

BEFORE ADMINISTRATIVE LAW JUDGE BERNARD PYLITT  
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

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INDIANA HORSE RACING COMMISSION STAFF, )  
Petitioner, ) Administrative )  
v. ) Complaint No. )  
MICKEL NORRIS, ) 214002 )  
Respondent )

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER**

This matter came before Administrative Law Judge Bernard Pylitt ("ALJ Pylitt") for a hearing on Administrative Complaint No. 214002 issued by the Indiana Horse Racing Commission Staff ("Commission Staff") to Respondent Mickel Norris.

ALJ Pylitt conducted a hearing in this matter on May 6 and 7, 2015 at the Indiana Horse Racing Commission Office in Indianapolis, Indiana. The Commission Staff was represented by its Deputy General Counsel, Holly Newell. Respondent Mickel Norris was present and represented by his counsel, John N. Shanks II of the Shanks Law Office.

Having considered the administrative record, having conducted a hearing, weighed the credibility of the witnesses presented by both sides, and the arguments of counsel,<sup>1</sup> ALJ Pylitt issues the following Findings of Fact, Conclusions of Law, and Recommended Order. To the extent that any Finding of Fact is more appropriately considered a Conclusion of Law, or conversely, they shall be so treated.

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<sup>1</sup> Counsel are to be commended for their cooperation during discovery and for a thorough and concise presentation of evidence.

## FINDINGS OF FACT

### I. THE PARTIES

1. During 2014, Respondent Mickel Norris (“Norris”) was a licensee of the Indiana Horse Racing Commission. (Administrative Complaint No. 214002, IHRC Staff Exhibit FF, Review of Information Item #2, Exhibit 1 to the Administrative Complaint). As a licensee, Norris submitted his application on April 29, 2014 and acknowledged at the end of his application:

I understand that participation in racing in Indiana is a privilege, not a right ... By acceptance of said license, I agree to abide by the statutes of the State of Indiana relating to racing, the Indiana Rules and Regulations and rulings or decisions of the Judges/Stewards with the knowledge that rulings or decisions of the Judges/Stewards shall remain in force until reversed or modified by the Indiana Horse Racing Commission ....

2. The Indiana Horse Racing Commission (“Commission”) is an administrative agency created by the legislature pursuant to its enabling statute, I.C. § 4-31 *et seq.* The Commission was created for the purpose of ensuring “that pari-mutuel wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity.” I.C. § 4-31-1-2. The Commission has a long-standing directive in its governing statute and related administrative regulation that allows the Commission to sanction a licensee if the person has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility. 71 IAC 5.5-1-14(a)(10).

3. The Commission has specific rules regulating the use of medications, and banning foreign substances. 71 IAC 8.5-1-2, 71 IAC 8.5-1-4.2. Additionally, a trainer is responsible for the condition of all horses he trains. 71 IAC 5.5-3-2.

4. The administration of any substance, other than furosemide, to a horse within 24 hours of scheduled post-time for the first race is an egregious offense, separately regulated at 71 IAC 8.5-1-1.5.

5. The Commission Staff is responsible for the day-to-day operations of the Indiana Horse Racing Commission, including enforcement of regulations, and prosecution of violations.

6. The Commission Staff is a proper party to this proceeding.

## **II. PROCEDURAL HISTORY**

7. On August 8, 11, and 12, 2014, the Commission Staff received notifications from its primary laboratory, LGC Sport Science, Inc. ("LGC"), that five post-race equine blood tests had been confirmed positive for the presence of hydrocortisone succinate.

8. On August 15, 2014, the IHRC Stewards notified Norris of these positive test results for horses he trained and offered him the opportunity to request that split samples be taken. His attorney at the time, Mike Red, declined said opportunity via email on August 19, 2014.

9. On August 26, 2014, Norris was summarily suspended by the Stewards. Norris filed a timely Motion to Vacate the Stewards' Summary Suspension. ALJ Pylitt recommended that the summary suspension be upheld. Norris filed objections thereto and the Commission affirmed the ALJ's recommendation on January 28, 2015, and adopted it as a final order.

10. Norris has remained summarily suspended since August 26, 2014.

11. On September 25, 2014, the Commission Staff received similar notification from its primary laboratory that one post-race equine blood test had been confirmed positive for triamcinolone acetonide.

12. The six (6) horses that tested positive were all trained by Norris.

13. On November 7, 2014, the Commission Staff issued Administrative Complaint 214002 against Norris, finding, in pertinent part:

- a. Norris separately violated 71 IAC 8.5-1-2 based upon each finding by LGC Science, Inc. of a drug or drugs in the system of the horses listed and on the dates indicated in Review of Information, Paragraph 29, above.
- b. Norris separately violated 71 IAC 8.5-1-1.5(b) based upon each finding by LGC Science, Inc., of a drug or drugs in the system of the horses listed on the dates indicated in Review of Information, Paragraph 29, above, and scientific data indicated race day administration of the substance.
- c. Norris violated 71 IAC 8.5-1-4.2 based upon the finding by LGC Science, Inc., and confirmation by UC-Davis Maddy Lab, of the presence, in excess of threshold limits, of a substance in the system of the horse listed on the date indicated in the Review of Information, Paragraphs 36-37, above.

(IHRC Staff Exhibit FF, "Findings of Fact")

14. Norris requested a hearing pursuant to 71 IAC 10-3-20(d) in a timely fashion.

15. On November 26, 2014, the Administrative Complaint was assigned to Administrative Law Judge Bernard Pylitt.

16. Five telephonic prehearing conferences and an in-person final prehearing conference were conducted by ALJ Pylitt.

17. Prior to the hearing, the parties submitted eleven (11) pages of written stipulations including the authenticity of 33 documents and eight facts. The stipulations were admitted into

evidence as Joint Exhibit 1.<sup>2</sup> Among the significant factual stipulations were those contained in paragraph 44:

- a. The horse Happy Moro did carry in its body hydrocortisone succinate at the time it participated in the first race on May 28, 2014 at Indiana Grand;
- b. The horse Sugar's Pretty Boy did carry in its body hydrocortisone succinate at the time it participated in the third race on June 7, 2014 at Indiana Grand;
- c. The horse Lady Dozer did carry in its body hydrocortisone succinate at the time it participated in the third race on June 10, 2014 at Indiana Grand;
- d. The horse Jodavi did carry in its body hydrocortisone succinate at the time it participated in the fourth race on June 14, 2014 at Indiana Grand;
- e. The horse West on Main did carry in its body hydrocortisone succinate at the time it participated in the fifth race on June 20, 2014 at Indiana Grand;
- f. The horse Sea of Enquiry did carry in its blood triamcinolone acetonide in excess of 100 pg/mL at the time it participated in the seventh race on May 24, 2014 at Indiana Grand.
- g. Hydrocortisone succinate is classified as a Class 4 Penalty Class C substance by the Association of Racing Commissioners International, Inc.; and
- h. Triamcinolone acetonide is classified as a Class 4 Penalty Class C substance by the Association of Racing Commissioners International, Inc.

18. The parties further stipulated in paragraphs 45-47 of Joint Exhibit 1 that:

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<sup>2</sup> Counsel are commended for their hard work ultimately resulting in stipulations of documents and facts which streamlined the presentation of complicated scientific evidence and substantially shortened the length of the hearing.

- a. Norris agrees that Dr. Richard Sams, PhD, is qualified by training and experience to issue expert opinions with respect to this matter, but reserves the right to take issue with those opinions.
- b. Norris agrees that Dr. Scot Waterman, DVM, is qualified by training and experience to issue expert opinions with respect to this matter, but reserves the right to take issue with those opinions.
- c. Commission Staff agrees that Dr. Steven Barker, PhD, is qualified by training and experience to issue expert opinions with respect to this matter, but reserves the right to take issue with those opinions.”

19. During the hearing before ALJ Pylitt, the Commission Staff presented the testimony of Dr. Richard Sams, Laboratory Director for LGC; Dr. Scot Waterman, DVM, consulting veterinarian to the Commission Staff; and Joe Gorajec, Executive Director of the Commission.

