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Re: Out of Competition Testing

Date: February 16, 2017

I. Introduction

The purpose of this memo is to discuss out of competition testing. Out of competition testing will be considered in two contexts. One is having Ohio State Racing Commission (Commission) investigators visiting locations where no race meets are being conducted to determine if statutes and rules of the Commission are being violated. Second is the Commission requiring a horse to give blood and urine sample within a certain time period not only after a race has taken place

II. Investigators going to locations where no race is currently operating

There is a strong concern that individuals who cannot obtain a Commission license or are suspended by the Commission are currently training horses at locations where there are not horse racing meets taking place such as fairgrounds. If individuals who cannot obtain a Commission license or are suspended by the Commission can still act as a trainer it severely limits the Commissions' authority to effectively sanction violations of the rules of racing and to maintain proper control over horse race meetings.

The Commission currently has rules which authorize Commission employees to search locations and vehicles used or maintained by licensees outside of the race track premises where horses eligible to race are stabled. (See OAC 3769-2-01 (B)(4) and OAC 3769-12-01 (B)(4)) The concern is the particular provision exceeds the statutory authority of the Commission to visit locations where race meets are not being conducted. It has been interpreted that R.C. 3769.09 limits the Commissions' authority to locations where horse racing meets are currently operating.

R.C. 3769.09 should be changed to allow Commission personnel to visit locations where horse racing meets are not taking place to determine if violations of statutes and/or Commission rules are taking place. In addition, R.C. 3769.09 is obsolete. Racing inspectors do not give a bond nor is their salary fixed pursuant to Chapter 124 of the Revised Code. A proposed statutory change is below for your review:

~~The state racing commission shall employ a racing inspector to attend each horse racing meeting, held under a permit issued under sections 3769.01 to 3769.14 of the Revised Code. Such racing inspector shall give bond in the sum of five thousand dollars with sufficient sureties to be approved by and made payable to the treasurer of state, which bond shall be filed with the secretary of state. Such racing inspectors [inspector] shall be paid a salary fixed pursuant to Chapter 124. of the Revised Code. Such racing inspector shall have full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any horse-racing meeting to which he the inspector shall be assigned, for the purpose of ascertaining whether the holder of such permit is retaining the proper amount of commission. Such racing inspector shall investigate and ascertain whether such sections or rules promulgated by the commission are being violated at such race track or enclosure. Upon discovering any such violation, such racing inspector shall immediately report ~~his~~ the inspectors findings in writing and under oath to the commission for such action as it may deem fitting and proper.~~

The other statutory changes would be to make the statute gender neutral and to eliminate the under oath requirement. The investigators' reports are never under oath.

III. Securing blood and urine samples outside of race meets

It has been found that certain prohibited substances such as blood doping agents, venoms and growth hormones are being administered to horses and post-race samples cannot detect these substances. Kentucky and other states have developed regulations to test horses at times when these prohibited substances can be detected. If the Commission wishes to require this type of testing, no other statutory changes, than what was discussed in the previous section, would be required.

The Kentucky regulations allow the Commission employees to test any horse eligible to race in Kentucky. The regulations require the owner, trainer or person who has care and custody of the horse (person) to make the horse available for testing within a certain time frame. Kentucky has a six hour window. The regulations do not require the person to allow Commission employees on private property to obtain the samples. If the person does not wish to allow commission personnel on private property, the person is required to transport the horse to a location agreed upon between the person and commission employees to have the samples taken. The person, not the Commission, would be responsible for the cost and the risk of shipping the horse to the agreed upon location to obtain the samples. The person is required to observe the collection of the samples from the horse. If the person fails to make the horse available within the specified time frame, the person can be penalized in the same manner as if the horse tested positive for a prohibited substance. In addition, the horse can be prohibited from racing for up to 180 days.

These regulations would simply put a testing program into effect to enforce existing prohibition against the use of blood doping agents, venoms and growth hormones. It would allow owners, trainers and other licensees to have confidence that they are not competing against horses that have a "pharmacologic edge."



KENTUCKY HORSE RACING COMMISSION
OUT OF COMPETITION TESTING REGULATION Q & A

Why do we need an out of competition testing regulation?

Certain prohibited substances, such as blood doping agents, venoms and growth hormones, have the potential to affect a horse's athletic performance for a period of time that extends well beyond a laboratory's ability to detect their presence in the horse's system. This means that a horse can test "clean" following a race even if it had been administered one of the prohibited substances prior to the race. This regulation allows for the sampling and testing of horses at times when these prohibited substances can be detected.

