

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF PARI-MUTUEL )  
WAGERING, )  
)  
Petitioner, )  
)  
vs. ) Case No. 08-3689  
)  
JEFFERSON COUNTY KENNEL CLUB, )  
INC., )  
)  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to written notice, the above matter was heard before the Division of Administrative Hearings by Administrative Law Judge, Diane Cleavinger, on March 5, 2009, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles T. Collette, Esquire  
Department of Business  
and Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Steve Andris, President  
Jefferson County Kennel Club, Inc.  
Post Office Box 400  
Monticello, Florida 32345

## STATEMENT OF THE ISSUES

Whether Jefferson County Kennel Club, Inc.'s, pari-mutuel wagering and operating license should be disciplined, and if so, the penalty that should be imposed.

## PRELIMINARY STATEMENT

On May 9, 2008, the Department of Business and Professional Regulation (Petitioner) filed an Amended Administrative Complaint against Respondent Jefferson County Kennel Club (JCKC or Respondent). The Amended Administrative Complaint alleged that Respondent, on 15 separate days, failed to have a veterinarian on the premises before and after various dog races held at the track. Respondent disputed the allegations of the Amended Administrative Complaint and requested a formal administrative hearing. The matter was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner presented the testimony of one witness and offered Petitioner's Exhibit numbered P1 into evidence. Respondent presented the testimony of one witness, but did not offer any exhibits into evidence.

After the hearing, both parties requested time to submit Proposed Recommended Orders. However, neither party submitted a proposed order.

FINDINGS OF FACT

1. JCKC holds a pari-mutuel wagering license, number 0000146-1000, and a pari-mutuel operating dates license numbered 0000146-1001. Under those licenses, Respondent operates a dog track and poker room at its race track facility in Jefferson County, Florida.

2. On certain dates, Respondent offers matinee and evening dog races. For each race, Respondent is required to have a licensed veterinarian on the premises before, during, and after the race. The purpose of the veterinarian is to ensure the racing dogs are healthy and fit enough to race and to provide care for any racing dog injured during a race.

3. In general, the veterinarian examines or observes all dogs during the dogs' weigh-in and after the dog is placed in the lock-out kennel before and after a race. The lock-out kennel or Jenny Pit is a holding area where each dog is held in a separate cage. Access to the area is limited.

4. On September 17 and 19, 2005, February 6, 18, 24, 25, March 4, 10, 11, 18, 30, and April 1, 8, 15, and 22, 2006, Respondent conducted races at its track.

5. During 2005 and 2006, Dr. David Jordan, now deceased, was the licensed veterinarian at Respondent's track. At the time, Dr. Jordan was dying from cancer, and with little notice, sometimes could not be present on race days due to his illness.

On those days, and because of the limited number of qualified veterinarians in the Jefferson County area, attempts to locate another veterinarian were not successful.

6. As a consequence, no track veterinarian was present for the matinee races held on September 17, 2005. Similarly, no track veterinarian was present for the evening races held on September 19, 2005, February 6, 2006, February 18, 2006, February 24, 2006, February 25, 2006, March 4, 2006, March 10, 2006, March 11, 2006, March 18, 2006, April 1, 2006, April 8, 2006, April 15, 2006, and April 22, 2006.

7. Additionally, no track veterinarian was present for the weighing in before the greyhounds entered the lock-out kennel prior to the evening races held on March 30, 2006. However, a veterinarian was present to observe the race dogs during and after the evening races on March 30, 2006.

8. Respondent does not dispute that a veterinarian was not present on the days listed above and does not dispute that such failure was a violation of the Division's rules. Respondent does dispute the maximum amount of the fine sought by Petitioner. Clearly, Respondent's license is subject to discipline under Chapter 550, Florida Statutes (2008).

9. The law in effect from September 2005 through April 2006 allowed JCKC to operate its cardroom only on the days that it was conducting live greyhound racing.

