STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULAT
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE
Respondent.
_____/

DOAH Case Nos. 14-4716PL
DBPR Case No. 2012-033990
2012-040949
2012-041931
2012-041948
2012-043730

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE

Respondent.
_____/

DOAH Case Nos. 15-2326PL
DBPR Case No. 2013-016106
2013-023790
2013-023875
2013-025104
2013-025126
2013-026031
2013-026525
2013-029114
2013-030616
2013-032774
2013-034195
2013-043815
2013-047021
2014-006345
2014-039033
2014-052733

FINAL ORDER

Pursuant to sections 120.57(1)(k), Florida Statutes (2015) and Rule 28-106.103 of the Florida Administrative Code, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("the Division") files the following Final Order. This cause came before the Division for the purpose of considering the Recommended Order

issued by Administrative Law Judge F. Scott Boyd ("ALJ Boyd") on December 15, 2015, in DOAH case number 15-2326, a copy of which is attached as Exhibit A. Kirk Ziadie ("Respondent" or "Mr. Ziadie") filed exceptions to the Recommended Order, to which The Department of Business and Professional Regulation ("Petitioner") filed a response and those exceptions and response are attached as composite Exhibit B. Petitioner also filed exceptions to the Recommended Order to which Respondent filed a response and those exceptions and response are attached as composite Exhibit C.

Background

On September 10, 2014, the Department filed a six-count Second Amended Administrative Complaint alleging Mr. Ziadie violated Section 550.2415, Florida Statutes. Subsequently, on March 17, 2015, the Division filed a sixteen-count Amended Administrative Complaint, again alleging Mr. Ziadie violated Section 550.2415, Florida Statutes. The Administrative Complaints alleged that Mr. Ziadie was the trainer of record of thoroughbred horses that raced at Florida racetracks with restricted drugs between July 4, 2012 to December 7, 2014. Mr. Ziadie petitioned for formal administrative hearings regarding the September 10, 2014, and March 17, 2015, Administrative Complaints.

ALJ Boyd convened a formal administrative hearing for the March 17, 2015, Administrative Complaint on August 25 and 26, 2015, and on September 1 and 2, 2015; however, on September 2, 2015, the hearing for the March 17, 2015, Administrative Complaint was consolidated with the hearing for the September 10, 2014, Administrative Complaint. A consolidated final hearing convened on September 23 and 24, 2015.

ALJ Boyd issued a Recommended Order on December 15, 2015, recommending the Division enter a final order finding Mr. Ziadie guilty of 18 of the 21 counts alleged in the

combined Administrative Complaints, suspending Mr. Ziadie's license for a period of six years, and fining him $18,000. However, ALJ Boyd also recommended that the Division find that the serum test results that were part of the evidentiary basis for Mr. Ziadie's violations of Section 550.2415(1)(a), Fla. Stat, were collected pursuant to an unadopted rule set forth in subsection 4.6 of the 2010 Equine Detention Barn Procedure Manual ("the Manual"), and that the Division failed to follow the blood sample collection procedures set forth in Rule 61D-6.005(3), Fla. Admin. Code.

The Respondent and Petitioner filed exceptions to ALJ Boyd's Recommended Order. After a complete review of the record in this matter, the Division rules as follows:

AGENCY STANDARD FOR REVIEW

Pursuant to Section 120.57(1)(l), Fla. Stat., a the Division may not reject or modify findings of fact unless it first determines, from a review of the entire record, and states with particularity, that the findings of fact were not based on competent substantial evidence. "Competent substantial evidence is such evidence that is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" Comprehensive Medical Access, Inc. v. Office of Ins. Regulation, 983 So. 2d 45, 46 (Fla. 1st DCA 2008)(quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)).

Pursuant to Section 120.57(1)(l), Fla. Stat., when rejecting or modifying conclusions of law or interpretations of administrative rules, the Division must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable that that which was rejected or modified.

Pursuant to Section 120.57(1)(e)3., Fla. Stat., an ALJ's determination regarding an unadopted rule shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity that such determination is clearly erroneous and does not comply with essential requirements of law.

RULINGS ON RESPONDENT'S EXCPETIONS

Exception #1

1. Respondent takes exception to the finding of fact set forth in Paragraph #72, paraphrased by Respondent as, "pertaining to the settlement offer made to another trainer (J.N.) who had numerous prior violations...The ALJ found that there was evidence that the alleged violations were in close proximity and that this would be a mitigating factor making the circumstances surrounding the offer to J.N. different than the circumstances in the above referenced case being prosecuted against Respondent."

2. Paragraph #72 is supported by competent substantial evidence.

3. The Division denies Respondent's Exception #1.

Exception #2

4. Respondent takes exception to the finding of fact in Paragraph #82 in which ALJ Boyd found that "the urine test results proved that Mr. Ziadie's horses had clenbuterol in their bodies on race day."

5. Paragraph 82 is based on competent substantial evidence.

6. The Division denies Respondent's Exception #2.

Exception #3

7. Respondent takes exception to the conclusion of law in Paragraph #102 in which

ALJ Boyd stated that "in order to prove selective prosecution that Respondent would need to prove that the prosecution in the above referenced cases was based on some unjustified standard such as race, religion or some other arbitrary classification."

8. The Division denies Respondent's Exception #3. Section 550.3145 (3), Fla. Stat. The Undersigned concludes that the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Respondent.

Exception # 4

9. Respondent takes exception to the conclusion of law in Paragraph #133 in which ALJ Boyd stated that "the Division's use of urine evidence as the sole basis to find the Respondent guilty was "harmless error."

10. The Division denies Respondent's Exception #4. The Undersigned concludes that the legal reasoning adopted by the ALJ and endorsed by the Petitioner in its Response to Respondent's Exceptions is more persuasive than the legal reasoning offered by Respondent.

RULINGS ON PETITIONER'S EXCEPTIONS

Exception #1

11. Petitioner takes exception to the finding of fact set forth in the portion of Paragraph #20 on Pages 11-12 of the Recommended Order in which ALJ Boyd found, "after the blood samples were taken by the veterinarian, they were not "sealed" in collection the tubes. The fact that the collections tubes are air tight prior to and after the taking of the blood and initially contain a partial vacuum to facilitate collection, does not constitute "sealing" of the specimen in its container for the specific purpose of the rule."

12. Paragraph #20 was supported by competent substantial evidence.

13. The Division denies Petitioner's Exception #1.

Exception #2

14. Petitioner takes exception to the finding of fact set forth in the portion of Paragraph #23 on Pages 12-13 of the Recommended Order in which ALJ Boyd found, "Rule 61D-6.005 does not make any reference to spinning the blood in the centrifuge to extract serum, the pouring of serum into an evergreen tube, the sealing of the evergreen tube with evidence tape, or the freezing of the specimen, The Manual establishes additional policies and procedures not contained in the rule."

15. Paragraph #23 was supported by competent substantial evidence.

16. The Division denies Petitioner's Exception #2.

Exception #3

17. The Petitioner takes exception to the findings of fact set forth in the portion of Paragraph #33 on Pages 16-17 of the Recommended Order in which ALJ Boyd found, "[t]he procedures that were followed—set forth in the Manual—which allowed the owner's witness to sign the sample tag after witnessing the taking of the blood but before the sealing of the specimen, were not in compliance with rule 61D-6.005(3), ...which required the owner's representative to sign as a witness to both the taking and the sealing of the specimen."

18. Paragraph #33 was supported by competent substantial evidence.

19. The Division denies Petitioner's Exception #3.

Exception #4

20. Petitioner takes exception to the findings of fact set forth in the portion of Paragraph #33 on Page 17 of the Recommended Order in which ALJ Boyd found, "[t]he requirement that the authorized representative must witness not only the taking, but also the

sealing of the specimens, is a provision directly related to maintaining the integrity of the sample collection process."

21. While Paragraph 33 was supported by competent substantial evidence, the Division notes that the former requirement of Rule 6.005 that the authorized representative must witness not only the taking, but also the sealing of the specimens is related to maintaining the integrity of the sample collection process in that it placed the requirement upon the owner or authorized representative to observe the process so that the owner or qualified representative could not make a complaint about chain of custody procedures regarding the sample collection process.

22. The Division denies Petitioner's Exception #4.

Exception #5

23. Petitioner takes exception to the findings of fact set forth in Paragraph #33 on Page 17 of the Recommended Order in which ALJ Boyd found, "[s]uch deliberate disregard of the plain language of the rule directly affects the fairness of the entire sampling procedure."

