before December 31 [~~August 15~~]
10 and remains in Texas until foaling. A mare may leave Texas for
11 breeding or medical purposes without losing its accreditation
12 provided the mare returns to Texas each year before August 15
13 and remains in Texas until foaling. All foals of an ATB
14 broodmare are eligible to be accredited as ATB horses provided
15 the mare is bred to an ATB stallion at least every other
16 breeding. TQHA may require documentation regarding breeding
17 activity to prove eligibility for accreditation.

18 (3) (No change.)

19 (c)-(f) (No change.)

**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Date of Request: 8/22/2017

***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.state.tx.us

Contact Information:

Name:	Frank Hopf	Phone(s):	281.807.8803
E-mail address:	fhopf@shrp.com	Fax number:	281.807.8719
Mailing address:	7575 N. Sam Houston Pkwy W. Houston, TX 77064		

Check appropriate box(s)

<input type="checkbox"/>	Personal Submission <i>OR</i>
<input checked="" type="checkbox"/>	Submission on behalf of <u>Sam Houston Race Park</u> (Name of Organization)

<input checked="" type="checkbox"/>	If known, Proposed Change to Chapter:	Chapter: <u>321</u>	Rule: <u>320</u>
<input type="checkbox"/>	If known, Proposed Addition to Chapter:	Chapter: _____	Rule: _____
<input type="checkbox"/>	If known, Other Rules Affected by Proposal:	Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____
		Chapter: _____	Rule: _____

A. Brief Description of the Issue

Under SEC 321.320 Subsection the rule does not allow for an unique payout option for the Super Hi-Five.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *Currently the option does not exist and this option would allow an association the opportunity to offer an "unique" payout.*

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *Add verbiage to the existing rule to offer a fourth payout option to the Super Hi-Five.*

D. Support or Opposition

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

- *Support from Lone Star Park and Retama Park*

No comments were submitted in response to proposal and posting for public comment.

DI. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please strikeout the language to be deleted. Please show new language with underlined text.

- (a) no change
- (b) no change
- (c) no change

(d) Unique Winning Ticket Option

(1) The net super hi-five pool shall be distributed to winning wagers in the following precedence, based on the official order of finish:

(A) As a single price pool, including any applicable carry-over, to the holder of a unique winning ticket whose combination finished in correct sequence as the first five betting interests, but if there is no such unique winning ticket, then

(B) The net pool shall be divided into two separate pools. The major pool of the net pool shall be paid as a carryover into the next regularly scheduled Super hi-five pool. The remaining minor pool shall be paid as a Super hi-five consolation pool, which shall be equally divided among those ticket holders who correctly select the first five interests in exact order, but if there are no such wagers, then

(C) The entire net pool shall be carried over into the next regularly scheduled Super hi-five pool.

(2) Unique winning ticket, as used in this subsection (d), shall be defined as having occurred when there is one and only one winning ticket whose combination finished in correct sequence as the first five betting interests, to be verified by the unique serial number assigned by the totalisator company that issued the winning ticket. In the event that there is more than one winning ticket whose combination finished in correct sequence as the first five betting interests, ~~the~~ a unique winning ticket shall be deemed to not have occurred.

(3) The association shall specify the minimum monetary amount of a unique winning ticket wager with prior approval of the executive secretary.

(4) Prior to the start of the race meet, the association shall specify the percentages for a major and minor pool with prior approval of the executive secretary.

(5) A written request to distribute the Super hi-five pool plus any carryover on a specific date and performance may be submitted by the association to the executive secretary for approval. The request must be for a specified date no greater than one year from the date the request is submitted and contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

Should the Super hi-five net pool and any applicable carryover be designated for distribution on a specified date and performance in which there is no unique winning ticket, the entire pool shall be distributed using the method described in subsection (i).

(6) Unless otherwise stated in writing by the Commission under paragraph 5, on the last Super hi-five race on the final day of the meeting, the net pool, including any applicable carryover, shall be distributed using the method described in subsection (i).

(e) The minimum number of wagering interests required to offer super hi-five wagering in any one race shall be seven actual starters. If a race scratches below seven actual starters, then the super hi-five pool for that race shall be canceled.

(f) Super hi-five wagers on races in which wagering has been canceled or the race declared no contest shall be refunded. Any carryover pool added to the net pool of a super hi-five race which is canceled shall carry forward to be added to the next consecutive super hi-five wagering pool.

(g) If less than five animals finish and the race is declared official by the stewards or judges, then pay off shall be made to ticket holders selecting the finishing animals in order of finish as provided above. The balance of any selection on any ticket beyond the number of betting interests completing the contest shall be ignored.

