

Memorandum of the Regular Meeting of the
Indiana Horse Racing Commission

December 3, 2019

Indiana State Library – Author’s Room
315 W. Ohio Street
Indianapolis, IN 46202

Commission members present: Philip C. Borst, Chairman; Greg Schenkel, Vice Chairman; Susie Lightle, member; and William McCarty, member.

Commission Staff members present: Deena Pitman, IHRC Executive Director; Tom Linkmeyer, IHRC Deputy Director; Noah Jackson, IHRC Deputy General Counsel; Dale Lee Pennycuff, IHRC Counsel; Jessica Barnes, IHRC Breed Development Director; Wendi Samuelson-Dull, IHRC Controller; Megan Arszman, Communications Coordinator; and Joyse Banister, Standardbred Breed Development Coordinator.

Attorney General’s Office members present: Nicole Schuster, Deputy Attorney General (acting as counsel to the Commission on Agenda Items III.1 and III.2.)

Speakers from the audience: David P. Murphy, Esq., representing Dr. Duane J. Wilcox, DVM; Brian Elmore, Executive Director of the Indiana Horsemen’s Benevolent & Protective Association; Paul Martin, President of the Quarter Horse Racing Association of Indiana; Lee Ann Hopper, Executive Secretary of the Indiana Thoroughbred Owner’s and Breeder’s Association; Joe Putnam, President of the Indiana Standardbred Association; Trent McIntosh, Senior Vice President and General Manager for Harrah’s Hoosier Park; Mike Rich, Senior Vice President and General Manager for Indiana Grand; Rick Moore, Vice President and General Manager of Racing for Harrah’s Hoosier Park; Emily Gaskin from Marketing at Harrah’s Hoosier Park; Kiersten Flint, Vice President of Marketing for Harrah’s Hoosier Park; Jon Schuster, Vice President and General Manager of Racing for Indiana Grand; Tammy Knox, Race Marketing Manager for Indiana Grand; Jeff Hendricks, Vice President of Regulatory Compliance for Eldorado Resorts; Gene Chabrier, Vice President of Regulatory Affairs for Xpressbet; Allison Meyer, Vice President of Legal and Business Affairs for TVG; Chad Riney, Senior Counsel to Churchill Downs, Inc.; Nelson Clemmens, CEO of AmWest Entertainment; and Scott Snyder, Chairman of the Indiana Standardbred Breed Development Advisory Committee.

I. Call to Order

Chairman Borst called the meeting to order at approximately 10:00 a.m. A quorum was present.

II. Approval of memorandum from the August 20, 2019 Special Meeting.

Chairman Borst asked for a motion for approval of the memorandum from the August 20, 2019, Special Commission Meeting. Motion for approval by Commissioner McCarty. Vice Chairman Schenkel seconded the motion. The vote was unanimous 4-0 for approval.

III. Agenda

Note: All items on the agenda were transcribed by a court reporter from Stewart Richardson. Transcripts are available at www.in.gov/hrc.

1. Consideration of the Administrative Law Judge’s Recommended Findings of Fact, Conclusions of Law, Ultimate Findings of Fact and Recommended Order in the matter of Indiana Horse Racing Commission (“IHRC”) licensee Duane J. Wilcox, DVM.

Deputy Attorney General Nicole Schuster, Esq., represented the Commission. David P.

Murphy, Esq., represented Dr. Duane J. Wilcox. The Commission Staff was represented by Noah Jackson, Esq. Ms. Schuster provided a quick summary of the matter and the Commission's four options in deciding the matter.

Mr. Murphy presented the oral argument for Dr. Wilcox. Mr. Jackson presented the oral argument for Commission Staff. Next, Chairman Borst asked for any Commission member questions. Vice Chairman Schenkel asked if Dr. Wilcox's veterinary license was currently suspended in Indiana or if it was currently valid. Mr. Murphy answered it was valid, but discussed a complaint that had been filed with the Attorney General's office by a Commission investigator that is still pending. Vice Chairman Schenkel asked if a hearing was scheduled with the Attorney General's office to which Mr. Murphy replied: "No, the Attorney General put it on hold."