20. During the hearing before ALJ Pylitt, Norris testified on his own behalf. Other witnesses testifying on Norris' behalf were Dr. Steven Barker, Section Head, Louisiana Animal Disease Diagnostic Laboratory (“LADDL”) and LSU School of Veterinary Medicine, and Sheri Norris (Norris' wife). Dr. Barker testified via telephone. He did not testify as a representative of LSU or LADDL. (Dr. Barker testimony, hearing transcript p. 168, lines 6-9).

21. Pursuant to IC 4-21.5-3-26 (f), ALJ Pylitt took official notice of the Indiana pari-mutuel enabling statute (I.C. § 4-31 *et seq.*, and I.C. 4-35 *et seq.*); the IHRC rules that regulate pari-mutuel racing in Indiana (71 IAC *et seq.*); and the Association of Racing Commissioners International (“ARCI”) Uniform Classification Guidelines for Foreign Substances and

Recommended Penalties and Model Rule. ARCI members are responsible to ensure the integrity of horse racing and pari-mutual wagering.

22. Throughout the hearing, Norris was sending text messages, was rude, disrespectful, and disrupted other witnesses' testimony by making outbursts on numerous occasions. He was warned by his counsel and ALJ Pylitt to refrain. (Hearing transcript pp. 208, 210, 223, 224, 225, 261, 287).

### III. FACTS UNDERLYING THE VIOLATIONS AND PROPOSED SANCTIONS

#### A. Substantial and Reliable Evidence Supports the Conclusion that five Norris horses had hydrocortisone succinate in their blood on race day in violation of 71 IAC 8.5-1-2.

23. At all times relevant during 2014, Norris was a licensed trainer in the State of Indiana, and the trainer of record for each of the five horses that tested positive for hydrocortisone succinate. Joint Exhibit 1 (Stipulations 1, 2, 9, 16, 23, and 30).

24. During 2014, Norris was bound to comply with the trainer responsibility rule, 71 IAC 5.5-3.2, which provides that a positive test for a prohibited substance is prima facie evidence of a violation of this rule.

25. Norris' responsibilities as a trainer included preventing "...the presence of any prohibited drug, medication, or other substance, including permitted medication in excess of the maximum allowable level, in horses he or she trains regardless of the acts of third parties. ...." (71 IAC 5.5-3-2(a)(2)). Norris was subject to sanctions in the event he "violated or attempted to violate a provision of this article, these rules, or a law or rule with respect to horse racing in a jurisdiction." (71 IAC 5.5-1-14(b)(4)). Norris was further subject to sanctions if he "engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility." (71 IAC 5.5-1-14(b)(10)).

26. Hydrocortisone is a naturally occurring corticosteroid which is used in veterinary medicine as an anti-inflammatory agent and often administered by intramuscular ("IM") or intravenous ("IV") injection in the form of hydrocortisone hemisuccinate (also known as "hydrocortisone succinate") which is water-soluble and allows high blood levels of hydrocortisone to be rapidly attained.

27. Hydrocortisone succinate is a foreign substance that is not permissible, at any level, in any horse participating in a pari-mutuel race in Indiana. (71 IAC 8.5-1-2). The foreign substances that may be present in a horse's system while participating in a pari-mutuel race in Indiana are identified at 71 IAC 8.5-1-4.1, 71 IAC 8.5-1-4.2, and 71 IAC 8.5-1-5. Hydrocortisone succinate is not identified in any of those rules.

28. During 2014, Norris was the trainer of record for the thoroughbred race horse Happy Moro. Joint Exhibit 1 (Stipulation 2)

29. On May 28, 2014, Happy Moro placed first in the first race conducted at Indiana Grand. (Stipulation 3)

30. After the May 28, 2014, race, blood and urine samples were taken from Happy Moro. (Stipulation 5)

31. Testing conducted by LGC indicated the presence of hydrocortisone succinate in the sample(s) obtained from Happy Moro. IHRC Staff Exhibit B.

32. Despite being offered the opportunity for split sample testing, on August 19, 2014 Norris waived his right to a split sample test on the sample taken from Happy Moro pursuant to 71 IAC 8.5.3-3(c). Joint Exhibit 1 (Stipulation 8)

33. Happy Moro carried in its body hydrocortisone succinate at the time it participated in the first race on May 28, 2014, at Indiana Grand. (Stipulation 44a)



34. During 2014, Norris was the trainer of record for the thoroughbred race horse Sugar's Pretty Boy. (Stipulation 9)

35. On June 7, 2014, Sugar's Pretty Boy placed first in the third race conducted at Indiana Grand. (Stipulation 10)

36. After the race, blood and urine samples were taken from Sugar's Pretty Boy. (Stipulation 12)

37. Testing conducted by LGC indicated the presence of hydrocortisone succinate in the sample(s) obtained from Sugar's Pretty Boy. (IHRC Staff Exhibit D)

38. Despite being offered the opportunity for split sample testing, on August 19, 2014 Norris waived his right to a split sample test on the sample taken from Sugar's Pretty Boy pursuant to 71 IAC 8.5.3-3(c). (Joint Exhibit 1) (Stipulation 15)

39. Sugar's Pretty Boy carried in its body hydrocortisone succinate at the time it participated in the third race on June 7, 2014, at Indiana Grand. (Stipulation 44b)

40. During 2014, Norris was the trainer of record for the thoroughbred race horse Lady Dozer. (Stipulation 16)

41. On June 10, 2014, Lady Dozer placed first in the third race conducted at Indiana Grand. (Stipulation 17)

42. After the race, blood and urine samples were taken from Lady Dozer. (Stipulation 19)

43. Testing conducted by LGC indicated the presence of hydrocortisone succinate in the sample(s) obtained from Lady Dozer. (IHRC Staff Exhibit F)

44. Despite being offered the opportunity for split sample testing, on August 19, 2014 Norris waived his right to a split sample test on the sample taken from Lady Dozer pursuant to 71 IAC 8.5.3-3(c). (Joint Exhibit 1) (Stipulation 22)

45. Lady Dozer carried in its body hydrocortisone succinate at the time it participated in the third race on June 10, 2014 at Indiana Grand. (Stipulation 44c)

46. During 2014, Norris was the trainer of record for the thoroughbred race horse Jodavi. (Stipulation 23)

47. On June 14, 2014, Jodavi placed first in the fourth race conducted at Indiana Grand. (Stipulation 24)

48. After the race, blood and urine samples were taken from Jodavi. (Stipulation 26)

49. Testing conducted by LGC indicated the presence of hydrocortisone succinate in the sample(s) obtained from Jodavi. (IHRC Staff Exhibit H)

50. Despite being offered the opportunity for split sample testing, on August 19, 2014 Norris waived his right pursuant to 71 IAC 8.5-3-1 et. seq. to a split sample test on the sample taken from Jodavi pursuant to 71 IAC 8.5.3.3(c). (Joint Exhibit 1) (Stipulation 29)

51. Jodavi carried in its body hydrocortisone succinate at the time it participated in the fourth race on June 14, 2014 at Indiana Grand. (Stipulation 44d)

52. During 2014, Norris was the trainer of record for the thoroughbred race horse West on Main. (Stipulation 30)

53. On June 20, 2014 West on Main placed first in the fifth race conducted at Indiana Grand. (Stipulation 31)

54. After the race, blood and urine samples were taken from West on Main. (Stipulation 33)

55. Testing conducted by LGC indicated the presence of hydrocortisone succinate in the sample(s) obtained from West on Main. (IHRC Staff Exhibit J)

56. Despite being offered the opportunity for split sample testing, on August 19, 2014 Norris waived his right to a split sample test on the sample taken from West on Main pursuant to 71 IAC 8.5.3-3(c). (Joint Exhibit 1) (Stipulation 36)

57. West on Main carried in its body hydrocortisone succinate at the time it participated in the fifth race on June 20, 2014, at Indiana Grand. (Stipulation 44e)

58. Norris testified that he had no knowledge when his horses were injected with hydrocortisone succinate. (Norris testimony, hearing transcript, p. 314, lines 1-8).