(h) In the event of a dead heat in any finishing position, the wagers shall be paid as follows:

(1) All wagers selecting either of the dead-heat positions with the correct non-dead-heat position shall be winners and share in the pool;

(2) Payouts will be calculated by splitting the pool equally between each winning combination, then dividing split pools by the number of winning tickets. A dead heat will produce separate and distinct payouts respective to each winning combination.

(i) If on the final day of a race meeting or on a designated mandatory payout date the pool has not been distributed under subsection (b), (c), or (d) of this section, then the net pool for that performance plus any carryover from previous performances shall be paid out in the following manner:

(1) To those who selected first-place, second-place, third-place, and fourth-place finishers in order. If there are no such wagers, then

(2) To those who selected first-place, second-place, and third-place finishers in order. If there are no such wagers, then

(3) To those who selected first-place and second-place finishers in order. If there are no such wagers, then

(4) To those who selected the first-place finisher.

(j) If the final or designated mandatory payoff performance is canceled or the pool has not been distributed under subsection (i) of this section the pool shall be deposited in an interest-bearing account approved by the executive secretary. The pool plus all accrued interest shall then be carried over and added to the super hi-five pari-mutuel pool in the following race meeting on a date and performance designated by the executive secretary.

(k) If an animal is scratched or declared a nonstarter, no further tickets may be issued designating such animal and all super hi-five tickets previously issued designating such animal shall be refunded and the money deducted from the gross super hi-five pool.

(l) For purposes of statutory deductions and commissions, the net amount does not include any amounts carried over from any previous super hi-five pool.

(m) The association may select a distinctive name for the super hi-five, with prior approval of the executive secretary.

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

1 **321.320. Super Hi-Five**

2 (a) The super hi-five is not a parlay and has no connection with
3 or relation to the win, place, and show pools shown on the tote
4 board. All tickets on the super hi-five shall be calculated as a
5 separate pool.

6 (b) A person purchasing a super hi-five ticket shall select the
7 five animals that will finish first, second, third, fourth, and
8 fifth in one race. The pool shall be distributed only to the
9 holders of tickets who [~~that~~] select the same order of finish as
10 officially posted.

11 (c) If no super hi-five ticket is sold for the winning
12 combination, then the net pool shall be carried over and paid
13 out in the following manner:

14 (1) The entire pool shall be carried over and made available
15 on the next consecutive super hi-five pool, and is combined with
16 and added to the net pool for such qualifying pool, and made
17 available for payout, or

18 (2) An association can, at its option, offer [~~announce~~] a
19 consolation pool[~~7~~] equal to 25% of the net pool[~~7~~, ~~will be~~
20 ~~offered~~]. The offering of a consolation pool shall be announced
21 at least 72 hours in advance of the first day upon which a
22 consolation pool will be offered, and shall be publicized.
23 Notice of the consolation pool may be announced, by way of
24 example, via press release, internet, simulcast signal, and on-
25 track announcements.

26 (3) If there are no ticket holders who selected first-place,
27 second-place, third-place, fourth-place, and fifth-place
28 finishers in order and a consolation pool is offered, then a
29 consolation pool shall be established. The consolation pool
30 shall be [~~equal to 25% of the net pool and~~] distributed as a

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

1 single price pool among those ticket holders and paid out as
2 follows:

3 (A) To those who selected first-place, second-place, third-
4 place, and fourth-place finishers in order. If there are no such
5 wagers, then

6 (B) To those who selected first-place, second-place, and
7 third-place finishers in order. If there are no such wagers,
8 then

9 (C) To those who selected first-place and second-place
10 finishers in order. If there are no such wagers, then

11 (D) To those who selected the first-place finishers.

12 (E) If the super hi-five pool cannot otherwise be
13 distributed in accordance with this section, the money in the
14 super hi-five consolation pool shall be carried forward to the
15 next consecutive super hi-five pool.

16 (d) Unique winning ticket option.

17 (1) Unique winning ticket, as used in this subsection,
18 shall be defined as having occurred when there is one and only
19 one winning ticket whose combination finished in correct
20 sequence as the first five betting interests, to be verified by
21 the unique serial number assigned by the totalisator company
22 that issued the winning ticket. In the event that there is more
23 than one winning ticket whose combination finished in correct
24 sequence as the first five betting interests, a unique winning
25 ticket shall be deemed to not have occurred.