24. While Paragraph # 33 was supported by component substantial evidence, the Division notes that in allowing the owner's witness to sign at the point of witnessing the taking of the urine and serum and sealing of the urine specimen, while allowing the owner's witness to return to the detention barn to witness and sign for the sealing of the serum specimen, it did not deliberately disregard then Rule 6.005, rather, its interpretation of the rule was contrary to that of ALJ Boyd. Additionally, the Department allowed the owner's witness to sign the card at the sealing of the urine and return later to sign for the sealing of the serum.

25. The Division denies Petitioner's Exception #5.

Exception #6

26. Petitioner takes exception to the Paragraph # 80 on Page 33 of the Recommended Order in which ALJ Boyd concluded, "[s]ubsection 4.6 of the Manual is an unadopted rule."

27. The Division denies Petitioner's Exception #6.

Exception #7

28. Petitioner takes exception to the findings of fact set forth in Paragraph #81 on Page 33 of the Recommended Order in which ALJ Boyd found, "[t]he only evidence of the presence of phenylbutazone in any of Mr. Ziadie's horses was from serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual an in a manner contrary to the Division's own rule."

29. Paragraph #81 was supported by competent substantial evidence.

30. The Division denies Petitioner's Exception #7.

Exception #8

31. Petitioner takes exception to the conclusion of law set forth in Paragraph #103 on Pages 40-41 of the Recommended Order in which ALJ Boyd stated, "[t]he evidence clearly showed that the sampling procedures followed here, as set forth in the Manual, has the witness sign the card before the sealing of the serum specimen"

32. The Division denies Petitioner's Exception #8. The Undersigned concludes that the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Petitioner.

Exception #9

33. Petitioner takes exception to the conclusion of law set forth in Paragraph

#107 on Page 42 of the Recommended Order in which ALJ Boyd stated, "Petitioner's argument that it cannot "force" the authorized representative to witness the sealing of the specimen is unpersuasive. The rule clearly states that "the sample tag shall be detached and signed by the owner, trainer, groom, or the authorize person as a witness to the taking and sealing of the specimen." A witness's refusal to do so would be one thing, but here the procedure followed—as established in great detail by the Manual—routinely secures the signature of the witness long before the serum is even extracted."

34. The Division denies Petitioner's Exception #9; however, it is noted the Division does not have the statutory authority to require an authorized representative to witness the sealing of the specimen.

Exception # 10

35. Petitioner takes exception to the conclusion of law set forth in Paragraph #109 on Page 43 of the Recommended Order in which ALJ Boyd stated, "[u]nder all of the circumstances of this case, it is not difficult to conclude that the systematic and regular violation of the rule's requirement that the authorized representative witness the sealing of the serum sample constituted a significant procedural error that effected the fairness of the proceeding."

36. The Division denies Petitioner's Exception #10. The Undersigned concludes that the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Petitioner.

Exception #11

37. Petitioner takes exception to the conclusion of law set forth in Paragraph #110 on

Page 43 of the Recommended Order in which ALJ Boyd stated, "with respect to the blood samples, Petitioner failed to identify restricted drugs in specimens collected in the manner required by its rules."

38. The Division denies Petitioner's Exception #11. The Undersigned concludes that the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Petitioner.

Exception #12

39. Petitioner takes exception to the conclusion of law set forth in Paragraph #117 on Page 46 of the Recommended Order in which ALJ Boyd found, "...the rule explicitly requires that the owner's representative witness the sealing of the sample and says nothing of serum extraction procedures. Because the witnessing of the sealing of the sample is not merely a matter of technical implementation, the Manual's restructuring of this important rule requirement constitutes an important policy change that constitutes an "agency statement."

40. The Division denies Petitioner's Exception #12. The Undersigned concludes that the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Petitioner.

Exception #13

41. Petitioner takes exception to the conclusion of law set forth in Paragraph #125 on Page 49 of the Recommended Order in which ALJ Boyd found, "[d]iscipline of Respondent's license may not be based upon the test results of serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and contrary to Petitioner's adopted rule."

42. The Division denies Petitioner's Exception #13. The Undersigned concludes that

the legal reasoning adopted by the ALJ is more persuasive than the legal reasoning offered by Petitioner.

FINDINGS OF FACT

43. Other than as explained and clarified in the rulings on Petitioner's exceptions #4 and 5, ALJ Boyd's Findings of Fact, as set forth in Exhibit A are approved adopted and incorporated herein by reference. Those findings are supported by competent and substantial evidence.

CONCLUSIONS OF LAW

44. ALJ Boyd's Conclusions of Law, as set forth in Exhibit A are approved, adopted, and incorporated herein by reference.

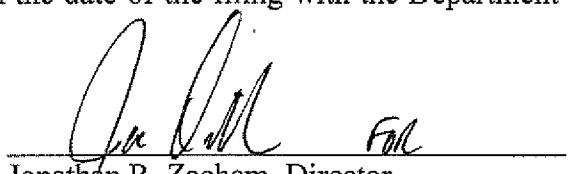
WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Respondent Kirk Ziadie is guilty of 18 counts of violating section 550.2415(1)(a), Florida Statutes.

2. Respondent Kirk Ziadie's pari-mutuel wagering license (license #701515-1021) shall be suspended for a period of six (6) years.

3. Respondent Kirk Ziadie shall pay an administrative fine of $18,000 to the Division.

4. This order shall become effective on the date of the filing with the Department's Agency Clerk.



Jonathan R. Zachem, Director
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail and electronic mail to: (1) Kirk Ziadie c/o Brad Beilly, Esquire; Beilly & Strohsahl, P.A.; 1144 S.E. Third Avenue, Ft. Lauderdale, Florida 33316 brad@beillylaw.com; and by electronic mail to (2) Caitlin Mawn, Esquire; Department of Business and Professional Regulation; 1940 North Monroe Street, Suite 42; Tallahassee, Florida 32399-2202; caitlin.mawn@myfloridalicense.com on this the 11th day of January 2016.

AGENCY CLERK'S OFFICE

Ronda Bryan, Agency Clerk

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Petitioner,

vs. Case No. 14-4716PL

KIRK M. ZIADIE,

Respondent.
_____/

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Petitioner,

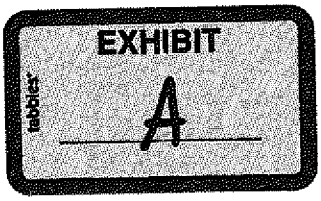
vs. Case No. 15-2326PL

KIRK ZIADIE,

Respondent.
_____/

RECOMMENDED ORDER

These consolidated cases came before Administrative Law Judge F. Scott Boyd in Fort Lauderdale, Florida, on August 25 through 27, 2015; by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida, on September 1, 2015; and again in Ft. Lauderdale, Florida, on September 23 and 24, 2015.



APPEARANCES

For Petitioner: Richard McNelis, Esquire
Caitlin R. Mawn, Esquire
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Division of Pari-Mutuel Wagering
1940 North Monroe Street, Suite 40
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For Respondent: Bradford J. Beilly, Esquire
John Daniel Strohsahl, Esquire
Bradford and Strohsahl, P.A.
1144 Southeast Third Avenue
Fort Lauderdale, Florida 33316

STATEMENT OF THE ISSUES

Whether Respondent raced an animal with a drug in violation of section 550.2415(1)(a), Florida Statutes (2012),[1/] as alleged in the Administrative Complaints, and, if so, what sanction is appropriate.

PRELIMINARY STATEMENT

Petitioner, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Petitioner" or "Division"), served a Second Amended Administrative Complaint on Respondent, Mr. Kirk Ziadie, on September 10, 2014. The complaint alleged that Respondent was the trainer of record of thoroughbred horses that raced at Florida racetracks with restricted drugs on dates from July 4, 2012, through September 27, 2012, charging six counts of violation of statutes and rules governing pari-mutuel racing. Respondent disputed material facts alleged in the complaint and timely requested an

administrative hearing. The case was forwarded to the Division of Administrative Hearings ("DOAH") for assignment of an administrative law judge on October 10, 2014, and was assigned DOAH Case No. 14-4716PL ("Ziadie I").

On March 17, 2015, Petitioner served Respondent with a First Amended Administrative Complaint alleging in 16 additional counts that he was the trainer of record of horses racing with restricted drugs in races that took place from March 13, 2013, through December 7, 2014. Respondent again disputed material facts alleged in the complaint and timely requested an administrative hearing. The case was forwarded to DOAH and was assigned Case No. 15-2326PL ("Ziadie II").

The final hearing in Ziadie I began on August 25 through 27, 2015, and continued on September 1, 2015. The question arose during hearing as to whether it might be efficient to consolidate the two cases. Neither party offering any reason why this should not be done, and no prejudice to either party being found, an Order of Consolidation was issued on September 2, 2015. The Order provided that the testimony and evidence admitted up to that point in the hearing would be considered just as if it had been admitted after consolidation. The hearing resumed in the consolidated cases on September 23 and 24, 2015.