59. There are no vet treatment records or billing statements that reflect that the five (5) horses that tested positive for hydrocortisone succinate received that medicine the day or two before the race. (Gorajec testimony, hearing transcript, p. 326, lines 18-24; p. 327, lines 7-21).

60. Solu-Cortef is typically administered to horses hours prior to a race for its calming effect:

Q. Then you were talking the effect that these would have on horses if they were administered as pre-race?

A. Right.

Q. What sort of effect is there?

A. It's not the anti-inflammatory effect. That's not the rationale for the use of the drug to manipulate performance. It's actually for a very subtle effect of the drug. It provides sort of a temporary euphoria. That's the best way that I can describe it. But the end result of that, the practical effect of that euphoric state is a calming effect. So a horse that gets wound up or agitated prior to the race, this just kind of evens them out, takes the edge off just a little bit. It's a property that's been noted of the corticosteroids for a long time, but it's a very subtle effect. I'm not aware that it's ever been published. But, again, it's not something that's easy to be measured because the effect is subtle, and it's subjective, and it's visual. So, again, anecdotal but that's what you hear in terms of why it's used as a pre-race.

(Dr. Scot Waterman testimony, hearing transcript p. 109, lines 24-25; p. 110, lines 1-21)

61. The level of hydrocortisone succinate rapidly decreases as a sample sits in frozen storage:

Q. Let's move to Exhibit V. "The detection of 21-corticosteroid esters in the horse and investigation of the stability of these compounds in plasma and urine." What did you learn from this study?

A. This is a companion study. The primary piece of information I took from this one is on page 324 in the upper left-hand corner. What this shows is that the succinate is not very stable under storage conditions. And even when the plasma is stored at minus 20-degrees, 82 percent of it degrades within a period of one week.

Q. Can you take that down another level?

A. Well, what it means is that in the stored sample, that is the sample collected after racing, that the ester is hydrolyzing. And once it's hydrolyzed, it's no longer detectable. In the period of one week, 82 percent of what was there at the start is gone.

Q. Okay. So this is for frozen serum?

A. Right, minus 20.

Q. Do you store your samples frozen?

A. Another way of looking at it is only 18 percent of what was there at the beginning remains at the end of a week.

Q. So if there was 100 picograms per milliliter, at the end of the week there's 18?

A. Correct.

(*Id.*, p.56, lines 23-25; p. 57 lines 1-25).

62. The blood samples taken from each of the Norris horses that tested positive for hydrocortisone succinate remained in frozen storage for more than a month before it was tested:

Q. How long did the blood sit in storage at LGC before you analyzed it for hydrocortisone succinate?

A. Until the day or two before the report was issued so it was August.

Q. So weeks?

A. Yes.

Q. Months?

A. Yes.

(Dr. Sams testimony, hearing transcript p. 58, lines 21-25; p. 59 lines 1-3)

63. It is reasonable to conclude that the levels of hydrocortisone succinate in the samples taken from Norris' horses at the time of collection were far higher than the levels eventually detected in the blood after it was in frozen storage for weeks or months:

Q. To be clear, you think the substance was administered race day, in part at least, due to the rapid deterioration of the hydrocortisone succinate in the blood. It simply disappears fast, right?

A. Yes.

(*Id.*, p. 94, lines 22-25; p. 95, line 1)

64. The lowest level of hydrocortisone succinate that can be detected in blood is 250 picograms per milliliter:

Q. You said that the study indicated that 250 picograms per milliliter was your lower end limit of detection?

A. That's what was reported by de Kock. So we made the decision that we would not report anything at a lower concentration than the limit of detection reported by de Kock.

Q. In these five samples, the lowest level you identified was 700 picograms per milliliter?

A. That's correct. I think it's reported in the report as .7 nanograms per milliliter, but those are equivalent.

(*Id.*, p. 59 lines 13-24)

65. Dr. Sams reported that in blind testing LGC detected the following amounts of hydrocortisone succinate in the blood of the Norris horses:

Horse	Race Date	Sample No.	Level of Hydrocortisone Succinate in Blood (pg/mL)
Happy Moro	May 28, 2014	45563	2,800 pg/mL
Sugar's Pretty Boy	June 7, 2014	45655	2,700 pg/mL
Lady Dozer	June 10, 2014	45669	1,700 pg/mL
Jodavi	June 14, 2014	45754	700 pg/mL
West on Main	June 20, 2014	45800	1,500 pg/mL

Source: IHRC Staff Exhibits A, B, C, D, E, F, G, H, I, J, and BB

66. The levels of hydrocortisone succinate identified in each of Norris' five horses' blood samples are consistent with race day administration by injection:

Q. So based on your analysis of these samples and your review of the relevant research, is it your conclusion as an expert that each Mike Norris horse that tested positive for hydrocortisone succinate was administered Solu-Cortef by injection within 24 hours of post time?

A. It is.

Q. Have you heard or read anything since you issued your letter that changes your opinion on this matter?

A. No.

(Dr. Sams testimony, hearing transcript, p. 6, lines 8-18)

Q. Mr. Shanks was asking you if you were conclusive about these horses being administered an injection of Solu-Cortef on race day. Now, do you think it's possible that five separate horses were administered Solu-Cortef outside of the 24-hour window and had these numbers?

A. I don't think it's very likely.

(*Id.*, p. 94, lines 15-21)

67. Dr. Barker disagrees with Dr. Sams' race day administration opinion. While Dr. Barker has impressive credentials, neither his laboratory nor he ever tested for hydrocortisone

succinate and he has refused to perform a split sample test despite being previously asked. (Dr. Barker testimony, hearing transcript, p. 167, lines 24-25; p. 168, lines 3-5).

**B. Substantial and Reliable Evidence Supports the Conclusion that Solu-Cortef was Administered Parenterally on Race Day, and not administered orally for the treatment of hives as Norris has contended.**

68. Hydrocortisone succinate is a corticosteroid manufactured as Solu-Cortef. IHRC Staff Exhibits CC and DD.

69. Solu-Cortef is manufactured as an injectable. ("hydrocortisone sodium succinate for injection"). (IHRC Staff Exhibit DD)

70. Norris testified that the Solu-Cortef was being administered to his horses in 2014 to combat hives:

Q. To the best of your knowledge, was the hydrocortisone succinate administered for the treatment of hives?

A. Yes.

(Norris testimony, hearing transcript p. 315 lines, 17-20)

71. Sheri Norris (Norris' wife) testified that Solu-Cortef was mixed with Wind Aid, a throat wash for horses, and administered orally:

I discussed with Ross (Dr. Russell) how else can we try to treat these hives where the horses were broken out without having to give the hydrocortisone succinate IV or IM, however he administered it. So in that discussion, we thought we could mix it with the Wind Aid solution, and then it would be effective.

(Sheri Norris testimony, hearing transcript p. 269, lines 19-25)

72. Dr. Ross Russell, who provided veterinary services to the Norris horses, testified:

Q. You instructed the Norrises to mix Solu-Cortef with Wind Aid?

A. I don't know if I instructed them, but that was the plan. I mean, we talked about it. I think we come to an agreement like, okay, maybe topical administration will help. At some point, I don't know if it was my idea or a combination but yes.

Q. Tell me about the mixture that you determined would be best. How much Solu-Cortef? How much Wind Aid?

A. A lot of times in veterinary practice, you just guesstimate. I put a bottle, took the bottle, put it in there. It was a decent sized medication. It was almost just practice and see. And they seemed to think that helped.

(IHRC Staff Exhibit R, March 30, 2015 Deposition of Dr. Ross Russell, IHRC Staff Exhibit R, p. 59, lines 24-25 and p. 60, lines 1-12)

73. Solu-Cortef is an expensive medicine that is designed to treat patients with acute issues. Contrary to Norris' explanation, it is not a drug that should be recommended for or used in the treatment of chronic issues, such as hives:

Q. Is Solu-Cortef something you would use to treat hives on a horse?

A. No.... [U]sing a drug that's designed to treat an acute crisis is not what I would tend to choose for a chronic, long-term disease.