This regulation does not address any substance that is not already prohibited. It simply puts a testing program in place that can effectively enforce the existing prohibition against the use of blood doping agents, venoms and growth hormones.

How will the regulation affect me?

The regulation will have a very minimal effect on you if you are not using the prohibited substances. It will, however, provide you with confidence that your horses are not competing against horses that have a "pharmacologic edge."

If you have horses eligible to race in Kentucky, or that may become eligible to race in Kentucky, you may have a horse selected for testing. If so, you will be required to cooperate in locating the designated horse and making it available to the KHRC for sampling. There is no requirement that you deliver the horse to the KHRC for sampling. If the horse is located on private property, there is no requirement that you allow the KHRC to come on that property to collect a sample. You must simply make the horse available for sampling at an agreed upon location. If that location is on private property, the KHRC will notify you, or any other person exercising care, custody or control of the horse, before arriving to collect the sample. If you choose to transport your horse to an agreed upon location for sampling, you will be responsible for the cost and risk of shipping.

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You, or your representative, are also required to observe the collection of the sample from the horse. This must occur within six hours of your being notified that your horse has been designated for testing. If you fail to make a horse available for sampling within the six hour window, you may be penalized in the same manner as if your horse tested positive for a prohibited substance.

What horses can be tested?

Any horse that is a racing breed and at least two years of age or older that is eligible to race in Kentucky, or may become eligible to race in Kentucky, may be tested. A horse is eligible to race in Kentucky if:

- It is owned by a KHRC licensed owner; or
- It is trained by a KHRC licensed trainer; or
- It is nominated to a race at a KHRC licensed track, or
- It is stabled at a KHRC licensed track or a training center under the jurisdiction of the KHRC, or
- It has raced at a KHRC licensed track within the last 12 months, or
- It is nominated to participate in the Kentucky Thoroughbred Development Fund, the Kentucky Standardbred Development Fund or the Kentucky Quarter Horse, Appaloosa and Arabian Development Fund.

What if I don't want my horse tested?

If there is a refusal to make a horse available for testing, or if there is any other failure to cooperate with the KHRC, the individual(s) directly responsible for the refusal or failure to cooperate will be penalized to the full extent allowed by the regulation. Those penalties are as follows:

- The horse will be placed on the Veterinarian's List and the Steward's/Judge's List and barred from racing for 180 days; and
- The individual(s) responsible for the refusal will have their license revoked for a period of 5 to 10 years and be subject to a fine of up to \$50,000.
 - Any individual who has his or her license revoked under this regulation must come before the License Review Committee before being re-licensed.

The regulation in its entirety can be found on the commission website at: www.khrc.ky.gov/



ARCI-011-022 Out of Competition Testing

(1) *Out-of-competition testing authorized.* The commission may at a reasonable time on any date take blood, urine or other biologic samples as authorized by commission rules from a horse to enhance the ability of the commission to enforce its medication and anti-doping rules, e.g., the Prohibited List pursuant to ARCI-011-015. The commission shall own such samples. This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race day prohibition or restriction of a substance by a commission rule is not applicable to an out-of-competition test unless there is an attempt to race the horse in a manner that violates such rule.

(2) *Horses eligible to be tested.* Any horse that has been engaging in activities related to competing in horse racing in the jurisdiction may be tested. This includes without limitation any horses that are training outside the jurisdiction to participate in racing in the jurisdiction and all horses that are training in the jurisdiction, but excludes weanlings, yearlings and horses no longer engaged in horse racing (e.g., retired broodmares).

(a) A horse is presumed eligible for out-of-competition testing if:

(i) It is on the grounds at a racetrack or training center under the jurisdiction of the commission;

(ii) It is under the care or control of a trainer licensed by the commission;

(iii) It is owned by an owner licensed by the commission;

(iv) It is entered or nominated to race at a premises licensed by the commission;

(v) It has raced within the previous 12 months at a premises licensed by the commission;
or

(vi) It is nominated to a program based on racing in the jurisdiction, including without limitation a state thoroughbred development, breeder's award fund, or standardbred state sires stakes.

(b) Such presumptions are conclusive in the absence of evidence that a horse is not engaged in activities related to competing in horse racing in the jurisdiction.

(3) *Selection of horses to be tested.*

(a) Horses shall be selected for sampling by a commission Veterinarian, Executive Director, Equine Medical Director, Steward or Presiding Judge or a designee of any of the

foregoing.