The Commission and Mr. Murphy discussed which type of animals Dr. Wilcox was allowed to practice on and in which locations. Chairman Borst discussed the medication, which was the subject of the violation, being injected into the horses by Dr. Wilcox and the keeping of veterinarian records. Vice Chairman Schenkel asked Ms. Schuster how upholding the recommend order of the ALJ would effect Dr. Wilcox's license. Ms. Schuster stated the Commission ruling was confined to the Commission's jurisdiction. Commissioner McCarty asked when the suspension would start and if there was an allowance for the amount of time Dr. Wilcox has been excluded. Mr. Jackson answered that while it was up to the Commission, past practice had been to start the suspension on the date the Commission approved the recommended order for cases such as this. Chairman Borst officially closed the arguments.

Chairman Borst asked for a motion. Commissioners McCarty and Lightle and Vice Chairman Schenkel discussed whether the suspension should start from the exclusion date or the current date. Chairman Borst asked if the Commission had a motion. Commissioner McCarty moved to approve the Recommended Order with the modification that the ten-year suspension date start on the date of the exclusion and not the current date. Vice Chairman Schenkel seconded the motion. Vice Chairman Schenkel and Commissioners McCarty and Lightle voted to affirm the Recommended Order and adopt it as the Final Order of the Commission in this proceeding with the following modification (only): that the affirmed ten year suspension of Dr. Wilcox's horse racing license begin on March 28, 2018 (in essence granting Dr. Wilcox "credit" for the time that he has been excluded from the racetrack) instead of having the suspension begin to run from the date of the issuance of this Final Order. Commission Chairman, Dr. Philip Borst, DVM, voted in dissent of the modification only, stating that although he approved of the ten year suspension and ten thousand dollar fine, he believed that credit for time excluded should not be given and that Dr. Wilcox's ten year suspension should begin to

run from the date of the Final Order. The motion carried 3-1.

2. Consideration of Settlement Agreement between IHRC Staff and Nate C. Brannin.

Deputy Attorney General Nicole Schuster represented the Commission.

The Stewards fined Mr. Brannin for a violation of 71 IAC 7.5-9-5, which he timely appealed. Commission Staff requested that the Commission approve the settlement agreement between the IHRC Staff and Mr. Brannin.

Chairman Borst asked for a motion to accept the settlement agreement. Vice Chairman Schenkel moved to accept the settlement agreement. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for approval of the Settlement Agreement between the IHRC Staff and Nate C. Brannin.

For Agenda Items 3-6, Mr. Jackson briefly described the background and process for applications from the horsemen's associations to be recognized to receive slot funds. He listed the four applicants for 2020: IHBPA, ITOBA, QHRAI, and the ISA. Mr. Jackson discussed the prehearing orders that were issued and listed items the Commission would take official notice of when deliberating on the applications.

3. Hearing on 2020 Renewal Application of Indiana Horsemen's Benevolent & Protective Association for Approval as a Registered Horsemen's Association pursuant to 71 IAC13-1-1 *et seq.* (pursuant to Notice of Hearing and Pre-Hearing Order issued on or about November 8, 2019).

Brian Elmore, Executive Director of the Indiana Horsemen's Benevolent and Protective Association (the "IHBPA"), presented the application and on behalf of the IHBPA respectfully requested approval for their 2020 application.

Chairman Borst asked if there were any Commission Staff, interested parties, or Commission questions. Hearing none, Chairman Borst asked for a motion to approve the IHBPA's 2020 horsemen's application. Commissioner Lightle moved to approve the application. Commissioner McCarty seconded the motion. The vote was unanimous 4-0 for approval of the IHBPA's 2020 horsemen's application.

4. Hearing on 2020 Renewal Application of Quarter Horse Racing Association of Indiana for Approval as a Registered Horsemen's Association pursuant to 71 IAC 13-1-1 *et seq.* (pursuant to Notice of Hearing and Pre-Hearing Order issued on or about November 8,

2019).