(Dr. Scot Waterman testimony, hearing transcript p. 112, lines 24-25; p. 113, lines 1, 17-19; p. 138, line 3)

74. Dr. Waterman described using Solu-Cortef to treat hives like "shooting a fly with an elephant gun". (Dr. Waterman testimony, hearing transcript p. 138, lines 23-25)

75. Dr. Ross Russell, Norris' veterinarian, testified at page 44-45 of his deposition on March 30, 2015 (IHRC Staff Exhibit R) that Solu-Cortef is an anti-inflammatory not commonly used in race horses, and that Norris was probably the only trainer in Indiana that used it.

76. Solu-Cortef is administered parenterally (by intravenous or intra-muscular injection):

Q. Do you know how hydrocortisone succinate is administered?

A. Yes.

Q. How is it?

A. By injection.



Q. Is that Solu-Cortef?

A. That's a trade name for hydrocortisone sodium succinate, yes.

(Dr. Richard Sams testimony, hearing transcript, p. 45, lines 23-25 and p. 46, lines 1-5)

77. Contrary to Norris' and his wife's testimony, Solu-Cortef is not recommended for oral administration, and is not likely to survive the gastro-intestinal tract if administered orally:

Q. Are you familiar with any literature that suggests [Solu-Cortef] can be administered orally?

A. No.

Q. Would you expect the succinate to survive the GI tract of the horse?

A. No.

(*Id.* p. 46, lines 6-11)

78. The labeling instructions of Solu-Cortef specifically recommend against mixing it with any other solutions. IHRC Staff Exhibit DD

79. Solu-Cortef, once prepared for use, is to be used within three days, and any unused mixture is to be discarded.

**C. Substantial and Reliable Evidence Supports the Conclusion that Race-Day parenteral administration of any substance is an aggravating factor to consider in determining penalties.**

80. The levels of hydrocortisone succinate identified in each of Norris' five horses' blood samples are consistent with race day administration by injection.

81. The administration to a horse of any substance, other than furosemide, on race day is a violation of one of the fundamental rules of pari-mutuel racing. 71 IAC 8.5-1-1.5

82. The injection of any substance, other than furosemide, on race day aggravates the violation:

Q. Does Indiana have a trainer responsibility rule?

A. Yes, they do.

Q. What does that rule mean?

A. It makes the trainer responsible for the care, control, and custody of the animal. And there's a lot of responsibilities that go along with that, including the drugs and medication and foreign substances that are in the horses that they train and that they race.

Q. It's a fairly high standard, wouldn't you agree?

A. By high, it's an obvious standard. Everyone knows it.

Q. Do you hear some complaints about it from trainers?

A. A few that get in trouble.

Q. Why is it important to have this rule?

A. Well, if you're protecting the integrity of horse racing, and you want everyone on a level playing field, you don't want people taking advantage of drugs and medication and foreign substances and putting them in horses and having those affect performance. But the 24-hour rule, you know, a lot of drugs, a lot of drugs aren't effective outside, if they're given outside 24 hours. And you just don't want to have a situation where you don't have that kind of standard where everyone's running around, trainers are running around with injectables and poking horses on race day and filling them up with drugs.

Q. Do you think that would happen if the trainers weren't ultimately responsible for everything that happens in their stable?

A. Well, to some extent it happens even with the rule. If the rule didn't exist, it would be just an intolerable situation.

(Gorajec testimony, hearing transcript, p. 191, lines 24-25; p. 192 lines 1-25; and p. 193, lines 1-7)

83. Despite the acknowledgement in his signed application for a license as a trainer in 2014 that he would follow all rules and regulations of the Commission, Norris testified in his March 27, 2015 deposition (pg. 24, line 15) (IHRC Exhibit P) and during the hearing that the trainer's responsibility rule is "wrong" since "people are going through the barn day and night". (Norris testimony, hearing transcript, pp. 321-322).

**D. Substantial and Reliable Evidence Supports the Conclusion that the timing of notification of the Norris positives was not a mitigating factor.**

84. The Norris horses carried prohibited substances during races in May and June of 2014. Norris was notified of the following positives test results on August 15 2014:

Horse	Race Date	Date of Certificate of Analysis
Happy Moro	May 28, 2014	August 8, 2014
Sugar's Pretty Boy	June 7, 2014	August 8, 2014
Lady Dozer	June 10, 2014	August 11, 2014
Jodavi	June 14, 2014	August 12, 2014
West On Main	June 20, 2014	August 12, 2014

Source: IHRC Staff Exhibits A, B, C, D, E, F, G, H, I, J

85. The Commission Staff was under no time constraints with respect to notifying trainers of positive test results. The underlying Lake Superior Court's Special Findings served as the basis for the Court of Appeals Decision which reached this conclusion in the (unrelated) case of *Mark P'Pool v. Indiana Horse Racing Commission* on October 2, 2008.<sup>3</sup>

P'Pool's claim that the IHRC's actions were somehow unfair because he was not notified of the positive test results of the drug tests until he had accumulated 11 positive test results. However, the IRC rules do not require that notice of a positive drug test be given within any defined time period. The investigators were trying to discover who was drugging horses and how widespread was this practice. The tactic of withholding notification of positive test results to enable the investigators to discover how wide spread was the practice, is not an unfair or improper one. Especially when one considers this doping of horses takes place secretly. This is not entrapment. (emphasis added)

(IHRC Staff Exhibit MM, paragraph M, page 5 of the Lake Superior Court's Special Findings, Conclusions thereon and Order.) The Indiana Court of Appeals upheld the trial court's decision

<sup>3</sup> The Court of Appeals decision is a Memorandum Decision – Not for Publication.

in *P'Pool v. Indiana Horse Racing Commission*, 916 N.E.2d 668 (Ind. App. 2009) on August 27, 2009.<sup>4</sup>

86. The Indiana Court of Appeals further found that the IHRC Staff had no duty to immediately inform P'Pool of the positive tests, and its decision to withhold notice while it continued testing was not arbitrary or capricious. (*Id.*, 916 N.E.2d at 675.)

87. The *P'Pool* case involved a situation where the IHRC Staff made a calculated decision to withhold positive test results in order to discover the full extent of the use by horsemen of a particular foreign substance.

88. Any delay in notifying the Commission of positive test results for Norris' horses was outside of the control of Commission Staff and was due to work flow issues with the IHRC's Primary Laboratory.

89. Exhibit A, the contract between the Commission and LGC lab (Respondent Exhibit 4), in effect at all relevant times (entitled "Duties of Contractor" under the heading "Scope of Work"), provided:

"Testing must be highly accurate and results must be reported in an expedient manner".

90. Paragraph 2 of Exhibit A, the contract between the Commission and LGC lab (Respondent Exhibit 3), which was in effect at all relevant times provided:

"The laboratory shall complete any confirmatory analysis of suspicious findings and communicate such findings, by email or facsimile, within 5 business days of receipt of the samples, excluding Saturdays and Sundays, to the Executive Director and follow with written report within 24 hours of the communication. The laboratory, for cause, may request of the Executive Director additional time to perform confirmatory analysis."

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<sup>4</sup> *P'Pool* received a six (6) year suspension and a \$30,000.00 fine for 11 positive tests involving a class 4 substance.

91. Even if LGC laboratory failed to comply with the time limits in its contract with the Commission, Norris was not a party to said contract and had no rights thereunder.

92. The LGC's Certificates of Analysis reporting positive samples for Norris' horses were not received by the Commission until 49 to 70 days after the samples were being received by the laboratory. (Respondent Exhibit 4)

93. Norris has no contractual rights under the contract between the Commission and LGC laboratory. Any remedy for a breach by LGC did not inure to the benefit of Norris.

94. Any delay in notifying the Commission of these positive results was a result of work flow issues at the LGC laboratory and would not mitigate any penalty assessed against Norris.