The parties stipulated to certain facts, which were accepted at hearing and are included among those set forth below. Petitioner presented the testimony of Ms. Margaret Wilding, associate director of the University of Florida Racing Laboratory; Dr. William Watson, D.V.M., the veterinarian manager at the Division; Mr. Ivan Urrutia, formerly a chief veterinary assistant at the Division; Ms. Jill Blackman, the Division's chief operations officer; Mr. Patrick Russell, a chemist at the University of Florida Racing Laboratory; Mr. Terry Mills, an analytical chemist and accreditation manager for American National Standards Institute-American Society for Quality National Accreditation Board; and Dr. Cynthia Cole, a veterinary pharmacologist and director of research and development at Mars Veterinary.

Respondent objected at hearing to the introduction of Petitioner's Exhibits P-7, P-8, and P-17 through P-20, which were test results and supporting documents from the laboratory, on the grounds that the samples were obtained and tested contrary to the procedures of the governing rule and pursuant to a manual that constituted an unadopted rule. Ruling on the objection was reserved. After careful consideration, the objection to admissibility of these exhibits is overruled, as under the statute "any evidence" that is relevant is admissible. All of Petitioner's exhibits, P-1 through P-21, are therefore

admitted. However, based upon provisions in chapters 120 and 550, Florida Statutes, Exhibits P-7, P-17, and P-18, relating to the serum specimens, were not used to prove the presence of restricted drugs, as discussed in detail below.

Respondent presented the testimony of Mr. Theodore Mizarak, a licensed horseman in Florida, Indiana, Ohio, and Kentucky; Mr. Kent Stirling, executive director of the Florida Horsemen's Benevolent and Protective Association; Mr. Kevin Scheen, state steward manager at the Division; Dr. Steven Barker, a chemist and professor at the School of Veterinary Medicine at Louisiana State University; Mr. Peter Lawson, a management and strategy consultant and thoroughbred horse owner; Mr. Bradford Beilly, counsel for Respondent; and Respondent. Respondent offered 27 exhibits, R-1 through R-27, all of which were admitted.

The seven-volume Transcript of the hearing was filed at DOAH on October 30 and November 4, 2015. Petitioner's Proposed Recommended Order was timely filed. Respondent's proposed recommended order was received about 5:05 p.m. on the filing deadline, November 19, 2015, and under the rule, was filed as of 8:00 a.m. the following day. No prejudice was found and both proposed recommended orders were carefully considered in the preparation of this Recommended Order.

On November 25, 2015, Respondent Ziadie's Motion to Strike Portion of Petitioner's Proposed Recommended Order or Otherwise

Bring to the Attention of the Court an Inaccuracy in a Finding of Fact Contained in Petitioner's Proposed Recommended Order was filed. Petitioner's Response in Opposition to Respondent's Motion to Strike Portion of Petitioner's Proposed Recommended Order was filed on December 1, 2015. Respondent's motion is denied. While Petitioner's citation to Florida Administrative Code Rule 28-106.217 is inapposite, as it pertains to exceptions filed with an agency after a recommended order is issued, Petitioner's basic position that Respondent's opportunity to challenge any findings and conclusions comes after the recommended order is issued is correct. Neither point raised by Respondent warrants departure from that general procedure. The points are disputable based upon the record, and neither is critical to the issues as they were resolved in this Recommended Order.

FINDINGS OF FACT

1. The Division is the state agency charged with regulating pari-mutuel wagering in the state of Florida, pursuant to chapter 550, Florida Statutes (2015).

2. At all times material, Mr. Ziadie held a pari-mutuel wagering occupational license, number 701515-0121, issued by the Division.

3. At all times material, Mr. Ziadie was subject to chapter 550 and the implementing rules in Florida Administrative Code Chapter 61D-6.[2/]

4. Under section 550.2415(1)(a), an animal may not be raced with any drug. It is a violation for any person to administer a drug to an animal which results in a positive test in samples taken from the animal after the race.

5. Under section 550.2415(1)(c), "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race."

6. Under rule 61D-6.002(1), "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

7. As reflected in Division records kept in accordance with the 2010 Equine Detention Barn Procedures Manual ("the Manual"), which was in effect at all relevant times, Mr. Ziadie was the trainer of record of the thoroughbred horses from which samples were obtained in Ziadie I and Ziadie II.

8. Mr. Ziadie is substantially affected by the Division's intended action.

9. The equine detention barn is the site at each licensed racetrack in Florida where employees of the Division collect

urine and blood samples from racehorses. It includes a fenced-in and secured area that generally has at least six stalls, as well as an area for walking the horses after a race.

10. After a horse has been selected for sample collection (usually the top two or three finishers and sometimes a "special" that has been added at the request of the stewards), a Division employee tags the horse and accompanies it back to the detention barn. Along the way, a Division veterinary assistant assigned to the horse assumes custody and escorts the horse. At the barn, the horse is positively identified by means of a tattoo on the underside of its lip. The horse is walked to cool it down and sometimes bathed, and then taken into a stall for sample collection. Following their respective races, Mr. Ziadie's horses were immediately taken in this fashion to the detention barn for the taking of urine and blood samples.

11. The Division publishes the Manual under the direction of Ms. Blackman as the chief of operations. The Manual is used at all horse racing facilities in the state of Florida and was last updated on June 25, 2010.

12. The Manual provides that veterinary assistants, chief veterinary assistants, detention barn security guards, and detention barn supervisors "study, become completely familiar with, and put into practice" the procedures outlined in the Manual. It describes seven steps in chain-of-custody

procedures, three of which are "collecting the specimen, sealing the specimen, and completing the required forms," and describes detailed procedures in this "strict sequence of events that must be followed."

13. As the Manual makes clear, Division employees at the detention barns in the state of Florida are all required to follow the procedures outlined in the Manual "each and every time" they work with samples. They do not have discretion not to follow its requirements.

14. Mr. Stirling credibly testified that in his capacity as executive director of the Florida Horseman's Benevolent and Protective Association, a position he has held for 20 years, he was an advocate for the horsemen. He attended all of the workshops for rules relating to medication overages as one of his primary duties. The centrifuging process, extraction of the serum, and sealing of the serum specimen as described in detail in the Manual were never discussed at a rulemaking hearing. These procedures are not a part of rule 61D-6.005, adopted in 2001. As he testified, Mr. Stirling was not even aware of these procedures until a month or two before the final hearing in these cases. The Manual has not been adopted under the procedures of section 120.54.

15. At the time of these races, rule 61D-6.005, effective November 19, 2001,[3/] governed the procedures for the taking of

urine and blood samples from the horses. Subsection (3) provided in part:

> The specimen shall be sealed in its container, assigned an official sample number which is affixed to the specimen container, and the correspondingly numbered information portion of the sample tag shall be detached and signed by the owner, trainer, groom, or the authorized person as a witness to the taking and sealing of the specimen.

16. Subsection 4.5 of the Manual describes the sample tag in greater detail:

> RL 172-03 is a self-adhesive sequentially numbered bar-coded, three part form (blood label, urine label and card) provided by the University of Florida Racing Laboratory that is used to catalog specimens by assigning them "Specimen Numbers." As specimens are collected, information regarding the animal from which the sample was collected is written on the bottom of this form. The top two portions of the form (Blood, Urine) are completed with the Track Number and Collection Date. The applicable top portions of the form are then separated and applied to the urine specimen cup and/or evergreen blood tube. The bottom portion, or Specimen Card, is completed and appropriately signed and is sent to the Tallahassee Office of Operations to be filed.

17. The sample tag thus consists of three portions: the numbered portion designated for the blood specimen ("blood label"), the numbered portion designated for the urine specimen ("urine label"), and the numbered portion containing additional information about the animal and trainer that is to be signed by

the witness ("card"). In the sampling procedures followed in these cases, the blood label was not affixed to the collection tube. The blood label, from which the card portion was "detached," was affixed to the evergreen blood tube. This was consistent with the governing rule, as well as the Manual. The evergreen tube is the specimen container for the serum.

18. The sampling procedures followed with respect to the serum and urine samples taken in Ziadie I and Ziadie II were in compliance with the procedures set forth in the Manual.

19. As stated in subsection 4.4 of the Manual, "[s]ealing the sample ensures the specimen does not spill during shipment to the laboratory and assures all parties that the sample has not been tampered with." The same purposes are served by sealing the serum specimen.

20. After the blood samples were taken by the veterinarian, they were not "sealed" in the collection tubes. The fact that the collection tubes are air tight prior to and after the taking of the blood and initially contain a partial vacuum to facilitate collection, does not constitute "sealing" of the specimen in its container for purposes of the rule. As Dr. Watson testified:

> Q: Okay. Are these 15 milliliter tubes sealed?
>
> A: Well, they're sealed in that there's a vacuum in there and in order to draw the

> blood efficiently, that vacuum has to be there. If that seal is broken then it would not work. But, as far as sealing for legal purposes, they're not sealed at that time. There's a process that it has to go through in order to extract the serum.