Paul Martin, President of the Quarter Horse Racing Association of Indiana (the “QHRAI”), introduced several QHRAI personnel present at the meeting and then presented the application and on behalf of the QHRAI respectfully requested approval for their 2020 application.

Chairman Borst asked if there were any questions. Hearing none, Chairman Borst asked for a motion to approve the QHRAI’s 2020 horsemen’s application. Vice Chairman Schenkel moved to approve the application. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for approval of the QHRAI’s 2020 horsemen’s application.

5. Hearing on 2020 Renewal Application of Indiana Thoroughbred Owner’s and Breeder’s Association for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* (pursuant to Notice of Hearing and Pre-Hearing Order issued on or about November 8, 2019).

Leigh Ann Hopper, Executive Secretary of the Indiana Thoroughbred Owners and Breeders Association (“ITOBA”), introduced the current and former ITOBA presidents and presented the application and on behalf of ITOBA respectfully requested approval for their 2020 application.

Chairman Borst asked if there were any Commission Staff questions. Vice Chairman Schenkel asked if ITOBA’s administrative secretary and executive director was one in the same person. Ms. Hopper answered that is was essentially one in the same. Chairman Borst asked if there were any other questions. Hearing none, Chairman Borst asked for a motion to approve ITOBA’s 2020 horsemen’s application. Vice Chairman Schenkel moved to approve the application. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for approval of ITOBA’s 2020 horsemen’s application.

6. Hearing on 2020 Renewal Application of Indiana Standardbred Association for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* (pursuant to Notice of Hearing and Pre-Hearing Order issued on or about November 8, 2019).

Joe Putnam presented the application. For 2020, highlights include the Breeder’s Crown returning to Hoosier Park, and ISA entertaining the idea of a new economic impact study for all breeds. Chairman Borst asked if the study was going to be similar to the previous study in 2011. Mr. Putnam indicated it was. Chairman Borst asked if the study was in concert with Purdue, to which Mr. Putnam answered, “Yes.” Vice Chairman Schenkel asked about how the study would be funded. Mr. Putnam indicated they were looking for

partners, and that in the past it was the ISA, Purdue, the past owner of Centaur, and some other associations. The Commission suggested several entities to Mr. Putnam that might also provide assistance. Vice Chairmen Schenkel also discussed with Mr. Putnam the positive relationship the ISA has had with Caesars and Mr. Putnam's concern about how the relationship might change based on Eldorado's purchase offer for Caesars.

Chairman Borst asked if there were any Commission Staff questions. Hearing none, Chairman Borst asked for a motion to approve the ISA's 2020 horsemen's application. Commissioner McCarty moved to approve the application. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for approval of the ISA's 2020 horsemen's application.

7. Consideration of Caesar's 2020 Operational Plan as required by the Commission's **Permit Transfer Final Order** dated July 10, 2018.

Mr. Jackson reviewed the Permit Transfer Final Order that is the basis for the 2020 Operational Plan. Trent McIntosh introduced Mike Rich. Next, Mr. McIntosh, Rick Moore, Emily Gaskin, and Kiersten Flint presented the operational plan.

Vice Chairman Schenkel expressed his concern that the 2020 Operational Plan was not done in conjunction with the ISA and his hope that this would be corrected in the future. Vice Chairman Schenkel also enquired about the number of employees since Caesars had taken over Hoosier Park. Mr. Moore replied it was on the same level, right around 800 employees. Mr. Moore also discussed how Caesars gives back to the community and uses local suppliers. Vice Chairman Schenkel referenced the June discussion of 2018 regarding how Caesars would determine community contributions and how the 2020 Operational Plan did not disclose any kind of cash contributions. Mr. Moore assured the Commission they are doing it. Mr. McIntosh stated to date they had given \$414,000 in the community here in Indiana. Vice Chairman Schenkel stated it was appreciated, but it would have been helpful to have evidence of that in the operational plan. Vice Chairman Schenkel further clarified the content of the information needed to be provided to the Commission in the record. Mr. McIntosh stated Caesars would provide the requested information for the record. Commissioner McCarty asked if the \$414,000 was for both Hoosier Park and Indiana Grand. Ms. Flint stated it was for Hoosier Park. Commissioner McCarty requested for the Commission to see an itemized list of the sponsorships and donations.

