

Memorandum of the Regular Meeting of the  
Indiana Horse Racing Commission

**September 28, 2022**

Indiana State Library  
Author's Room  
315 W. Ohio St.  
Indianapolis, IN 46204

Commission members present: Philip C. Borst, Chairman; George Pillow, member, Bill Estes, member, and Gus Levengood, member.

Commission Staff members present: Deena Pitman, IHRC Executive Director; Tom Linkmeyer, Assistant Executive Director; Dale Pennycuff, IHRC Counsel; Matt Eggiman, IHRC Deputy General Counsel; Jessica Barnes, IHRC Breed Development Director; Wendi Samuelson-Dull, IHRC Chief Financial Officer; Dr. Kerry Peterson, IHRC Equine Medical Director; Eric Smith, IHRC Senior State Steward.

Speakers from the audience: Rick Moore, VP and GM of Racing Harrah's Hoosier Park; Jeffrey Hendricks, Senior VP & Assistant General Counsel, Regulatory & Compliance, Caesars; Eric Smith, IHRC Senior State Steward.

### **I. Call to Order**

Chairman Borst called the meeting to order at approximately 2:00 p.m. A quorum was present.

### **II. Approval of memorandum and executive session memorandum from the June 29, 2022, meeting.**

Chairman Borst asked for a motion for approval of the memorandum and executive session memorandum from the June 29, 2022, Commission Meeting. The vote was unanimous 4-0 for approval.

### **III. Agenda**

**Note:** *All items on the agenda were transcribed by a court reporter from StewartRichardson. Transcripts are available at [www.in.gov/hrc](http://www.in.gov/hrc).*

1. Consideration of Recommended Order Granting Default Judgment in the matter of IHRC Staff vs. Samuel Mendez.

Chairman Borst introduced this agenda item and turned it over to Mr. Eggiman, who will be representing the Commission in the matter of IHRC Staff v. Samuel Mendez. Mr. Eggiman introduced Mr. Pennycuff, who has been representing Commission Staff in the matter. Mr. Mendez is not represented by counsel and did not appear.

Mr. Eggiman explained that the case resulted from Administrative Complaint No. 221001, filed on or about November 17, 2021. The complaint alleges that Mr. Mendez violated Ind. Code 4-31-12-20 by possessing a battery or other electrical device that may be used to affect speed or reaction of a racehorse on at least three occasions on the premises of Indiana Grand, now known as Horseshoe Indianapolis. This included the use

of the device during a race held on September 4, 2021.

Mr. Eggiman went on to describe the procedural history of the case, including a withdraw of counsel request from Mr. Mendez's attorney in January 2022. That request was granted by Administrative Law Judge Michael Buker in March, and Mr. Mendez proceeded pro se in the matter. The matter proceeded with several scheduling orders issued by ALJ Buker, and despite those orders and countless attempts by Commission Staff and ALJ Buker to engage Mr. Mendez in the matter, Mr. Mendez had not participated at all in the case since a March 2, 2022, telephonic prehearing.

Mr. Eggiman continued that due to Mr. Mendez's lack of participation in the case, he was susceptible to a Default Order pursuant to the Administrative Orders and Procedures Act in the Indiana Code. After a motion from Commission Staff, ALJ Buker issued a Proposed Default Order on July 13, 2022. Pursuant to AOPA Mr. Mendez had seven days to file a response to the proposed order. With no response from Mr. Mendez, ALJ Buker issued a Recommended Order of Default Judgment on July 20, 2022. Mr. Eggiman explained that due to Mr. Mendez being in default, the Commission really had only one option in front of it – affirm the recommended order of ALJ Buker. That recommended order contained a recommended penalty of a \$10,000 fine and a 20-year suspension.