10. The revenues from JCKC's cardroom operations for the dates at issue are as follows:

DATE	GROSS RECEIPTS	TOURNAMENT GROSS RECEIPTS	TOTAL GROSS RECEIPTS	TAX DUE STATE
09/17/05	\$4,558.00	\$1,620.00	\$6,178.00	\$617.80
11/19/05	4,220.00	0.00	4,420.00	422.00
02/04/06	6,852.00	0.00	6,852.00	685.20
02/18/06	5,452.00	0.00	5,452.00	545.20
02/24/06	3,862.00	0.00	3,862.00	386.20
02/25/06	5,154.00	0.00	5,154.00	515.40
03/04/06	5,404.00	0.00	5,404.00	540.40
03/10/06	2,971.00	0.00	2,971.00	297.10
03/11/06	3,949.00	0.00	3,949.00	394.90
03/18/06	4,254.00	918.00	5,172.00	517.20
03/30/06	898.00	1,600.00	2,498.00	249.80
04/01/06	3,494.00	1,224.00	4,718.00	471.80
04/08/06	3,782.00	1,440.00	5,222.00	522.20
04/15/06	4,204.00	1,386.00	5,590.00	559.00
04/22/06	3,235.00	1,440.00	4,675.00	467.50
<b>TOTALS</b>	<b>\$62,289.00</b>	<b>\$9,628.00</b>	<b>\$71,917.00</b>	<b>\$7,191.70</b>

11. Even with this revenue, the track operates at a loss. Moreover, this is the only disciplinary action against Respondent. On the other hand, Respondent did have multiple times when a veterinarian was not present to observe the dogs at the track. However, the veterinarian's absences were unpredictable and not within Respondent's control. Given these factors, it is unreasonable to fine Respondent the maximum amount accorded under Chapter 550, Florida Statutes (2008). In

this case, a reasonable fine would be \$500 for each day the track veterinarian was not present as required.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 760.11(6), 120.569, and 120.57, Fla. Stat.

(2008)

13. Florida Administrative Code Rule 61D-6.009 requires a licensed veterinarian to be present before and after a race.

The Rule states:

Each racing animal permitholder shall employ a veterinarian (the track or permitholder veterinarian) who is licensed by and in good standing with the Florida State Board of Veterinary Medicine. It is the duty of the general manager to ensure that the requirements of the rules pertaining to the track veterinarian are strictly complied with.

(a) Every racing animal entered to race shall be given a pre-race examination on the day of the race for which entered to determine the entry's fitness to race. The pre-race examination shall be made by the track veterinarian.

\* \* \*

2. Racing greyhounds shall be examined by the track veterinarian at the first weighing-in time, before entry into the lock-out kennel (Jenny Pit).

(b) The track veterinarian shall observe the condition of all racing animals immediately prior to, during, and after the race, time permitting. Any racing animal which has been entered to race that the

track veterinarian or division veterinarian considers to be unsound for racing shall be promptly reported to the stewards or judges and said animal shall be scratched.

14. Petitioner has the burden of proof in this proceeding to establish by clear and convincing evidencing that Respondent committed the acts alleged in the Administrative Complaint and the reasonableness of the proposed penalty. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

15. In this case, Petitioner established by clear and convincing evidence that there were 15 days in late 2005 and early 2006 when Respondent did not have a veterinarian present at its greyhound track in Jefferson County, Florida. Such failure constitutes 15 violations of Florida Administrative Code Rule 61D-6.009(2)(a)2.

16. Sections 550.0251(10) and 550.054(9)(b), Florida Statutes (2008), set forth the range of penalties Petitioner may impose for violations of Chapter 550, Florida Statutes (2008). Section 550.0251(10), Florida Statutes (2008), states:

The division may impose an administrative fine for a violation under this chapter of not more than \$1,000 for each count or separate offense, except as otherwise provided in this chapter, and may suspend or revoke a permit, a pari-mutuel license, or an occupational license for a violation under this chapter. All fines imposed and collected under this subsection must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

Section 550.054(9)(b), Florida Statutes (2008), states:

The division may revoke or suspend any permit or license under this chapter upon the willful violation by the permitholder or licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a permit or license, the division may impose a civil penalty against the permitholder or licensee for a violation of this chapter or any rule adopted by the division. The penalty so imposed may not exceed \$1,000 for each count or separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

17. As indicated, Respondent has not been the subject of disciplinary action in the past and the veterinarian's absence from the track on race days was not under Respondent's control. Nevertheless, there were 15 days that Respondent did not have a veterinarian at its greyhound track. An administrative penalty of \$7500 (\$500 for each day) is appropriate.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order finding Respondent guilty of violating Florida Administrative Code Rule 61D-6.009(2), and imposing a \$7500 fine.



DONE AND ENTERED this 5th day of June, 2009, in  
Tallahassee, Leon County, Florida.

*Diane Cleavinger*

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of June, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.