The three collection tubes are not the specimen container, but the last three digits of the number from the blood label affixed to the specimen container were written on each blood collection tube with a black "Sharpie" type marking pen to ensure control of the sample.

21. The Manual prescribes detailed procedures for spinning the blood collected from the race horses in a centrifuge to extract the serum.

22. After the blood was centrifuged, and the serum was poured into the evergreen tube, the serum was sealed with evidence tape, as described in the Manual, and the chief veterinary assistant put his initials over the seal. This constituted "sealing" of the specimen in its container. Subsection 4.6 of the Manual provides:

> Serum is poured into applicable (numbered) "evergreen" tubes. Each "evergreen" tube is immediately properly sealed with evidence tape.

23. Rule 61D-6.005 does not make any reference to spinning the blood in the centrifuge to extract serum, the pouring of serum into an evergreen tube, the sealing of the evergreen tube with evidence tape, or the freezing of the specimen. The Manual

establishes additional policies and procedures not contained in the rule.

24. The serum must be separated from the blood because whole blood cannot be frozen without damage that would affect its usefulness in laboratory testing. Centrifuging facilitates the separation of the serum from the whole blood. The transfer of the separated serum from the glass collection tubes to the plastic evergreen tube is then done for two reasons. First, the plug that helps separate the serum can allow the blood cells to seep around and return to the serum, where they can release hemoglobin and iron, which can distort laboratory analysis. Second, using the plastic evergreen tube saves shipping weight and reduces the incidence of breakage during shipping.

25. The centrifuged collection tubes are stored in a locked refrigerator. The opening of the centrifuged collection tubes and the pouring of the serum into correspondingly numbered evergreen specimen containers is carefully performed by Division employees with the intent to avoid contamination. The sealed evergreen specimen containers then remain in a locked freezer until they are shipped to the laboratory. The evidence was clear and convincing that the serum specimens in these consolidated cases were derived from the blood sample tubes bearing the same last three numbers as the tag which was

prepared when the blood was taken. The serum specimens came from Mr. Ziadie's horses.

26. Dr. Barker testified that the "free pour" of the serum was the point at which the specimen was most vulnerable, and that contamination or tampering was possible. He stated he would have preferred more supervision, witnessing, and documentation as to who was doing what, at what time. Dr. Cole concurred that there is always a possibility of contamination when a sample is transferred from one container to another. However, the free pour method used to transfer the serum from the collection tubes into the evergreen specimen container is one of the better approaches, as opposed to using a pipette or other method that would put something into the sample. Contamination from the free pour of the serum is unlikely. There was no evidence introduced to suggest that misidentification, tampering, or contamination of the specimens was likely or probable.

27. The state veterinarian who took the blood sample from each horse signed PMW Form 504, a Daily Record of Sample Collection, indicating that this had been done. After centrifuging the whole blood in the collection tubes, at the end of the day the state veterinarian usually leaves the collection tubes with the chief veterinary assistant, who pours the separated serum from each collection tube into the

correspondingly numbered evergreen container and seals it. Sometimes, the state veterinarian stays to observe the transfer of the serum to the evergreen specimen container.

28. No document is signed to note the time that the state veterinarian leaves the samples at the detention barn or the time that the chief veterinary assistant opens the collection tubes and transfers the serum. Custody of the samples remains with Division personnel throughout this process. No transfer of custody takes place until the specimen containers are shipped to the laboratory.

29. In each instance of sampling in these cases, the owner's witness signed the card portion of the sample tag (Form RL 172-03) after the taking of the urine and blood samples.

30. In each instance of sampling in these cases, the owner's witness signed the card portion of the sample tag after the sealing of the urine specimen in its container, but before the sealing of the serum specimen in its container, the evergreen tube.

31. In each instance of sampling in these cases, the owner's witness did not observe the extraction of the serum or the sealing of the serum specimen in its container with the evidence tape. The witnesses could have remained to watch those procedures had they requested to do so. Subsection 4.6 of the Manual states, "the owner, trainer of record or designated

authorized witness may leave with the released animal or may elect to witness the conclusion of the collected blood specimen processing and sealing cycle." According to Division policy, two signs are posted in the detention barns to advise owners' witnesses that they may remain to witness the centrifuge process and sealing of the sample. Specific testimony that a sign was in place at the exact times sample collection took place in each of these races, or the exact location that it was posted, was lacking. However, there was more general testimony from Dr. Watson that signs have been posted ever since he has been employed.

32. Dr. Watson credibly testified that, during the five years he has been working at the tracks, no owner's representative has ever stayed to watch the centrifuging of the samples or the sealing of the serum specimen container. The pouring of the collection tubes into the specimen container takes place at the end of the racing day, after all of the horses have departed from the detention barn. It would be very inconvenient for an owner's witness to remain until the serum specimens were sealed.

33. The procedures that were followed--set forth in the Manual--which allowed the owner's witness to sign the sample tag after witnessing the taking of the blood but before the sealing of the specimen, were not in compliance with rule 61D-6.005(3),

quoted above, which required the owner's representative to sign as a witness to both the taking and sealing of the specimen. Even had it been clearly shown that signs advising the owners' representatives that they were allowed to stay and witness the sealing of the specimen container were prominently displayed on every occasion on which the samples were taken, this would not bring the procedure being followed into compliance with rule 61D-6.005(3). The requirement that the authorized representative must witness not only the taking, but also the sealing of specimens, is a provision directly related to maintaining integrity in the sample collection process. Such deliberate disregard of the plain language of the rule directly affects the fairness of the entire blood sampling procedure.

34. The urine and serum samples in these cases were properly delivered to the University of Florida racing laboratory and the integrity of the samples was intact.

35. The laboratory conducts an initial screening of each urine sample in a process of elimination to weed out negative samples that do not contain any suspected drugs. This screening looks at a large number of samples and screens them broadly. The suspicious samples are then subjected to confirmation testing, in either serum or urine, testing a fewer number of samples and targeting for detection of specific drugs.

36. The Association of Racing Commissioners International create Uniform Classification Guidelines for Foreign Substances. Classes range from class I drugs, which have no therapeutic value and are most likely to affect the outcome of a race, to class V drugs, which have the most therapeutic value and the least potential to affect the outcome of a race. Class III, IV, and V drugs all have some therapeutic value.

37. Clenbuterol is a bronchodilator, a drug which may be prescribed for horses for therapeutic purposes. If a horse had blood or sand in his lungs after a race, he might be placed on clenbuterol for five to eight days, twice a day, and the medication would clean the lungs out completely. Clenbuterol also has the capacity to be a repartitioning (conversion of fat into muscle) agent. It is not as effective as an anabolic steroid, but it does have the capacity for building muscle. Rule 61D-6.008 does not permit any clenbuterol in the body of a racing animal on race day. Clenbuterol is a Class III drug under the Uniform Classification Guidelines for Foreign Substances.

38. Phenylbutazone is a nonsteroidal anti-inflammatory drug effective in treating fever, pain, and inflammation. It was credibly described as having effects similar to aspirin. Rule 61D-6.008(2)(a)2. provided in part that, "[p]henylbutzone may be administered to a horse providing . . . the post-race

serum sample of such horse contains a concentration less than 2 micrograms (mcg) of Phenylbutazone or its metabolites per milliliter (ml) of serum." Phenylbutazone is a class IV drug under the Uniform Classification Guidelines for Foreign Substances.

39. The laboratory routinely receives only the information on the urine and blood labels with the specimens and does not know the identity of the horse or trainer. Samples tested in the laboratory are assigned an "LIMS" number internal to the laboratory and do not contain any information that would identify the horse or trainer. The technicians who actually conduct the tests are not informed of the name of the horse or trainer involved. Once the Division is advised by a laboratory report that a sample has "tested positive" for a particular substance, the Division matches the laboratory report to the sample tag, which has been kept under lock and key, to determine the identity of the horse and trainer. The stewards and trainer are then notified.

40. After the trainer is notified of positive results, he has the opportunity to request a split sample. In this procedure, a portion of the specimen is shipped from the University of Florida laboratory to an outside laboratory for independent analysis.

41. There is a minimum amount of a drug that can be detected scientifically with a reliable concentration range. As the scientific capability to detect a drug improves, this testing level can be lowered by a laboratory. The instrumentation can almost always detect the presence of the drug below the reliable concentration range that establishes the testing level.

42. As Ms. Wilding testified, a "withdrawal time" is the time interval prior to sample collection at which the last administration of a drug can take place to allow the drug to be cleared from the horse's system so that no "positive" would be reported in that sample based upon the test detection level or reporting point for that particular drug.