95. It is the Commission Staff's opinion that there is no way to mitigate a race day administration, which is an attempt to violate the rules and regulations, unless a trainer comes forward and tells the truth about the administration time and method:

Q. Is there any way to mitigate race-day violations?

A. I think that the only way I can think of offhand to mitigate race-day violations is come in and tell the truth. We always give a lot of points for people who come in and tell the truth as opposed to change your story, concoct stories, make up things that just don't make any sense at all. And so that is one way. I'm not sure if there is another way.

Q. Do you think that happened in this case?

A. Absolutely not.

(Joe Gorajec testimony, hearing transcript, p. 251, lines 4-13)

96. Through the entire investigation, and during the hearing before ALJ Pylitt, Norris provided inconsistent and contradictory testimony in an effort to support of his changing version of the events.

97. The Commission Staff clearly established aggravating factors that support the imposition of an enhanced penalty, specifically:

- a. The Norris horses received Solu-Cortef on race day, by injection;
- b. Norris has not been honest about the circumstances surrounding the positive tests;  
and
- c. Norris has failed to accept responsibility for those violations.

98. Norris failed to present any credible evidence during the hearing before ALJ Pylitt that would mitigate the penalties proposed by the Commission Staff:

1. So the distinction here is race-day administration, intention to cheat, deliberate violation of the rules?

A. Yes.

Q. Have you heard anything today or read anything as you've reviewed deposition transcripts that you think would go to mitigation in this case?

A. No.

Q. How long have you been recommending penalties?

A. We started in '94, 20 years.

(Gorajec testimony, hearing transcript, p. 217, lines 23-25; p. 218, lines 1-7)

**E. Substantial and Reliable Evidence Supports the Conclusion that Norris refused to be truthful and forthcoming to Commission Staff during the course of its investigation as required by 71 IAC 5.5-1-28(a).**

96. Norris' testimony during the course of investigation, and the hearing on the Administrative Complaint, provided inconsistent and contradictory testimony, and was not supported by any credible or reliable evidence.

97. Norris changed his story as the investigation progressed:

- a. Upon learning of the positive tests, the IHRC Staff took Norris' statement on August 15, 2014. Norris told the Commission Staff: "It just blows my mind

that it's in there". Further Norris stated that he had no idea of how the drug got into the horses' systems. IHRC Staff Exhibit T (recorded statement of Mickel Norris taken August 15, 2014).

- b. As the investigation continued, Norris changed his story, saying that the Wind-Aid spiked with Solu-Cortef was the likely source. IHRC Staff Exhibit P (Deposition of Mickel Norris, taken March 27, 2015); IHRC Staff Exhibit Q (Deposition of Sheri Norris, taken March 27, 2015); and IHRC Staff Exhibit R (Deposition of Dr. Ross Russell, taken March 30, 2015).
- c. 13 days prior to the hearing before ALJ Pylitt, Norris retained an expert who suggested the possibility of residual contamination to Norris' horses who may have urinated on hay that they then consumed, thereby re-ingested the drug orally. IHRC Staff Exhibit S (Deposition of Dr. Steven Barker, taken on April 24, 2015).
- d. Norris' expert was advised that the horses had received one gram doses of Solu-Cortef by IV administration outside of the 24 hour window. (Dr. Barker testimony, hearing transcript p. 171, line 1). However, there are no vet treatment records or bills indicating said administration at or around the dates of the races.

98. Norris' changing explanations lack merit and failed to support his claims of innocence:

- a. Norris' initial statement to the Commission Staff on August 15, 2014 (IHRC Staff Exhibit T) that he had no knowledge of how the horses he trained ended

up testing positive for hydrocortisone succinate is contradicted by his later alternative theories.

- b. Norris next explanation was that the horses he trained had been orally administered Wind-Aid that had been mixed with Solu-Cortef, resulting in the positives. This explanation was clearly refuted by the testimony of Dr. Sams, Dr. Waterman, and Pfizer's Solu-Cortef labeling information.
- c. The third explanation that a horse would have had a hydrocortisone succinate positive as a result of ingesting contaminated hay lacks any merit or support from the evidence in the record. During the hearing Norris' expert Dr. Barker rejected his theory during the hearing which he initially suggested during his deposition:

Q. Do you think there's a possibility that hydrocortisone succinate was detected in these horses because of residual contamination?

A. Not particularly, no.

(Dr. Barker testimony, hearing transcript at p. 175, lines 19-22)

99. The IHRC Staff had no duty to immediately inform Norris of the positive tests, and its decision to withhold notice was not arbitrary or capricious.

**F. Substantial and Reliable Evidence Supports the Conclusion that the Norris horse Sea of Enquiry did, at the time of the May 24, 2014 race, have in its system triamcinolone acetonide in excess of levels permitted by Indiana rule.**

100. On May 24, 2014, Norris was the trainer of record for the thoroughbred race horse Sea of Enquiry. Joint Exhibit 1 (Stipulation 37)

101. On May 24, 2014, Sea of Enquiry placed third in the seventh race conducted at Indiana Grand. (Stipulation 38)



102. After the May 24, 2014 race, blood and urine samples were taken from Sea of Enquiry. (Stipulation 40)

103. Testing conducted by LGC indicated the presence of triamcinolone acetonide in excess of the allowable threshold in the sample(s) obtained from Sea of Enquiry. IHRC Staff Exhibit L.

104. A split test requested by Norris was conducted at the UC-Davis Maddy Lab confirmed the presence of triamcinolone acetonide in excess of the allowable threshold in the sample(s) obtained from Sea of Enquiry. IHRC Staff Exhibit M.

105. Sea of Enquiry carried in its body triamcinolone acetonide in excess of the allowable threshold at the time it participated in the seventh race on May 24, 2014 at Indiana Grand. Joint Exhibit 1 (Stipulation 44f)

106. Norris offered no explanation about how Sea of Enquiry had triamcinolone acetonide in excess of the allowable threshold during the seventh race on May 24, 2014.

**IV. NORRIS' EXPLANATIONS/THEORIES PRESENTED AT THE HEARING FAILED TO CONTRADICT THE EVIDENCE OFFERED BY THE COMMISSION STAFF**

107. Norris' theory through Dr. Baker<sup>5</sup> that there is no reliable scientific data by which either a veterinarian or trainer can accurately determine the withdrawal time for either hydrocortisone succinate or Vetalog to avoid the possibility of the medication being in a horse's blood at the time of a race, was clearly refuted by the testimony of Drs. Sams and Waterman.

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<sup>5</sup> Norris' expert Dr. Steven Barker was previously criticized by a three (3) judge panel in Canada for being more of an advocate than an expert. (Dr. Barker testimony, hearing transcript, p. 179; IHRC Staff Exhibit GG, paragraph 44, Ruling No. -Com- SV030(a)/2009 In The Matter of The Racing Commission at S02000 In Re: Standardbred Licensee William Elliott). Dr. Barker's testimony during the hearing was similarly argumentative and non-responsive on occasion. (Hearing transcript pp. 148, 163, 170 and 173).

108. Norris' alternative explanation/theory that the five (5) horses that tested positive were being treated for an inflammatory, allergic medical condition known as "hives" by intramuscular or intravenous administration of hydrocortisone succinate by Dr. Ross Russell, DMV, at various times including at an unspecified time the day before each race was refuted by the testimony of Drs. Sams and Waterman and the lack of any treatment records or bills indicating the date(s) of administration.

109. Norris' additional explanation/theory that the five (5) horses that testing positive were administered hydrocortisone succinate ("Solu-Cortef") orally, at unknown times, by use of an aqueous solution containing a product known as "Wind Aid" was refuted by the testimony of Drs. Sams and Waterman and the packing information by the manufacturer of Solu-Cortef.

110. Norris's final explanation/theory that had he been advised in a timely fashion of the first positive test he would have changed his training habits is self-serving and not credible.

111. Norris admitted that all six (6) of the horses involved carried medicine on race day in violation of the Rules. (Joint Exhibit 1)

112. Norris offered no credible or reliable evidence that contradicts the evidence offered by the Commission Staff at the hearing.