26 (2) If an association elects to offer the unique winning
27 ticket option, the net super hi-five pool shall be distributed
28 to winning wagers in the following order of precedence, based on
29 the official order of finish:

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

1 (A) as a single price pool, including any applicable
2 carry-over, to the holder of a unique winning ticket whose
3 combination finished in correct sequence as the first five
4 betting interests, but if there is no such unique winning
5 ticket, then

6 (B) the net pool shall be divided into two separate
7 pools. The major pool of the net pool shall be paid as a
8 carryover into the next regularly scheduled super hi-five pool.
9 The remaining minor pool shall be paid as a super hi-five
10 consolation pool, which shall be equally divided among those
11 ticket holders who correctly select the first five interests in
12 order, but if there are no such wagers, then

13 (C) the entire net pool shall be carried over into the
14 next regularly scheduled super hi-five pool.

15 (3) The association shall specify the minimum monetary
16 amount of a unique winning ticket wager with prior approval of
17 the executive secretary.

18 (4) Prior to the start of the race meet, the association
19 shall specify the percentages for a major and minor pool with
20 prior approval of the executive secretary.

21 (5) A written request to distribute the super hi-five pool
22 plus any carryover on a specific date and performance may be
23 submitted by the association to the executive secretary for
24 approval. The request must be for a specified date no greater
25 than one year from the date the request is submitted and contain
26 justification for the distribution, an explanation of the
27 benefit to be derived, and the intended date and performance for
28 the distribution. Should the super hi-five net pool and any
29 applicable carryover be designated for distribution on a
30 specified date and performance in which there is no unique

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

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1 winning ticket, the entire pool shall be distributed using the
2 method described in subsection (i).

3 (6) Unless otherwise stated in writing by the Commission
4 under paragraph (5), on the last super hi-five race on the final
5 day of the meeting, the net pool, including any applicable
6 carryover, shall be distributed using the method described in
7 subsection (i).

8 (e) The minimum number of wagering interests required to offer
9 super hi-five wagering in a race shall be seven actual starters.
10 If scratches cause the number of horses in a race to fall below
11 seven, then the super hi-five pool for that race shall be
12 canceled.

13 (f) [~~e~~] Super hi-five wagers on races in which wagering has
14 been canceled or the race declared no contest shall be refunded.
15 Any carryover pool added to the net pool of a super hi-five race
16 which is canceled shall carry forward to be added to the next
17 consecutive super hi-five wagering pool.

18 (g) [~~f~~] If fewer [~~less~~] than five animals finish and the race
19 is declared official by the stewards or judges, payout [~~then pay~~
20 ~~off~~] shall be made to ticket holders selecting the finishing
21 animals in order of finish as provided above, disregarding any
22 selections beyond the number of betting interests.

23 (h) [~~g~~] In the event of a dead heat in any finishing position,
24 the wagers shall be paid as follows:

25 (1) all [~~All~~] wagers selecting either of the dead-heat
26 positions with the correct non-dead-heat position shall be
27 winners and share in the pool; and

28 (2) payouts [~~Payouts~~] will be calculated by splitting the pool
29 equally between each winning combination, then dividing split
30 pools by the number of winning tickets. A dead heat will produce

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1 separate and distinct payouts respective to each winning
2 combination.

3 (i) [~~(h)~~] If on the final day of a race meeting or on a
4 designated mandatory payout date the pool has not been
5 distributed under subsection (b), ~~or~~ (c), or (d) of this
6 section, then the net pool for that performance plus any
7 carryover from previous performances shall be paid out in the
8 following manner:

9 (1) To those who selected first-place, second-place, third-
10 place, and fourth-place finishers in order. If there are no such
11 wagers, then

12 (2) To those who selected first-place, second-place, and
13 third-place finishers in order. If there are no such wagers,
14 then

15 (3) To those who selected first-place and second-place
16 finishers in order. If there are no such wagers, then

17 (4) To those who selected the first-place finisher.

18 (j) [~~(i)~~] If the final or designated mandatory payoff
19 performance is canceled or the pool has not been distributed
20 under subsection (i) [~~(h)~~] of this section the pool shall be
21 deposited in an interest-bearing account approved by the
22 executive secretary. The pool plus all accrued interest shall
23 then be carried over and added to the super hi-five pari-mutuel
24 pool in the following race meeting on a date and performance
25 designated by the executive secretary.

26 (k) [~~(j)~~] If an animal is scratched or declared a nonstarter, no
27 further tickets may be issued designating such animal and all
28 super hi-five tickets previously issued designating such animal
29 shall be refunded and the money deducted from the gross super
30 hi-five pool.

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1 (l) [~~(k)~~] For purposes of statutory deductions and commissions,
2 the net amount does not include any amounts carried over from
3 any previous super hi-five pool.

4 (m) [~~(l)~~] The association may select a distinctive name for the
5 super hi-five, with prior approval of the executive secretary.