Jon Schuster and Tammy Knox presented Indiana Grand's 2020 Operational Plan. Mr. Schuster explained that because the Indiana Grand staff is in constant contact with the IHBPA and QHRAI they also did not formally develop the 2020 Operation Plan with the

horsemen's groups and apologized to the IHBPA and QHRAI. Mr. Schuster highlighted that the Indiana Derby set a new record for handle and attendance, with handle being up 13% to \$4.1 million.

Vice Chairman Schenkel asked if this was additional spending, which Mr. Schuster confirmed several items were in addition to the previously planned items. Next Ms. Knox went through the community impact and marketing plans. After a question by Vice Chairman Schenkel, Ms. Knox listed many of the cash and in-kind donations. Vice Chairman Schenkel requested Indiana Grand supply the Commission an itemized list that gives more detail and clarity on the donations. Mr. Schuster agreed to supply the list. Commissioner Lightle expressed concern about how the track resurfacing delay affected the horsemen at the beginning of the race meet. Mr. Schuster explained that the delay was weather related. Chairman Borst entered a letter from Taft into the record.

Chairman Borst asked Mr. McIntosh how Caesars had put its stamp on horse racing in Indiana over the last eighteen (18) months. Mr. McIntosh listed promoting horse racing, handicapping contests, and the 2020 Breeder's Crown. Vice Chairmen Schenkel, referencing the Taft letter, asked about the status of the Quarter Horse Challenge Races for 2020. Mr. Schuster replied that hosting the 2020 race was not going to happen. Vice Chairmen Schenkel asked about 2021. Mr. Schuster replied that it was also not going to happen.

Chairman Borst stated there was a couple of issues. First, the meetings with the Horsemen's Associations still needed to happen. Second, the Commission needed the itemized lists to show the impacts of the cash and in-kind donations made by both Hoosier Park and Indiana Grand.

Jeff Hendricks, from Eldorado, spoke about the communications between the Commission, the tracks, and the horsemen.

Chairman Borst asked for a motion for approval of the 2020 Operational Plan. Vice Chairman Schenkel moved to conditionally approve the 2020 Operational Plans for Harrah's Hoosier Park and Indiana Grand, collectively Caesars, with the following conditions required before approval being made:

- a) Further information is provided for all of the operations related to community and corporate involvement completely detailing the contributions.
- b) Caesars corrects any further deficiencies that may have been outlined in the letter which the staff had sent earlier, including holding meetings with the respective Horsemen's Associations.

- c) The Commission Members and Chairman will review the updated submissions to the operational plans and will inform Executive Director Pitman of Commission approval of the submission, thereby delegating to Executive Director Pitman, the ability to give final approval of the 2020 Operational Plan based on Commission recommendations and review.
- d) All of the requested information be submitted by December 31, 2019.

Commissioner McCarty seconded the motion. The vote was unanimous 4-0 for conditional approval of the 2020 Operational Plan.

8. Review and approval of Indiana Grand's (Centaur Acquisition, LLC) permit renewal application and consideration of pari-mutuel permit for 2020 in accordance with 71 IAC 11-1-21 and consideration of Indiana Grand's request for live racing dates for 2020 pursuant to IC4-31-5-9, IC 4-31-5-10 and 71 IAC 11-1-7.

Mr. Jackson stated that approval by the Commission would be a conditional approval subject to the same conditions as the 2020 Operational Plan.

Chairman Borst asked for a motion for the conditional approval of Indiana Grand's permit renewal and consideration of their request for live racing dates for 2020. Vice Chairman Schenkel moved to approve. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for conditional approval of Indiana Grand's permit renewal and consideration of their request for live racing dates for 2020.

9. Approval of the renewal of Indiana Grand's satellite facility license in Clarksville for 2020 in accordance with 71 IAC 12-1-23 and 71 IAC 12-1-10.

Mr. Jackson stated that approval by the Commission would be a conditional approval subject to the same conditions as the 2020 Operational Plan.