**V. THE SANCTIONS PROPOSED BY THE COMMISSION STAFF ARE REASONABLE AND APPROPRIATE.**

113. Joe Gorajec is the Executive Director of the Commission and has held that position from 1990 to the present. Mr. Gorajec has extensive training and experience in the horse racing industry. He is believed to be the longest standing Executive Director of a Horse Racing Commission in the country. (Gorajec testimony, hearing transcript p. 188, lines 13-14).

114. Mr. Gorajec has been delegated the authority by the Commission to prepare and issue Administrative Complaints (formerly Preliminary Reports) pursuant to the provisions of 71

IAC 10-3-20. Mr. Gorajec has issued Administrative Complaints and Preliminary Reports since horse racing began in the State of Indiana in September 1994. (Gorajec testimony, hearing transcript p. 188, line 10).

115. As the Commission's Executive Director, it is Mr. Gorajec's responsibility to propose sanctions for violations that a Commission investigation reveals have been committed. Mr. Gorajec was the only witness who testified at the hearing who is qualified by training, special skills, and experience to address an appropriate sanction for a particular racing related violation.

116. In proposing a penalty, the Commission Staff is required to consider the facts specific to and the severity and seriousness of the violation(s). 71 IAC 2-11-1; 71 IAC 10-3-20(b).

117. After recommended penalties have been proposed, the ALJ may in his discretion accept, reject or modify them. 71 IAC 10-3-12 (f).

118. Mr. Gorajec testified that the violations at issue were very serious due to the fact that the five Norris horses with hydrocortisone succinate positives received race day injections of the drug:

Q. Why does race day matter?

A. Oh, race day matters, race day matters. Again, I sat through the testimony. And there's a few people who explained the race day as a 24 hour. I mean, we have that 24-hour rule. I think most every jurisdiction that I'm aware of has a similar 24-hour rule. **And, you know, it's not a thin line. It's a really bright, big bold line that all the participants, all the trainers in the business know that it's a line that can't be crossed.** Other than we do allow for one therapeutic medication called furosemide to be allowed four hours out. Other than the furosemide, medication and drugs, especially by IV, just cannot be given.

(Gorajec testimony, hearing transcript p. 191, lines 9-23) (*emphasis added*)

119. 71 IAC 10-3-12(f) specifically provides that “the special skill and knowledge of the Commission and Commission Staff may be used in evaluating the evidence.”

120. ALJ Pylitt expressly finds that Mr. Gorajec is qualified to propose an appropriate sanctions to assess for violations by way of his training and experience in the field of horse racing regulation.

121. Mr. Gorajec testified that his penalty recommendation was based on Dr. Sams’ conclusion that the five hydrocortisone succinate positives were the result of race day administration by injection. (Gorajec testimony, hearing transcript p. 191, lines 3-5).

122. Race day administration is an egregious violation of Commission rules, and is an indication of an attempt to cheat and gain an unfair advantage. (Gorajec testimony, hearing transcript p. 211, line 1). Race day administration is a flagrant violation that should be penalized commensurate with that violation. Since the five Norris horses received race-day injections of hydrocortisone succinate, an enhanced penalty is appropriate due to the aggravating circumstances.

123. Norris and his wife testified that they believed the recommended three (3) year suspension was unreasonable since 71 IAC 8.5-1-7.1 provides that the Commission Staff may treat multiple violations as a single violation. Further, Norris argued that had the Commission Staff notified Norris in a timely fashion following the first positive result, he would have changed his training habits.

124. Sheri Norris testified that the proposed penalty was excessive since she felt that Joe Gorajec had some underlying reason “to punish Norris so severely”. (Sheri Norris testimony, hearing transcript p. 277, lines 12-25).

125. Sheri Norris further testified that based upon an anonymous critical comment she posted about Dr. Libby Reese on the Paulick report, Joe Gorajec issued the Administrative Complaint. (Sheri Norris testimony, hearing transcript p. 285, lines 4-9; IHRC Staff Exhibit SS, October 23, 2014 email from Ray Paulick to Joe Gorajec).

126. Joe Gorajec did not take Sheri Norris' comments into consideration in deciding to issue the Administrative Complaint. More importantly, he believed that the mother of a wife of a suspended trainer in Kentucky made those comments. (Gorajec testimony, hearing transcript, p. 328, line 10; p. 331, lines 6-10).

127. The financial impact upon the Norris family in defending this action is not relevant to the penalty recommended. (Sheri Norris testimony, hearing transcript, pp. 276-277)

128. Norris testified in his deposition that he should receive no suspension and a \$500.00 fine for each of the five horses testing positive, totaling \$2,500.00. In his proposed Findings of Fact, he recommended that these five be treated as one positive with no suspension and a \$1,000.00 fine. As to the violation for triamcinolone acetonide, Norris recommended a thirty (30) day suspension and no fine.

129. Norris' testimony throughout the hearing was not credible.

130. Due to the serious nature of the violations, Norris' failure to accept responsibility for his actions, and his continually changing and inconsistent testimony, he is not deserving of any reduction in the proposed penalty. To allow for such a reduction under the evidence presented would be contrary to the public interest in that it would establish a harmful precedent that the Commission would reward a licensee for repeated lies and deceptive acts.

## CONCLUSIONS OF LAW

1. ALJ Pylitt has jurisdiction over this matter pursuant to his appointment by the Commission and the provisions of I.C. 4-21.5 et seq. and 71 IAC 10-3-7.
2. The Commission has promulgated rules, consistent with its legislative directive, that provide for the assessment of sanctions, including license suspension, revocation and/or fines to those who impermissibly medicate race horses on race day.
3. Norris was duly licensed by the Indiana Horse Racing Commission as an owner/trainer on April 29, 2014, and was at all times relevant, subject to the jurisdiction of the Indiana Horse Racing Commission.
4. Administrative Complaint No. 214002 was issued in accordance with Indiana statutes and Commission rules, and was supported by substantial and reliable evidence present during the hearing before the ALJ.
5. The evidence presented at the hearing, including the stipulation of the parties, demonstrated by greater than a preponderance of the credible and reliable evidence, that Norris committed the following violations:
  - a. Six violations of 71 IAC 5.5-3-2 (Trainer Responsibility);
  - b. Six violations of 71 IAC 8.5-1-2 (Foreign substances prohibited);
  - c. Five violations of 71 IAC 8.5-1-1.5(b) (Medication – 24-hour rule); and
  - d. One violation of 71 IAC 8.5-1-4.2(21).
6. Norris' violations of each of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.

7. A three (3) year suspension is reasonable in light of the numerous violations, aggravated circumstances, specifically the race day administration, of Solu-Cortef to five separate horses.

8. A \$15,000.00 fine is similarly reasonable in light of the aggravated circumstances.

9. Norris presented no credible or reliable evidence that would properly mitigate the proposed penalty.

### RECOMMENDED ORDER

1. ALJ Pylitt recommends that a Final Order be entered by the Indiana Horse Racing Commission in favor of the Indiana Horse Racing Commission Staff and against Norris, and that said order affirm Administrative Complaint 214002 in all material respects.

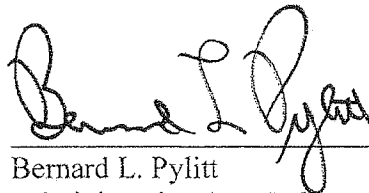
2. ALJ Pylitt adopts the following recommended sanctions from Administrative Complaint No. 214002, and recommends that Norris:

- a. Be suspended and remain ineligible for licensure for a period of three (3) years from the date of the summary suspension August 26, 2014 up to and including August 26, 2017;
- b. Be fined \$15,000.00; and
- c. All horses participating in the races identified in the Findings of Fact be ordered unplaced, and all purse monies earned be forfeited, returned, and redistributed pursuant to the provisions of 71 IAC 8.5-1-2(b), specifically:
  - i. Happy Moro is disqualified from first place in the first race on May 28, 2014 at Indiana Grand for the purpose of receiving purse money;
  - ii. Sugar's Pretty Boy is disqualified from first place in the third race on June 7, 2014 at Indiana Grand for the purposes of receiving purse money;

- iii. Lady Dozer is disqualified from first place in the third race on June 10, 2014 at Indiana Grand for the purposes of receiving purse money;
- iv. Jodavi is disqualified from first place in the fourth race on June 14, 2014 at Indiana Grand for the purposes of receiving purse money;
- v. West on Main is disqualified from first place in the fifth race on June 20, 2014 at Indiana Grand for the purposes of receiving purse money; and
- vi. Sea of Enquiry is disqualified from third place in the seventh race on May 24, 2014 at Indiana Grand for the purposes of receiving purse money.