(b) Horses may be selected to be tested at random, for cause, or as otherwise determined in the discretion of the commission.

(c) Collectors shall for suspicion-less collections of samples abide by a plan that has been approved by a supervisor not in the field and identifies specific horses or provides neutral and objective criteria to follow in the field to determine which horses to sample. Such a supervisor may consider input from persons in the field during the operation of the plan and select additional horses to be sampled.

(4) Cooperation with the commission

(a) Licensees of the commission are required to cooperate and comply fully with the provisions of this rule.

(b) Persons who apply for and are granted a trainer or owner license shall be deemed to have given their consent for access at such premises as their horse may be found for the purpose of commission representatives collecting out-of-competition samples. Licensees shall take any steps necessary to authorize access by commission representatives at such premises.

(c) No other person shall knowingly interfere with or obstruct a sampling.

(5) General procedure for collecting samples

(a) Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission. All blood samples shall be collected by a veterinarian licensed in the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the veterinarian.

(b) Upon request of a representative of the commission, the trainer, owner, or their specified designee shall provide the location of their horses eligible for out-of-competition testing.

(c) The commission need not provide advance notice before arriving at any location, whether or not licensed by the commission, to collect samples.

(d) The trainer, owner, or their specified designee shall cooperate with the person who takes samples for the commission, which cooperation shall include without limitation:

(i) Assist in the immediate location and identification of the horse;

(ii) Make the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;

- (iii) Provide a stall or other safe location to collect the samples;
 - (iv) Assist the person who is collecting samples in properly procuring the samples; and
 - (v) Witness the taking of samples including sealing of sample collection containers.
- (e) The management and employees of a licensed racetrack or training facility at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the commission may require that the collection be done at a specified location on such premises.
- (f) The commission, if requested and in its sole discretion, may permit the trainer, owner, or their specified designee to present a horse that is located in the jurisdiction, but not at a racetrack or training center licensed by the commission, to be sampled at a time and location designated by the commission.

(6) Procedure for collecting samples from horses located outside the jurisdiction

- (a) The commission may arrange for the sampling of an out-of-state horse by the racing commission or other designated person in the jurisdiction where the horse is located. Such racing commission or other designated person shall follow the relevant provisions of this rule, including paragraph (a) of subdivision five of this rule.
- (b) The test results shall be made available, for its regulatory use, to each jurisdiction that has participated in the process of collecting any out-of-competition sample, subject to any restrictions on public disclosure of test results that apply to the commission that selected the horse for sampling.
- (c) The commission, if requested and in its sole discretion, may permit the trainer or owner instead to transport the horse into its jurisdiction for sampling at a time and place designated by the commission.

(7) Additional procedures

- (a) The person who takes samples for the commission shall provide identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse.
- (b) A written protocol for the collection of samples shall be made generally available.
- (c) An owner or trainer does not consent to a search of the premises by making a horse that is not located at a racetrack or training center available for sampling.
- (d) If the trainer or other custodian of a selected horse refuses or declines to make the horse available for sampling and the managing owner has previously provided the commission with a means for the commission to give immediate notification to the managing owner in such situation, then the commission shall attempt to notify the managing owner and the

eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. The commission is not required to make repeated attempts to notify the managing owner.

(e) The chain of custody record for the sample (including a split sample where appropriate) shall be maintained and made available to the trainer, owner, or their designee when a complaint results from an out-of-competition test.

(8) Analysis of collected samples

(a) The commission may have out-of-competition samples tested to produce information that may enhance the ability of the commission to enforce its medication and anti-doping rules.

(b) Split sample rules and procedures for post-race testing shall apply to out-of-competition testing.

(c) The commission may use any remaining sample for research and investigation.

(9) Penalties for non-cooperation

(a) Willful failure to make a horse available for sampling or other willfully deceptive acts or interference in the sampling process shall carry a minimum penalty of a one year license suspension and referral to the commission in addition to any other authorized penalties.

(b) A selected horse that is not made available for out-of-competition sampling shall be placed on the Steward's List. The horse shall remain on the Steward's List for a minimum of 180 days unless the owner can establish extraordinary mitigating circumstances.

(c) A selected horse that is presumed eligible for out-of-competition testing shall be placed on the Steward's list and be ineligible to race in the jurisdiction for 180 days if the horse is not sampled because the trainer, owner or their designee asserts that the horse is not engaged in activities related to competing in horse racing in the jurisdiction. This restriction shall not apply if the trainer, owner or their designee instead permits voluntarily an immediate collection of such samples from the horse.