Chairman Borst asked for a motion for the conditional approval and renewal of the Indiana Grand satellite facility in Clarksville for 2020. Commissioner McCarty moved to conditionally approve the Indiana Grand satellite facility in Clarksville for 2020. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for conditional approval and renewal of the Indiana Grand satellite facility in Clarksville for 2020.

10. Review and approval of Harrah's Hoosier Park permit renewal application and consideration of pari-mutuel permits for 2020 in accordance with 71 IAC 11-1-21 and consideration of Harrah's Hoosier Park request for live racing dates for 2020 pursuant to IC 4-31-5-9, IC 4-31-5-10 and 71 IAC 11-1-7.

Mr. Jackson stated that approval by the Commission would be a conditional approval subject to the same conditions as the 2020 Operational Plan.

Chairman Borst asked for a motion for the conditional approval of Hoosier Park's permit and renewal application and consideration of pari-mutuel permit for 2020, and also their request for the live racing dates for 2020. Commissioner Lightle moved to approve. Vice Chairman Schenkel Commissioner seconded the motion. The vote was unanimous 4-0 for conditional approval of Hoosier Park's permit and renewal application and consideration of pari-mutuel permit for 2020, and also their request for the live racing dates for 2020.

11. Approval of the renewal of Harrah's Hoosier Park satellite facility licenses in New Haven and Indianapolis for 2020 in accordance with 71 IAC 12-1-23 and 71 IAC 12-1-10.

Mr. Jackson stated that approval by the Commission would be a conditional approval subject to the same conditions as the 2020 Operational Plan.

Chairman Borst asked for a motion for the conditional approval and renewal of Harrah's Hoosier Park satellite facility licenses in New Haven and Indianapolis for 2020. Commissioner McCarty moved to conditionally approve. Vice Chairman Schenkel seconded the motion. The vote was unanimous 4-0 for conditional approval and renewal of Harrah's Hoosier Park satellite facility licenses in New Haven and Indianapolis for 2020.

12. Review and approval of the following IHRC Emergency Rules.

Mr. Jackson presented the IHRC Emergency Rules broken down by breed, with the intent to approve them with a single vote. Mr. Jackson detailed how the rules had been presented to the stakeholders for the various breeds, how several of the proposed rule changes came about through judicial rulings, new legislation, and general housekeeping. Mr. Jackson explained that all the rules would be adopted through the Commission's emergency rule adoption procedure and go into effect as soon as filed.

Chairman Borst asked for a motion to approve all the emergency rules. Commissioner McCarty moved to approve all the emergency rules. Commissioner Lightle seconded. The vote was unanimous 4-0 for approval of all of the IHRC Emergency Rules.

13. Review and consideration of 2020 Secondary Pari-Mutuel Organization (SPMO) license applications.

Mr. Jackson discussed that Commission Staff had reviewed and assessed each of the SPMO applications, contracted with the Thoroughbred Racing Protective Bureau to review daily wagering data provided by each of the SPMO, and each of the five SPMOs have been operating on a probationary license. Mr. Jackson further discussed that Commission Staff has been in close contact with the Oregon Racing Commission which has set itself up as the foremost authority on advance deposit wagering (“ADW”) operations, including conducting yearly audits and maintaining strict licensure requirements on each SPMO. Each of the five SPMOs for licensure are considered to be in good standing with the Oregon Racing Commission. Mr. Jackson had the representatives from the SPMOs who were in attendance to introduce themselves.

Nelson Clemmens, of AmWest Entertainment, spoke to the Commission about AmWest’s collaboration with industry organizations, their capabilities, issues with getting a signal at Hoosier Park or Indiana Grand for ADW due to the content being withheld for competitive purposes, and their involvement in opening a track in Michigan. Chairman Borst thanked Mr. Clemmens for his comments and suggested Mr. Clemmens send information regarding any issues he may have to the Commission Office.

Mr. Jackson stated the SPMO license was an annual renewal license that would be effective from January 1, 2020, to December 31, 2020, and would need to be renewed each year during the December meeting.