Mr. Eggiman turned the floor over to the Commission to ask any questions, and noted that ALJ Buker was present in the audience to take questions as well. Chairman Borst was surprised about the penalty, noting that it was probably the most severe penalty he has seen. Executive Director Pitman explained the severity of the penalty was due to the multiple instances the electrical device was used by Mr. Mendez on a horse. Additionally, Executive Director Pitman explained that the 10-year suspension penalty seen in previous cases was not deterring the behavior, due to this being the fifth or sixth similar case.

Chairman Borst opened the floor for any further questions. When none were asked, he then asked the Commission if there was a motion and a second regarding approval of the Recommended Order of Default in the IHRC Staff v. Mendez case. Commissioner Pillow moved to entertain the motion. Commissioner Estes seconded. Chairman Borst then asked for any further discussion. With no response, Commissioner Borst requested a vote. The vote was unanimous 4-0 for approval of ALJ Buker's Recommended Order of Default.

Chairman Borst then thanked ALJ Buker for his attendance and all of his work involving the Commission.

2. Readoption of administrative rules scheduled to expire. See attached Notice of Intent to Readopt, LSA Document #22-265.

Mr. Pennycuff explained to the Commission that like other administrative agencies, IHRC rules automatically expire every seven years. Agencies are given the opportunity to readopt any expiring rules so long as the rule language remains identical. Mr. Pennycuff stated that the rules up for readoption this year are listed in the Notice of Intent to Readopt, labeled as LSA Document #22-265 in the Commissioner's packets of information.

Mr. Pennycuff went on to explain the required procedural steps taken by Commission Staff to ensure the rules are readopted according to statute and then requested the Commission's approval for the rules to be readopted without change before the end of the year.

Chairman Borst then asked for any questions or comments, lauding the rule readoption process. He then asked the Commission if there was a motion and a second regarding Mr. Pennycuff's request to readopt the expiring rules. Commissioner Estes moved to take a motion on the rule readoption. Commissioner Pillow seconded the motion.

Chairman Borst asked for comments from the public on the proposal to readopt the expiring rules. Seeing no one commenting, Commissioner Borst asked for a vote. The vote was unanimous 4-0 for approval.

3. Review and consideration of the following Indiana Horse Racing Commission emergency rules:

**Thoroughbred**

- 71 IAC 7.5-5-1 Horses ineligible
- 71 IAC 7.5-6-5 Post to finish
- 71 IAC 8.5-2-5 Out of competition testing

**Standardbred**

- 71 IAC 8-3-5 Out of competition testing

Mr. Eggiman explained to the Commission the proposed emergency rules concerning harness racing and flat racing. Mr. Eggiman also explained that the proposed emergency rules were provided in each Commissioner's packet, the proposed rules were posted on the IHRC website the week before, that no public comments had been received, and that the Commission typically casts a single vote in favor of all of the proposed emergency

rules. Once the rules are filed with the Legislative Service Agency, according to Mr. Eggiman, the rules go into effect. Mr. Eggiman also explained that a matching Standardbred rule for out-of-competition testing was not included in the rules sent out to the public, but that it was just a clerical correction to reference the latest edition of the ARCI model rules that was included in the thoroughbred emergency rule amendment. Mr. Eggiman then respectfully requested the Commission's approval of the rules listed in the Commissioner's packets.

Chairman Borst asked the Commission if any of them had any questions. Commissioner Levengood asked if anyone knows how many horses are either chipped or tattooed. Dr. Kerry Peterson explained that it is now a requirement for all thoroughbreds to be microchipped, so all young ones are now microchipped. She explained that the rule went into effect in 2018, so all thoroughbreds born from 2018 to the present have chips. The rule went into effect this year for Standardbreds, but many are still freeze branded. Dr. Peterson stated that all Quarter Horses are currently lip tattooed.

Chairman Borst and Executive Director Pitman then have a quick discussion about HISA's potential effect on the chip rules. They then provide a brief commentary on HISA in general.