43. Mr. Stirling testified that based upon informal conversations with Dr. Tebbet, Dr. Cole, and Dr. Sams, former directors of the laboratory, he had disseminated information to horsemen for years that a five-day withdrawal time would be appropriate for clenbuterol.

44. From July 1, 2010, until June 30, 2011, there were four clenbuterol positives from horse race tracks in Florida.

45. From July 1, 2011, until June 30, 2012, there were 13 clenbuterol positives from horse race tracks in Florida. During this same fiscal year, the laboratory also found the presence of clenbuterol in 193 additional samples, but did not

deem them "positives." In these samples, the laboratory detected clenbuterol in a concentration of less than 25 picograms per milliliter.

46. Dr. Barker credibly testified that the fact that 193 findings of clenbuterol at less than 25 picograms per milliliter were not called "positives" indicated that either the laboratory or the Division had some form of confirmation level established.

47. As Ms. Wilding testified, changes to the protocol as to the amount of a drug that must be present in a sample before that sample will be called "positive" are made through revisions to the laboratory's standard operating procedures (SOPs).

48. Ms. Blackman testified that she had conversations with Ms. Wilding at the laboratory "sometime in, maybe, the summer of 2012" about the ability of the laboratory to calibrate their instruments to detect clenbuterol at the lowest level, based upon Ms. Blackman's understanding that clenbuterol was being abused, in that it was being prescribed not just for its bronchodilator effect, but also for its anabolic effects.

49. SOP DCN: R1.07.04.05.04-07, entitled "Extraction of Clenbuterol from Horse Serum or Plasma and Identification by Liquid Chromatography-Tandem Mass Spectrometry," effective April 27, 2012, established the low end of the calibration curve at 10 picograms per milliliter. The amount of the lower

positive control was 25 picograms per milliliter. The SOP provided: "If the mean concentration of clenbuterol in the test sample is less than the lower end of the calibration curve, it will not be reported."

50. From July 1 until December 31, 2012, there were nine clenbuterol positives from horse race tracks in Florida. The first Florida positive called by the laboratory for a thoroughbred race horse whose post-race serum sample contained a level of clenbuterol less than 25 picograms per milliliter of serum was for the first race in Ziadie I, on July 4, 2012, which was reported as a positive with a level of 18 picograms per milliliter. Testing also confirmed in serum the presence of phenylbutazone in that first sample, in the amount of 2.3 micrograms per milliliter, an amount in excess of the 2 micrograms per milliliter which is permitted. The laboratory results were sent to the Division by letter dated August 6, 2012.

51. The initial confirmation of the phenylbutazone overage and clenbuterol positive from the race of July 4, 2012, was originally sent to the stewards to resolve but was later taken from the stewards and turned into an administrative complaint.

52. On August 9, 2012, a long article appeared in the Miami New Times entitled "Cheaters Prosper at Calder Park." The article described a racing industry tainted by drug violations

and criticized the Division for lax regulations and poor enforcement. The article identified Mr. Ziadie by name, giving a short biography and saying there were signs of "systematic rulebreaking" over his long racing career.

53. Ms. Blackman saw the article. She also forwarded an e-mail attaching the article to Ms. Wilding at the laboratory.

54. Clenbuterol was confirmed in serum taken after the other four races of the Ziadie I complaint, held on August 17, August 30, September 14, and September 27, 2012. The concentration of clenbuterol in those samples ranged from 10 to 21 picograms per milliliter. The results from the laboratory were provided to the Division on September 25, October 1 (two races), and October 16, 2012. At Mr. Ziadie's request, the samples were split, and an independent laboratory confirmed the presence of clenbuterol in each sample.

55. In late December 2012, the Division gave the laboratory authority to begin conducting confirmation testing for clenbuterol in urine rather than in serum. In the beginning of 2013, the laboratory changed to a 140 picogram per milliliter confirmation level for clenbuterol in urine. The Division did not give notification to the horsemen or veterinarians of these changes.

56. From January 1, 2013, until June 30, 2013, there were 154 clenbuterol positives from the horse race tracks in Florida.

57. Dr. Barker testified:

> So you would be able to see clenbuterol in urine for a much longer period of time. And, of course, that's also why ARCI now has a urine threshold instead of a plasma threshold because the idea was to push it out as far as they could and still be able to call it. They couldn't do that sufficiently in blood, they felt, so they converted it to a urine threshold. So if you go from a plasma threshold to a urine threshold, particularly the--if it's a threshold that ARCI has recommended, you know, ARCI threshold is 140 picograms per ml in urine, and that's based on using the lowest dose and a 14-day withdrawal.
>
> Well, if you had been using the lowest dose and had been following a five-day withdrawal, you would come up positive. If you had been using the lowest dose and had been following a ten-day withdrawal, you're going to come up positive. And so if people, trainers and veterinarians, were not being informed of a change in how the laboratory was testing and interpreting data, and basically was working from a position that required a longer withdrawal time and the horsemen didn't know that, well, you're going to--you should get all kinds of positives.

Dr. Barker's explanation of the consequences of changing from a serum confirmation to a urine confirmation for clenbuterol is credited. His testimony also at least partially explains why there is not a clear correlation between the concentrations of clenbuterol detected in serum with the concentrations detected in urine from samples taken at the same time. The amounts of clenbuterol and the times it was administered to the horse

remain unknown variables, and clenbuterol is detectable for a longer period of time in urine. Differences might also be explained by the amount of water the horse drank, or other factors.

58. On or about February 8, 2013, following the great increase in the number of positive calls for clenbuterol, Mr. Stirling posted a notice regarding withdrawal times at the tracks and published it in the "overnights" that went to trainers. The notice stated:

> According to the Department [sic] of Pari Mutuel Wagering the withdrawal time for clenbuterol is the same as it was previously (5 days) at the proper dosage.
>
> If you had a recent positive for clenbuterol and used the old/new withdrawal time there should be no administrative action taken against you.

59. At either the end of February or the beginning of March of 2013, the Division requested the laboratory to return to clenbuterol confirmation screening in serum, rather than urine.

60. SOP DCN: R1.07.04.05.04-09, entitled "Extraction of Clenbuterol from Horse Serum or Plasma and Identification by Liquid Chromatography-Tandem Mass Spectrometry," effective March 7, 2013, established the low end of the calibration curve at 5 picograms per milliliter. The low end of the calibration curve reflects the lower limit of detection at which the SOP can

detect a drug with a reliable concentration range. The amount of the lower positive control was set at 15 picograms per milliliter. The SOP provided: "If the mean concentration of clenbuterol in the test sample is less than the lower end of the calibration curve, it will not be reported."

61. Clenbuterol was confirmed in serum in confirmation testing of 13 of the Ziadie II samples, taken after races from March 13, 2013, through October 27, 2013, ranging in concentration from 5 to 14 picograms per milliliter. These samples were also split, and an independent laboratory confirmed the presence of clenbuterol in each sample.

62. Testing also confirmed in serum the presence of phenylbutazone in the sample taken from the race on January 19, 2014, in Ziadie II, in the amount of 2.3 micrograms per milliliter, plus or minus .3 micrograms.

63. The Division did not give notification to the horsemen of any changes in the testing level at which the laboratory would report that a sample had tested positive for clenbuterol. Ms. Blackman testified that clenbuterol is not permitted at any level on race day, and it is the trainers' responsibility, in conjunction with their veterinarians, to decide whether to administer a particular medication at all. She testified that she did not think it was in the best interest of the horses or

the Division to make announcements every time they are able to detect a new drug or an existing drug at a lower level.

64. In contrast, she noted, when the amount of phenylbutazone permitted in a horse on race day was lowered from 5 mg to 2 mg, this was announced to the horsemen through the public rulemaking process. An advance notice of about six months allowed trainers to work out adjustments with veterinarians so there would not be a huge number of phenylbutazone positives when the new rule became effective. Since phenylbutazone is a "threshold" drug permitted on race day at no greater than prescribed amounts, Ms. Blackman testified that it was reasonable to give horsemen notice of this change.

65. Dr. Cole testified that she had a different view about changes to testing levels of drugs such as clenbuterol that were completely prohibited on race day when she was the director of the lab, saying she believed it was "prudent and fair" to notify the horsemen of changes in advance:

> Often when we're changing levels or sensitivity for medication type—drugs that have legitimate use in a horse, we would try to have a conversation with the horsemen to let them know that change was coming so that they could comply. Generally it's going to be an increase in the withdrawal time that they're going to be needed.