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

SUBMITTED THIS 10TH DAY OF JUNE, 2015.

  
\_\_\_\_\_  
Bernard L. Pylitt  
Administrative Law Judge

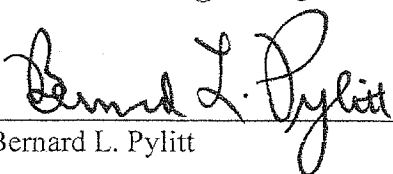


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served via email and first-class United States mail, postage prepaid this 10<sup>th</sup> day of June, 2015 to the following counsel of record:

John N. Shanks II  
SHANKS LAW OFFICE  
931 Meridian Street, Suite 403  
Anderson, IN 46016  
Email: jnshanks@aol.com

Holly Newell  
Indiana Horse Racing Commission  
1302 North Meridian, Suite 175  
Indianapolis, IN 46202  
Email: hnewell@hrc.in.gov

  
Bernard L. Pylitt

Bernard L. Pylitt  
Katz & Korin, PC  
334 North Senate Avenue  
Indianapolis, IN 46204  
Office: 317-464-1100; Fax: 317-464-1111  
Email: bpylitt@katzkorin.com

BEFORE THE ADMINISTRATIVE LAW JUDGE  
THE HONORABLE BERNARD PYLITT  
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF,	)	
Petitioner,	)	
	)	Administrative Complaint
vs.	)	214002
	)	
MICKEL NORRIS,	)	
Respondent.	)	

**RESPONDENT'S OBJECTION TO  
THE RECOMMENDED ORDER OF THE  
ADMINISTRATIVE LAW JUDGE**

Comes now the Respondent, by counsel, and objects to the Findings of Fact, Conclusions of Law and Recommended Order of Administrative law Judge Bernard Pylitt ("ALJ Pylitt") to-wit:

**FINDING OF FACT**

1. The Respondent does not object to Finding of Fact Nos. 1 – 5.
2. The Respondent does not object to Finding of Fact Nos. 6- 21.
3. The Respondent objects to Finding of Fact No. 22 in that the there was no evidence admitted which established that the Respondent was "sending text messages" and is only a presumption on the part of ALJ Pylitt because he had his cell phone in his hand and such behavior is irrelevant to the issue before ALJ Pylitt.
4. As to the remaining comments in Finding of Fact No. 22, the Respondent admits that this was a very emotional experience for him because he believed he was being mistreated by Executive Director Gorajec which was causing extreme economic impact upon his family but ALJ Pylitt neglected to disclose that the respondent apologized to ALJ Pylitt for his emotional behavior.
5. The Respondent does not object to Findings of fact Nos. 23 – 62 but objects to Nos. 63 – 64 because they are based upon supposition and not scientifically reliable evidence because "de Kock" was not a witness who could be cross-examined. Further, Dr. Sams in his deposition admitted that the "de Kock study" did not meet the standards of reliability established by the U.S. Supreme Court in Daubert v. Dow Pharmaceuticals 113 S.Ct. 278 (1993). (See Sams

deposition page 45 lines 20 -25) The Supreme Court's standard is clear, expert opinion on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community. ALJ Pylitt said on the record that he would not be bound by this standard which he has proved to be true.

6. The Respondent does not object to Findings of Fact Nos. 65 but objects to No. 66 because the conclusion of Dr. Sams is based upon supposition and not scientifically reliable data.

7. The Respondent objects to Finding of Fact No. 67 in that whether or not his laboratory tests for hydrocortisone succinate is irrelevant to the issue before ALJ Pylitt.

8. The Respondent does not object to Finding of Fact Nos. 68 -72.

9. The respondent objects to Finding of Fact No. 73 -74 because Dr. Waterman offered no scientifically reliable evidence to support his opinions.

10. The Respondent does not object to Findings of fact 75 – 79.

11. The Respondent objects to Findings of Fact No. 80 because it is based solely upon presumptive and not by any reliable scientific study presented into to evidence.

12. The Respondent does not object to Finding of Fact Nos. 80 – 90.

13. The Respondent objects to Finding of Fact Nos. 91 – 95 in that the contract with the laboratory was drafted for the purpose of providing timely results and the Commission was constrained from reporting the test results to the respondent because of the failure of the laboratory to comply with the terms of the contract. Further, once the results were received the Commission reported the results to the respondent within a reasonable time.

14. The Respondent objects to Finding of Fact No. 96 because of the emotional impact of the proceedings the respondent may have provided inconsistent testimony and from the beginning said he didn't know why the horses tested positive for the drugs.

15. The Respondent objects to Finding of Fact Nos. 97 -98 did not "clearly establish aggravating factors" in that there was no scientific reliable evidence of "race day injection", the Respondent, despite the emotional distress was honest about his recollection about the circumstances surrounding the positive tests and accept responsibility for the violations as a licensed trainer.

16. The Respondent objects to the characterization of his testimony in Finding of Fact No. 96.

17. The Respondent objects to Finding of Fact No. 97 in that he disagrees that the Commission Staff "clearly established aggravating factors that support the imposition of an enhanced penalty because: a) there was no credible evidence of that the "Norris horses received Solu-Cortef on race day by injection there were no witnesses to the alleged injection only supposition based upon an unreliable scientific theory expressed by the petitioner's expert witnesses; b) Norris was honest about the circumstance surrounding the positive tests because lack of understanding and confusion about how the horses received the Solu-Cortef in the quantity revealed by the laboratory; and c) Norris was never asked if he accepted responsibility for the violations because as a licensed trainer he had no option as was previously described.

18. The Respondent objects to Finding of Fact No. 98 because there was no reliable scientific evidence of race day administration by injection, any positive test could be construed as an "intent to cheat" and a "deliberate violation of the rules". Had Executive Director Gorajec heard anything during the hearing or read anything in the depositions which "would go to mitigation in this case" he would have said "no" otherwise he would have provided inconsistent testimony which would not support his unreasonable and excessive penalty proposal.

19. The Respondent objects to Finding of Fact No. 96 and 97 under Section E beginning on page 22 (it should be noted that following Finding of Fact No. 98 on page 22 of ALJ Pylitt's recommended order the sequence of paragraph numbers changed due to a clerical error). The objection is that ALJ Pylitt failed to recognize that the Respondent's "inconsistent and contradictory testimony" was due to the emotional distress he was experiencing as a result of the Commission Staff's actions and the fact that there were no veterinarian treatment records or bills indicating administration of the drug outside of the "24 hour window" was beyond the Respondent's control.

20. The Respondent objects to Finding of Fact No. 98 (Page 23) for the same reasons express in Objection paragraph 19, above.

21. The Respondent objects to Finding of Fact No. 99 (Page 24) in that although there is no Administrative Rule requiring the IHRC Staff to "immediately inform" the respondent of the positive tests they have an ethical duty, in the best interest of the integrity of horse racing, to

immediately notify a trainer of a positive test especially under the circumstance in this case where the testing laboratory failed to comply with the terms of its contract with the Commission. The Commission Staff provided the Respondent with notice of the positive test results within a reasonable period of time once they received notice from the laboratory but the timing of the results deprived the Respondent the opportunity to investigate the administration of the hydrocortisone succinate and avoid additional violations.