Chairman Borst then asked for any further comments from the public. Seeing none, he asked the Commission if there was a motion and a second regarding Mr. Eggiman's request to adopt the emergency rules. Commissioner Estes moved to make the motion. Commissioner McCarty seconded the motion.

Chairman Borst then asked for a vote. The vote was unanimous 4-0 for approval.

4. Review of commission rulings – June 22, 2022, through September 20, 2022.

Chairman Borst asked if there were any questions on the Commission rulings. He noted there were several whip violations this time, more so than in the past, probably due to HISA's new rules. He then referenced the whipping demonstration from June's Commission Meeting. There were no questions, and seeing no one coming forward for another whipping demonstration, Chairman Borst moved on.

5. Ratify Executive Director Pitman's approval of Harrah's Hoosier Parks' request to amend the expected 2022 Capital Expenditure Equipment Plan and substitute with an alternate 2022 purchase.

Mr. Eggiman explained that pursuant to the Commission's Final Order from the petition of Eldorado Resorts International for the IHRC to approve the permit transfer dated July 15, 2020, quote "ERI covenants to materially comply with the schedule for equipment replacement through 2033 as set forth in the titled 'Hoosier Park and Indiana Grand Equipment Summary, Revised May 18, 2018' ... and understands that any material deviation from this schedule is subject to approval by the Commission or its Executive Director, which approval shall not be unreasonably withheld."

Mr. Eggiman further explained that Hoosier Park is requesting a substitution of equipment from its original 2022 equipment list to better fits its needs, specifically, trading out the purchase of several Gators it doesn't anticipate needing with a needed snowblower. Mr. Eggiman explained the overage when compared to Hoosier Park's 2022 total capital expenditures is only .003%. Executive Director Pitman had already given approval for the equipment substitution, and Mr. Eggiman is requesting the Commission ratify her approval.

Mr. Eggiman then gave the floor to the Commissioners and the public to ask any questions. Rick Moore took to the microphone to explain the necessity of the snowblower and how it will fit Hoosier Park's needs. Chairman Borst then asked if anyone has any questions for Mr. Moore. Commissioner Levengood asked what Hoosier Park will do with the old Gators. Mr. Moore said they trade those in, and he can get to the Commission what the value of the trade-in will be.

Chairman Borst then asked the public if they have anything to say about the Gators or snowblowers. After a quick discussion about John Deere, Chairman Borst asked for a motion and a second. Commissioner Pillow moved to make a motion whether to ratify Executive Director Pitman's approval of Harrah's Hoosier Parks' request to amend the expected 2022 Capital Expenditure Equipment Plan and substitute with an alternate 2022 purchase (a.k.a., making Mr. Moore's life real comfortable so he doesn't have to get out there and shovel by hand). Commissioner Estes seconded it. Chairman Borst then asked for a vote. The vote was unanimous 4-0 for approval.

6. Ratify Executive Director Pitman's approval of Caesars Debt (refinance) Transaction pursuant to IHRC rule 71 IAC 11-1-12.

Mr. Eggiman explained that pursuant to 71 IAC 11-1-12(a)(5), the Commission or the Executive Director must approve any contract between a permit holder and any party that equals or exceeds \$50,000,000 in value. Mr. Eggiman further explained that in early August, Caesars Entertainment Inc. provided notice to the IHRC that it intended to undertake debt financing transactions that would fall under this

provision and that proceeds from these transactions would allow Caesars to make strategic business decisions.

Mr. Eggiman then explained that many details of the transactions are to be kept confidential, but that the terms and structure have been provided to the Commission. He went on to state that the Indiana Gaming Commission issued a confidential report about the proposed transactions and made that report available to the IHRC. Mr. Eggiman stated that the Gaming Commission approved the debt finance transactions the day before during its commission meeting, after it gave interim approval two weeks before.