66. On March 20, 2013, Mr. Stirling sent an e-mail to Ms. Blackman stating that he was beginning to get low-level

positives for clenbuterol again, giving an example of 6 picograms per milliliter. He stated he thought the testing medium had been changed back to blood to return to a five-day withdrawal time and asked how the Division planned to handle the low-level clenbuterols from December. In e-mail correspondence continuing through April and May of 2013, Mr. Stirling continued to question the Division about the withdrawal time and to urge a 25 picogram per milliliter testing level. Ms. Blackman advised that the laboratory was re-confirming in serum the clenbuterol positives that had been confirmed in urine. She noted that a 10 picogram per milliliter reporting point for testing in serum had been established prior to the change in the medium for confirmation and noted there was no "threshold" for clenbuterol in Florida. On May 24, 2013, Ms. Blackman advised Mr. Stirling that clenbuterol positives confirmed in serum at 5 picograms per milliliter or a greater concentration would be prosecuted.

67. On or about May 29, 2013, Mr. Stirling issued a memorandum to Florida horsemen advising that the Division was continuing to call clenbuterol positives at levels detected below 25 picograms per milliliter and suggesting that they should no longer rely on a five-day withdrawal time. The memorandum suggested that a 14-day withdrawal time "should be more than safe" for avoiding a clenbuterol positive.

68. Mr. Ziadie admitted he did not change his practice of utilizing a five-day withdrawal time in response:

> I was still stuck on the five days, your honor. I was stubborn. I know I did wrong. I know that there was a rumor and I know there was a brochure going around 14 days. but I was trying to do the best for my horses. I thought that it was the medication that they needed at the time when we were racing and I take blame for being stubborn and making a mistake, but I did keep it at 5 days.

69. SOP DCN: R1.07.04.05.11-06, entitled "Extraction of Clenbuterol from Horse or Dog Urine and Identification by Liquid Chromatography-Tandem Mass Spectrometry," effective October 9, 2014, established the low end of the calibration curve at 50 picograms per milliliter and the high end of the calibration curve at 2000 picograms per milliliter. The amount set for both positive controls was 140 picograms per milliliter. The SOP provided:

> Report the calculated concentration of clenbuterol in the suspect sample as the average of its duplicates if its calculated value lies within the range of the calibration curve. If the calculated concentration of clenbuterol in the test sample is outside the range of the calibration curve, it will be reported as either greater than, or less than the limits of the calibration curve.

70. Based on the serum test results, the Second Amended Complaint in Ziadie I was served on Mr. Ziadie on or about September 8, 2014.

71. The First Amended Complaint in Ziadie II was served on Mr. Ziadie on or about March 16, 2015.

72. Other trainers whose horses tested positive for clenbuterol did not have administrative complaints filed against them. The Division, instead, settled their cases with fines. Almost all of these trainers had few prior violations, however. There was credible testimony that the Division had offered to settle charges against one other trainer who had numerous prior violations with the imposition of fines and a short suspension, but there was no evidence that a settlement had been reached. It was also noted at hearing that this trainer's recent violations were in close proximity, which suggested that he might not have been informed of the violations in one case before the samples were taken in the next. The Division noted that this could be a mitigating factor, because a trainer would not reasonably have had an opportunity to adjust his medication levels in response to the earlier violations.

73. Ms. Wilding testified that, in early 2015, she was asked by the Division to re-confirm the 2012 positive serum confirmations from Ziadie I using the urine samples taken immediately after those races. The urine samples had been used for initial screening in 2012, but had not been used for confirmation at that time. The urine samples had been stored in

a minus 30-degree freezer since the initial screening in 2012 had determined them suspicious for clenbuterol.

74. On March 18, 2015, Ms. Wilding sent an e-mail to her immediate subordinates, the supervisors of the laboratory's four main divisions, advising that "PMW Legal is asking us to analyze the five urine samples in the first Ziadie case for clenbuterol." Her e-mail listed the sample numbers for the five urine samples and directed that they be rescreened for clenbuterol and then tested for confirmation.

75. The 2012 urine samples were rescreened for clenbuterol in 2015, and, as Ms. Wilding testified, the results were in "good agreement" with the screening results from 2012. This indicated that the presence of clenbuterol remained relatively stable over that period of time.

76. Although the laboratory supervisors knew the trainer associated with the samples, as Ms. Wilding and Mr. Russell testified, samples tested in the laboratory do not contain identification of the horse or trainer and are only marked with a "LIMS" number internal to the lab. The technicians who actually performed these tests were not informed of the name of the horse or trainer involved.

77. Clenbuterol was confirmed in the urine in the 2015 tests in each of the five samples from Ziadie I, ranging in concentration from 1.8 nanograms per milliliter to 1.3 nanograms

per milliliter. The samples were also split, and an independent laboratory confirmed the presence of clenbuterol in each urine sample. There was no significant degradation of the urine samples over the three-year period. The results were scientifically sound.

78. In early May 2015, again at the Division's request, the laboratory began confirmation testing for clenbuterol in urine samples from the Ziadie II races. These urine samples were not rescreened because, as Ms. Wilding had earlier determined from the Ziadie I urine samples, the stability of clenbuterol in urine stored in a minus 30-degree freezer for several years was "excellent." The senior staff members were again likely told about the identity of the trainer. Again, samples tested in the laboratory do not contain identification of the horse or trainer and are only marked with a "LIMS" number internal to the lab. The technicians who actually performed the confirmation testing were not informed of the name of the horse or trainer involved. The samples confirmed positive for clenbuterol at concentrations, in picograms per milliliter, of 973, 551, 390, 212, 718, 450, 236, 740, 698, 225, 435, 197, and 435, all amounts with a measurement of uncertainty at plus or minus 30 picograms. Again, these results were scientifically sound.

79. The serum specimens were routinely collected without the owners' representatives witnessing the sealing of the specimens and were not collected pursuant to the requirements of chapter 61D-6. The systematic and regular violation of this important requirement constituted a significant procedural error that affected the fairness of the blood sampling procedure.

80. Subsection 4.6 of the Manual is an unadopted rule.

81. The only evidence of the presence of phenylbutazone in any of Mr. Ziadie's horses was from serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and in a manner contrary to the Division's own rule. The Division failed to prove that Mr. Ziadie's horses carried a prohibited level of phenylbutazone in their bodies on race day.

82. The urine test results proved that Mr. Ziadie's horses in these consolidated cases had clenbuterol in their bodies on race day.

83. Mr. Lawson testified that as a licensed horse owner in the United States, South Africa, and Jamaica, he has had an opportunity to observe the different ways that trainers care for their thoroughbred horses. He testified that Mr. Ziadie's stalls were always clean, the handling of the feed was always done in a very systemized and structured way, and the best feed available was used, even though it had to be imported and was much more expensive.

84. He testified that Mr. Ziadie's horses were always well groomed, they always looked very healthy, their coats were very shiny, their feet were carefully inspected, and they were happy horses. He testified that Mr. Ziadie looked after the specific needs of each horse, rather than treating them all the same, and spent a lot of time personally inspecting them. He noted that Mr. Ziadie didn't race his horses as often as other trainers.

85. Mr. Lawson's testimony was bolstered by the stipulated testimony of Dr. Al Smollen, a veterinarian for the tracks, and the testimony about the excellent condition of Mr. Ziadie's horses, the cleanliness of their surroundings, the quality of the feed, and the care given to the horses is credited.

86. The Division presented clear evidence that Mr. Ziadie has had 14 prior violations of section 550.2415, Florida Statutes. The Division case number, date of offense, name of restricted drug, classification, and disposition are as follows:

CASE NUMBER	DATE	DRUGS	CLASS	DISPOSITION
2004028212	5/02/2004	flunixin	IV	$100 fine
2004057550	10/14/2004	glycopyrrolate	III	$500 fine, 15 days susp
2004060610	12/03/2004	glycopyrrolate	III	$500 fine
2005030701	5/08/2005	clenbuterol	III	$300 fine
2005064692	12/02/2005	phenylbutazone	IV	$250 fine
2006005191	1/15/2006	dimethyl sulfoxide	V	$100 fine

CASE NUMBER	DATE	DRUGS	CLASS	DISPOSITION
2006006449	1/19/2006	dimethyl sulfoxide phenylbutazone	V	$1,000 fine
2006007718	1/30/2006	dimethyl sulfoxide	V	$250 fine
2006019839	3/18/2006	phenylbutazone/ oxypenbutazone	IV	$500 fine
2006060434	10/15/2006	phenylbutazone	IV	$1,000 fine
2006067518	11/26/2006	phenylbutazone	IV	$1,000 fine 7 days susp
2007008307	1/06/2007	clenbuterol	III	$250 fine
2007025004	3/19/2007	acepromazine	III	$1,000 fine 60 days susp
2009048213	3/31/2009	boldenone	IV	$250 fine

CONCLUSIONS OF LAW

87. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

88. The substantial interests of Respondent are being determined by Petitioner, and Respondent has standing in this proceeding.

89. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Petitioner must therefore prove the charges against Respondent by clear and convincing evidence. Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008)(citing Dep't of

Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996)).

90. The clear and convincing standard of proof has been described by the Florida Supreme Court:

> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

91. Section 550.2415(1)(a) provided in part:

> The racing of any animal with any drug, medication, stimulant, depressant, hypnotic, local anesthetic, or drug-masking agent is prohibited. It is a violation of this section for any person to administer or cause to be administered any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent to an animal which will result in a positive test for such substance based on samples taken from the racing animal immediately prior to or immediately after the racing of the animal.

92. Section 550.2415(1)(c), providing that the finding of a prohibited substance in a race day sample is prima facie evidence of a violation, does not distinguish between blood or urine specimens.

93. Section 550.0251(3) required Petitioner to adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees, and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state.

94. The statute also provided that, when a race horse has been impermissibly medicated or drugged, action may be taken "against an occupational licensee responsible pursuant to rule of the division" for the horse's condition. § 550.2415(2), Fla. Stat.

95. Consistent with the above statutes, Petitioner adopted rule 61D-6.002, the "absolute insurer rule," making trainers strictly responsible.

96. Petitioner was specifically directed by section 550.2415(7)(c) to adopt rules setting conditions for the use of phenylbutazone. The statute went on to expressly prohibit its administration within 24 hours prior to the officially scheduled post time of a race.

97. Petitioner adopted rule 61D-6.008(2)(a)2., which provided in part that, "[p]henylbutzone may be administered to a horse providing . . . the post-race serum sample of such horse contains a concentration less than 2 micrograms (mcg) of Phenylbutazone or its metabolites per milliliter (ml) of serum."

Change of Testing Levels

98. Respondent argues that Petitioner changed a de facto testing level set for clenbuterol and subsequently unfairly charged Respondent with violations based upon the presence of small amounts of clenbuterol that previously would not have been considered "positives."

99. The evidence showed that testing protocols have been periodically adjusted to establish the minimum amount of a drug that will be reported as positive. While legal authority for a testing level was not clear, the evidence did convincingly show that, as a practical matter, there was in fact a testing level in place, below which a "positive" for clenbuterol was not reported, and that this level changed. However, as Petitioner argued, it was equally clear that no amount of clenbuterol was permitted in a horse on race day. The evidence regarding testing levels did not provide a legal defense to the counts charged.

Chain-of-Custody

100. Respondent argues that Petitioner failed to show that the serum samples that were tested came from Respondent's horses because the chain-of-custody from the whole blood samples was broken. However, the testimony regarding the procedures that were followed in taking blood samples, centrifuging them, and pouring the extracted serum from the numbered blood collection

tubes into the correspondingly numbered specimen container was clear and convincing, and showed continuity and control of the samples. While Dr. Barker testified that contamination or tampering was possible, he never concluded that either of these things was likely or probable. The mere possibility of tampering or contamination is not sufficient to require proof of a strict chain-of-custody, there must be a probability. Hildwin v. State, 141 So. 3d 1178, 1187 (Fla. 2014); Armstrong v. State, 73 So. 3d 155, 171 (Fla. 2011); Murray v. State, 838 So. 2d 1073, 1082-83 (Fla. 2002).

Selective Prosecution

101. Respondent argues that Petitioner has not settled the charges against him through the payment of small fines, as it has done with other trainers, but instead has sought to revoke his license. He argues that this constitutes selective and discriminatory prosecution because Petitioner was motivated to take action against him following a news article published on August 9, 2012, that referred to Respondent and cast Petitioner in an unfavorable light.

102. "Selective prosecution," in violation of principles of equal protection, would require a finding not only that Respondent was "singled out" for different and less favorable treatment by Petitioner, but also that this action was based on some unjustified standard such as race, religion, or other

arbitrary classification. State v. A.R.S., 684 So. 2d 1383, 1384 (Fla. 1st DCA 1996). Even had it been shown, which it was not, that Petitioner's action was prompted by the newspaper article, Respondent did not put on persuasive evidence that he was treated differently than other similarly-situated trainers. Almost all trainers who received fines had few prior violations, unlike Respondent. There was credible testimony that Petitioner had offered to settle charges against one other trainer who had numerous prior violations with the imposition of fines and a short suspension, but there was no evidence that any settlement had been reached. Further, differences were pointed out as to the close proximity of the violations in that case, which has sometimes been considered a mitigating circumstance. Respondent failed to show that the treatment of any other trainer was inconsistent with Petitioner's broad authority to prosecute or settle cases or that Petitioner's failure to come to any particular agreement with Respondent was predicated upon discriminatory animus.

Violation of Rule 61D-6.005

103. Respondent maintains that Petitioner did not follow the procedures set forth in chapter 61D-6 for collecting, sealing, and testing the blood samples, as required by rule 61D-6.005(8). Any suggestion that the taking of the blood sample in a partial vacuum tube constituted the "sealing" of the specimen

required by the rule has been rejected. The rule refers to the sealing of the specimen in its container, which has the "blood label" affixed. The evidence clearly showed that the sampling procedures followed here, as set forth in the Manual, had the witness sign the card after the sealing of the urine specimen, but before the sealing of the serum specimen.

104. A procedural error in agency action is not necessarily fatal to agency action unless the "fairness of the proceedings or the correctness of the action" may have been impaired. § 120.68(7)(c), Fla. Stat. (2015). Cases consider errors made before, as well as during, quasi-judicial proceedings. Putnam Cnty. Envtl. Council v. St. Johns River Water Mgmt. Dist., 136 So. 3d 766, 768 (Fla. 1st DCA 2014)(action by secretary rather than the Florida Land and Water Adjudicatory Commission in determining whether a request for review met statutory jurisdictional grounds affected the correctness of the action and so was not harmless error); Matar v. Fla. Int'l Univ., 944 So. 2d 1153, 1158 (Fla. 3d DCA 2006)(university's failure to strictly comply with its rule requiring that student be given a specific waiver form was harmless error where university substantially complied by advising the student of his rights).

105. It is beyond question that Petitioner must exercise broad powers to regulate and control the unique challenges of

legalized pari-mutuel racing activities. The courts have long and consistently held that Petitioner has authority to adopt necessary rules, including the "absolute insurer" rule, 61D-6.002:

> The trainer of record shall be responsible for and be the absolute insurer of the condition of the horses or racing greyhounds, he/she enters to race. Trainers, kennel owners and operators are presumed to know the rules of the division.

Hennessey v. Dep't of Bus. & Prof'l Reg., 818 So. 2d 697 (Fla. 1st DCA 2002); Solimena v. State, 402 So. 2d 1240 (Fla. 3d DCA 1981); State ex rel. Mason v. Rose, 122 Fla. 413 So. 347 (1936).

106. However, attendant with the broad power to adopt rules heavily regulating races and imposing such strict accountability is the necessary obligation on Petitioner to precisely and fairly abide by those same rules.

107. Petitioner's argument that it cannot "force" the authorized representative to witness the sealing of the specimen is unpersuasive. The rule clearly states that "the sample tag shall be detached and signed by the owner, trainer, groom, or the authorized person as a witness to the taking and sealing of the specimen." A witness's refusal to do so would be one thing, but here the procedure routinely followed--as established in great detail by the Manual--secures the signature of the witness long before the serum is even extracted.

108. Rule 61D-6.005(8) provided:

> The division may proceed when other evidence exists that an illegal or impermissible legend or proprietary drug, medication, or medicinal compound (natural or synthetic) may have been administered to a racing animal. Otherwise, no action shall be taken unless and until the laboratory under contract with the division has properly identified the legend or proprietary drug, medication, or medicinal compound (natural or synthetic) in a sample or specimen collected pursuant to this chapter.

109. The blood samples were not collected pursuant to the requirements of chapter 61D-6. Under all of the circumstances of these cases, it is not difficult to conclude that the systematic and regular violation of the rule's requirement that the authorized representative witness the sealing of the serum sample constituted a significant procedural error that affected the fairness of the proceeding.

110. With respect to the blood samples, Petitioner failed to identify restricted drugs in specimens collected in the manner required by its rules.

Unadopted Rule

111. Respondent contends that the results of the laboratory tests may not be used as the basis for discipline of his license because they were obtained pursuant to the Manual procedures, and the Manual is an unadopted rule.[4/]

112. Section 120.52(20) provides that an unadopted rule is an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of section 120.54.