22. The Respondent does not object to Findings of Fact Nos. 100 – 106 beginning of Page 24.

23. The Respondent objects to Finding of Fact Nos. 107 – 109 beginning on Page 25 Dr. Sams and Dr. Waterman disagreed with the testimony of Dr. Barker but could not “refute” it because they had no scientifically reliable evidence to present only opinion and supposition to support the Commission who employed them to defend the Staff’s arguments.

24. The Respondent objects to Finding of Fact Nos. 110 – 112 on Page 26, in that when testifying at hearing and in deposition, was under severe emotional distress because of the actions of the Commission Staff and the testimony of his witnesses was credible and the evidence was reliable. The facts are clear, he was deprived of the opportunity to change his training habits and avoid additional positive tests and does not lack credibility.

The Staff’s recommended enhanced sanctions are unsupported by reliable scientific evidence and in retribution for the Respondent not agreeing to lie about the actions of Dr. Ross Russell, support the allegations of Dr. Russell’s former employee, Dr. Reese, and because of the negative comments about the Executive Director made by Sheri Norris in the Paulick Report last summer. Subsequently the Staff has provided a copy of ALJ Pylitt’s recommended order to the Ray Paulick, a friend of the Executive Director, for publication on June 22, 2015, further demining the Norris family and causing addition intentional infliction of emotional distress upon the Respondent.

25. The Respondent objects to Finding of Fact Nos. 113 – 130 beginning of Page 26 in that the violations were not as serious as violations of other trainers (Respondent’s Exhibit #9 involving 3 Clenbuterol positives, ARCI Class 3 drugs and 3 Dexamethasone positives, ARCI Class 4 drugs) and during the 2014 racing season and that licensee continues to race. Although the Executive Director testified that he did not take the comments of Sheri Norris (printed in the Paulick Report blog) into consideration in determining the proposed enhanced sanctions the

timing of those comments which were sent to him by Ray Paulick (Respondent's Exhibit #10) and the issuance of the Administrative Complaint are suspiciously coincidental. Pursuant to the Uniform Classification Guidelines for Foreign Substances established by the Association of Racings Commissions International ("ARCI"), which are recognized by the IHRC, there are four (4) classifications of drugs based upon their potential effect on the performance of a horse racing.

Hydrocortisone is a ARCI Class 4 drug with no allowable threshold and a recommended Category 4 penalty.

A Class 4 drug includes therapeutic medications (including corticosteroids) that would be expected to have less effect on performance than a Class 3 drug.

Triamcinolone (also known as "Vetalog") is an RCI Class 4 therapeutic medication used in horses to reduce inflammation if a joint with an allowable threshold of 100 picograms per milliliter ("pg") with a Category 4 penalty.

There is no reliable scientific data by which either a veterinarian or trainer can accurately determine the withdrawal time for either hydrocortisone succinate or Vetalog to avoid the possibility of the medication being in a horse's blood at the time of a race.

The five (5) horses described were being treated for an inflammatory, allergic medical condition known as "Hives" by intramuscular or intravenous administration of hydrocortisone succinate by Dr. Ross Russell, DMV, at various times including at an unspecified time the day before each race.

#### **CONCLUSIONS OF LAW**

Effective May 15, 2014 the Commission adopted an emergency rule dealing with Multiple Medication Violations amending 71 IAC 8.5-1-7.1(a), incorporating standards contained in ARCI Uniform Classification Guidelines of Foreign Substances and Recommended Penalties, and Model Rules as revised in August 1996, and any other revision effective after said date, which were incorporated by reference therein and assigned points for violations based upon the class of the therapeutic substance which rule applies to the Respondent.

71 IAC 8.5-1-7.1(b) requires that the points assigned to a medication violation by the stewards or Commission ruling, shall be included in such ruling.

The Commission anticipated a situation like this by enacting 71 IAC 8.5-1-7.1(d) which provides that multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the Commission may be treated as a single violation.

Neither Stewart's Ruling 14624 nor Ruling 14633 contained the points to be assigned as required by 71 IAC 8.5-1-7.1(d).

Pursuant to 71 IAC 8.5-1-7.1(a) the points to have been assigned to the Respondent's violations are 7 points for Class C drugs.

Pursuant to 71 IAC 8.5-1-7.1(g) the penalty for 7 points is a 60 day suspension with no fines described.

If the multiple violations are treated as one (1) violation, pursuant to 71 IAC 8.5-1-7.1(d), the penalty would be a minimum fine of \$1,000.00 and no suspension pursuant to the ARCI Recommended Penalties.

There was no credible expert testimony to firmly establish the administration of hydrocortisone succinate within twenty four (24) hours prior to the scheduled post time for the first race on the dates based upon scientific studies which utilized a scientific technique that is generally accepted (Daubert case) as reliable in the scientific community or on reliable scientific principles as required by Rule 702 of the Indiana Rules of Evidence.

The negligent actions of the Lab and the Petitioner's subsequent summary suspension of the Respondent have caused him undue financial and emotional hardship.

As a licensed trainer the Respondent was at all relevant times subject to the jurisdiction of the Commission and to its rules and regulations.

The Respondent is responsible for the presence of any prohibited drug in horses he trains regardless of the acts of third parties pursuant to 712 IAC 5.5-3-2.

On May 31, 2014, June 7, 2014, June 10, 2014, June 14, 2014, and June 20, 2014, the Respondent violated 71 IAC 8.5-1-2 and 71 IAC 8.5-1-1.5(b).

On May 24, 2014, the Respondent violated 71 IAC 8.5-1-4.2(21).

The evidence presented is inconclusive as to the administration of the drug hydrocortisone succinate within twenty-four (24) hours of the scheduled post time of the first race on the dates described above in violation of 71 IAC 8.5-1-1.5(a).

The Respondent incurred multiple positives of hydrocortisone succinate prior to the delivery of official notice of any positive by the Commission.

The failure of the Lab to communicate its Certificates of Analysis to the Commission in a timely manner, as required by its contract, prejudiced the Respondent by depriving him of his ability to avoid further violations by altering the timing of or discontinuance of the administration of hydrocortisone succinate to the horses after the May 31, 2014 race.

The Commission has provided relief for trainers where there were multiple positives incurred for the same medication prior to delivery of official notice by the Commission by promulgating 71 IAC 8.5-1-7.1(d).

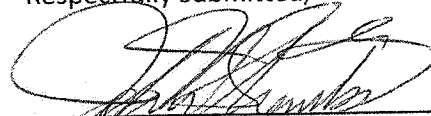
The multiple positives of hydrocortisone succinate incurred by the Respondent should be treated as one (1) positive pursuant to 71 IAC 8.5-1-7.1(d).

Had the Petitioner followed the rules of the Commission the Respondent would have avoided continuing undue financial and emotional headship.

#### **RECOMMENDED DECISION**

ALJ Pylitt's recommended sanctions mirror the sanctions recommended by the Commission Staff in all respects and are illogical, excessive, unsupported by the evidence, capricious in nature and blantly disregard the standard for the expert witness testimony in such a case established by the U.S. Supreme Court.

Respectfully submitted,



John N. Shanks II  
Counsel for the Respondent

SHANKS LAW OFFICE  
931 Meridian Street, Suite 403  
Anderson, IN 46016  
765/649-3840




**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and exact copy of the foregoing has been served upon the following by U.S. Mail, first class postage prepaid or by electronic means this 25th day of June, 2015:

Holly Newell, IHRC Counsel  
1302 North meridian Street, Suite 175  
Indianapolis, IN 46202  
Email: [hnewell@hrc.in.gov](mailto:hnewell@hrc.in.gov)

Bernard L. Pylitt  
Katz & Koris, PC  
334 North Senate Avenue  
Indianapolis, IN 4604  
Email: [bpylitt@katzkorin.com](mailto:bpylitt@katzkorin.com)

Joseph Gorejec, IHRC Executive Director  
1302 North meridian Street, Suite 175  
Indianapolis, IN 46202  
Email: [jgorajec@hrc.in.gov](mailto:jgorajec@hrc.in.gov)



John N. Shanks II