Chairman Borst asked for a motion to approve the SPMO license applications from January 1, 2020, to December 31, 2020. Vice Chairman Schenkel moved to approve. Commissioner Lightle seconded the motion. The vote was unanimous 4-0 for approval of the five SPMO applications for 2020.

14. Review of commission rulings – March 5, 2019 – November 25, 2019.

Chairman Borst asked if there were any Commissioner questions. Vice Chairman Schenkel asked if the rulings were complete, with no outstanding rulings. Executive Director Pitman noted there may be a few rulings yet to be entered dealing with drug positives that are currently out for split-laboratory analysis. Commissioner McCarty, noting the rulings covered approximately nine months, asked if there was an increase in violations. Executive Director Pitman stated there was not an increase, that it was a pretty standard year. No vote was required.

15. Review and consideration of Notice of Sixth Subsequent Term pertaining to the Initial Distribution Agreement.

Mr. Pennycuff explained the Senate Enrolled Act 609 committee composed of horsemen and the tracks came together in 2013 to negotiate what percentage of slot revenue would be allocated to the horse racing industry, with the initial agreement including a provision that if no party objects, it will automatically renew for a subsequent year. Since no notice of non-renewal was given by September 1, 2019, the agreement will renew for another year on January 1, 2020.

Chairman Borst asked for a motion for the sixth subsequent term. Vice Chairman Schenkel moved for approval of the subsequent term agreement for 2020 for the distribution agreement. Commissioner McCarty seconded the motion. The vote was unanimous 4-0 for the approval of the subsequent term agreement for 2020 for the distribution agreement.

16. Presentation of the 2020 Standardbred Breed Development Advisory Committee Program.

Scott Snyder presented the 2020 Standardbred Breed Development Advisory Committee Program. Mr. Snyder discussed how the program is well represented nationally, the sale of two Indiana-sired trotters for \$175,000 each, and the challenge of determining funding levels based on the increased funding from table games.

Chairman Borst asked for a motion to approve the Standardbred plan. Vice Chairman Schenkel moved to accept the 2020 Standardbred Breed Development Advisory Committee Program. Commissioner Lightle seconded. The vote was unanimous 4-0 for approval of the 2020 Standardbred Breed Development Advisory Committee Program.

17. Status update of the 2020 Standardbred Advisory Board Program.

Jessica Barnes discussed the fact that the Standardbred Advisory Board, whose program primarily deals with county fair racing, would not be set until the annual convention of the Indiana Association of Fairs, Festival, and Events, which occurs the first weekend in January. Therefore, the proposal will not be completed until after that meeting. Ms. Barnes asked the Commission to delegate to the Executive Director the ability to approve the Standardbred Advisory Board's proposal at that time.

18. Status update of the 2020 Thoroughbred Breed Development Advisory Committee Program.

Ms. Barnes stated that the Thoroughbred Breed Development program just received new appointments to the advisory committee the week before. While they Advisory

Committee has had one meeting, they are still putting their proposal together. Ms. Barnes asked the Commission to delegate to the Executive Director the ability to approve the Thoroughbred Breed Development proposal at that time.

19. Status update of the 2020 Quarter Horse Breed Development Advisory Committee Program.

Ms. Barnes stated that the Quarter Horse Breed Development program is in a similar situation with the advisory committees only being reappointed the week before and the program would not be ready until the middle of January. Ms. Barnes asked the Commission to delegate to the Executive Director the ability to approve the Quarter Horse Breed Development proposal at that time.

Agenda Items 17, 18, and 19, requiring the Commission to delegate to the Executive Director the ability to approve the programs were voted on in one motion. Chairman Borst asked for a motion. Commissioner Lightle moved to approve. Vice Chairman Schenkel seconded. The vote was unanimous 4-0 for approval to delegate to the Executive Director the ability to approve the three programs in Agenda Items 17, 18, and 19.

III. Old Business

There was no old business.

IV. New Business

No new business was brought before the Commission.

V. Adjournment

Before adjournment, Executive Director Pitman discussed the great working relationship between the Commission, the horsemen's associations, and the racetracks in Indiana. The meeting was adjourned at approximately 1:30 p.m.