Mr. Eggiman went on to explain that after consulting with Chairman Borst, Executive Director Pitman issued an interim approval based on the review conducted by the Gaming Commission and its confidential report, as well as the Gaming Commission's interim approval. Mr. Eggiman stated that Commission Staff respectfully requests the Commission ratify Executive Director Pitman's interim approval concerning the proposed transactions, and he then turned the floor over to Jeffrey Hendricks from Caesars to take any questions.

Mr. Hendricks thanked Commission Staff for its prompt and professional review of the transaction, and then Chairman Borst asked if there were any questions. Commissioner Pillow asked Mr. Hendricks if Caesars was refinancing any of its other properties. Mr. Hendricks stated that it is a corporate matter, and has no direct impact on the Indiana racing licenses.

After seeing no other questions, Chairman Borst asked for a motion and a second to ratify the approval. Commissioner Estes moved to accept a motion. Commissioner Pillow seconded it. Seeing no further discussion, Chairman Borst then asked for a vote. The vote was unanimous 4-0 for approval.

7. HISA update from a racing perspective given by the Commission's Senior State Steward Eric Smith.

Chairman Borst turned the floor over to Mr. Smith to give a HISA update from a racing perspective. Mr. Smith explained that it had been nearly 90 days since HISA's implementation of its racetrack safety rules, which comes out to about 50 race days at Horseshoe Indianapolis. Mr. Smith stated that the stewards have issued 25 rulings so far, all for riding crop violations. He stated that all of the violations have been for the least severe riding crop rule, meaning the jockeys have only struck the horses one to three times more than the allotted six strikes.

Mr. Smith explained that two claims have been voided pursuant to HISA rules that would not have been voided under IHRC rules, and that one referral has been made to the HISA Racetrack Safety Committee for a violation that falls outside of the stewards' jurisdiction. It was a significant violation, and as of yet, Mr. Smith has not heard from anyone at HISA to follow up on it or that they even received it.

Mr. Smith went on to explain that while HISA was created to promote uniformity in the industry, he has seen absolutely no increase in uniformity so far among jurisdictions and gave the example of the riding crop rule being interpreted differently depending on which state a jockey was racing. Mr. Smith then opened the floor to questions, and Chairman Borst asked if he and the stewards adjudicated the 25 riding crop violations. Mr. Smith stated that they indeed adjudicate those type of violations, and he gave examples of other rule violations that the stewards can adjudicate, as well as examples of what violations go directly to HISA.

Chairman Borst asked other questions about when the violation occurred that led to the referral to HISA (July 5) and where HISA is located (Lexington). He ended with asking Mr. Smith if he has seen anything with HISA that could be considered an improvement, and Mr. Smith answered no. Chairman Borst explained that's probably because the stewards were doing everything right to begin with. Executive Director Pitman pointed out that there are many things HISA hasn't anticipated, and if HISA had worked with those of us in the industry when they were putting it all together, we in the industry could have helped them anticipate these things. Chairman Borst agreed.

Because no vote was required for this agenda item, Chairman Borst moved on.

### **III. Old Business**

Chairman Borst asked the Commission about any old business. None was presented.

### **IV. New Business**

Chairman Borst asked the Commission about any new business.

Mr. Pennycuff explained that each year there are matters that arise throughout the race meet that require quick turnaround and a quick decision. He went on to state that Commission Staff routinely requests that the Commission delegate authority to Executive Director Pitman to handle any matters that arise between Commission meetings, pursuant to 71 IAC 2-2-1. Mr. Pennycuff respectfully requested delegation of authority to Executive Director Pitman to make race meet decisions as required that cannot be left for a Commission meeting through the end of both race meets.

Chairman Borst then asked if someone would like to make a motion. Commissioner Estes



motioned to delegate to Ms. Pitman. Commissioner Pillow seconded. Seeing no discussion, Chairman Borst then asked for a vote. The vote was unanimous 4-0 for approval.

**V. Adjournment**

The meeting was adjourned at approximately 2:36 p.m.

DRAFT