113. Section 120.52(16), in relevant part, defines the term "rule" as follows:

> "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

114. The courts have considered several elements of this statutory definition in determining whether a statement constitutes an unadopted rule. Perhaps the most fundamental element is that it must be an "agency" statement, that is, an expression of policy by the agency. First, it must be a statement of the agency as an institution, not merely the position of a single employee. It must be properly attributable to the agency head or some duly-authorized delegate. Dep't of High. Saf. & Motor Veh. v. Schluter, 705 So. 2d 81, 87 (Fla. 1st DCA 1997)(Benton, J., concurring and dissenting). Second, to be a statement attributable to the agency, it must go beyond the mere reiteration or restatement of policy already established by a properly adopted rule or by the implemented statute.

St. Francis Hosp., Inc. v. Dep't of HRS, 553 So. 2d 1351 (Fla. 1st DCA 1989).

115. While rare, courts have recognized that de facto policy established by procedures may constitute an unadopted rule. See Dep't of Bus. & Prof'l Reg. v. Harden, 10 So. 3d 647, 649 (Fla. 1st DCA 2009)(committee procedure by which license applications were reviewed was unadopted rule); Dep't of Rev. v. Vanjaria Enters., Inc., 675 So. 2d 252, 254 (Fla. 5th DCA 1996) (assessment procedure to determine tax exemption contained in training manual was unadopted rule).

116. While subsections 4.3 through 4.5 of the Manual[5/] provide detail on collecting the urine specimen, filling out the required forms, and sealing the container in the presence of the witness, this detail is essentially technical or administrative in nature. The general policy of taking blood and urine samples for testing to determine possible violations of section 550.2415, as well as the witnessing requirement, is established by the statute or by properly adopted rules. As these Manual subsections simply provide minor administrative details necessary to execute policy already established elsewhere, it was not shown that these subsections were "agency statements" so as to constitute unadopted rules.

117. However, the same cannot be said with respect to subsection 4.6, with regard to collection and sealing of the

blood sample. As noted earlier, the rule explicitly requires that the owner's representative witness the sealing of both samples, and says nothing of procedures to extract serum from the blood. Because the witnessing of the sealing of the serum sample is not merely a matter of technical implementation, the Manual's restructuring of this important rule requirement constitutes an important policy change that does constitute an "agency statement."

118. The requirement that a statement be generally applicable involves the field of operation of the statement. Dep't of Com. v. Matthews Corp., 358 So. 2d 256 (Fla. 1st DCA 1978)(wage rates applicable to public works contracts held not to be rules because they applied only to the construction of a particular public building and did not establish wages elsewhere in the state into the future). The Manual applies to every state-licensed horseracing facility in the state of Florida.

119. The concept of general applicability also involves the force and effect of the statement itself. An agency statement that requires compliance, creates or adversely affects rights, or otherwise has the direct and consistent effect of law is a rule. State Bd. of Admin. v. Huberty, 46 So. 3d 1144, 1147 (Fla. 1st DCA 2010). Subsection 4.6 of the Manual directly affects the rights of a trainer charged with racing thoroughbred horses that are impermissibly medicated or drugged, especially

given that the statutory presumption, in conjunction with the "absolute insurer" rule, instills the test results with such a significant, virtually determinative, effect. Subsection 4.6 of the Manual directly affects rights and has the effect of law.

120. An agency statement must also be consistently applicable. In Schluter, supra at 81, 82, the court found three of the challenged policies not to be generally applicable because an employee's supervisor was not required to apply them, and therefore they could not be considered to have the "consistent effect of law." See also Coventry First, LLC v. Off. of Ins. Reg., 38 So. 3d 200, 205 (Fla. 1st DCA 2010) (examination manual provided to examiners of the Office of Insurance Regulation not generally applicable because examiners had discretion not to follow it). The Manual by its own terms requires compliance by Petitioner's employees. The procedures set out in the Manual are generally applicable.

121. The Manual has not been adopted under the rulemaking process set forth in section 120.54.

122. Subsection 4.6 of the Manual is an agency statement of general applicability that describes the procedure requirements of Petitioner and constitutes an unadopted rule.

123. Section 120.57(1)(e)1., Florida Statutes (2015), provides:

> An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule. The administrative law judge shall determine whether an agency statement constitutes an unadopted rule. This subparagraph does not preclude application of adopted rules and applicable provisions of law to the facts.

124. In Vanjaria Enterprises, supra, at 252, the Department of Revenue assessed tax based on a square footage comparison pursuant to a procedure set forth in its sales and use tax training manual. The court rejected the Department of Revenue's argument that the audit calculation formula merely represented a direct application of the statute and concluded that the training manual constituted an unadopted rule, stating at page 255:

> Furthermore, the tax assessment procedure creates DOR's entitlement to taxes while adversely affecting property owners. The Training Manual was created to be used as the sole guide for auditors in their assessment of multiple-use properties. In determining exempt versus nonexempt uses of multiple-use properties, DOR's auditors strictly comply with the procedure set forth in the Training Manual for all audits performed. Moreover, DOR auditors are not afforded any discretion to take action outside the scope of the Training Manual.

Finding the tax assessment procedure to be an unadopted rule, the court affirmed the decision below that the training manual procedure was void and could not be applied to increase appellee's tax liability.

125. The public in general, and trainers in particular, in light of their "absolute liability," have a right to be fully advised of all of the basic procedures that are to be followed, and through the rulemaking process, even participate in their formulation. Given the critical procedures involved, it is remarkable that Petitioner has not incorporated the Manual by reference into its governing rule. Discipline of Respondent's license may not be based upon test results of serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and contrary to Petitioner's adopted rule.

Anonymity Rule

126. Petitioner did not rely solely on the results of the serum tests, however. It also presented evidence of test results from urine samples taken from the horses on race day.

127. While initially Respondent challenged the scientific validity of the 2015 re-testing of the 2012 urine samples, he abandoned that claim in his proposed recommended order. In any event, while Ms. Wilding testified that multiple "freeze and thaw cycles" may cause degradation of samples, the evidence clearly showed that there was no significant degradation of the urine samples here resulting from the passage of time. The results from the urine confirmations were scientifically sound.

128. Respondent argues that the urine test results may not be used because Petitioner violated the "anonymity requirement" set forth in rule 61D-6.005(6):

> All specimens taken by or under direction of the division veterinarian or other authorized representative of the division shall be delivered to the laboratory under contract with the division for official analysis. Each specimen shall be marked by number and date and also bear any information essential for its proper analysis; however, the identity of the racing animal from which the specimen was taken or the identity of its owner, trainer, jockey, stable, or kennel shall not be revealed to the laboratory staff until official analysis of the specimen is complete.

129. The evidence showed that when the initial urine and serum samples were sent to the laboratory in 2012 and 2013, the usual procedures were followed and anonymity was preserved. Respondent argues that when confirmation in urine was requested by Petitioner in 2015, however, the rule was violated.

130. It is undisputed that Ms. Wilding and her immediate subordinates, the supervisors of the laboratory's four main divisions, were aware that five urine samples from the Ziadie I case were to be re-screened for clenbuterol and then tested for confirmation. It was not a "blind sample" test, as is called for by the rule. While some adjustments, such as the selection of tests able to detect clenbuterol for re-screening and confirmation, were required, it was not shown that this

re-testing could not have been done in a way that did not reveal the horse or trainer involved. Petitioner's argument that, if anonymity was preserved in 2012 and 2013, when the specimens were originally tested, it was no longer required in 2015, is rejected as contrary to the spirit of the rule.

131. However, Ms. Wilding and Mr. Russell testified that when the laboratory is processing samples, they are marked only with an internal laboratory number, not the name of the horse or trainer. The laboratory technicians who actually performed the tests were not told the name of the horse or trainer. The purpose of the rule--to avoid the identity of the trainer from affecting test results--was not compromised.

132. The fact that the 2015 urine results confirmed the 2012 screening results for these same samples, which were conducted with complete anonymity, also provides support for the conclusion that the test results were valid and not fabricated based upon knowledge of the trainer. There was excellent agreement of the concentration of clenbuterol in the two different screenings, showing that the presence of clenbuterol in the samples remained relatively stable. The results were also subsequently confirmed by an outside laboratory.

133. Allowing the identity of the trainer to be known by the top echelon of laboratory personnel was a violation of the rule, but it did not affect the fairness of the proceedings or

the correctness of the results. Under all of the circumstances, this failure to strictly follow the rule was harmless error.

134. Although Petitioner is unable to rely on the blood serum test results derived from procedures that were not adopted by rule, Petitioner had independent evidence that the horses had clenbuterol in their bodies on their respective race days, in the form of the test results from these urine samples.[6/]

135. Petitioner proved by clear and convincing evidence that Respondent violated section 550.2415(1)(a), on five occasions from July 4 to September 27, 2012, as alleged in the Second Amended Administrative Complaint in Ziadie I.

136. Petitioner proved by clear and convincing evidence that Respondent violated section 550.2415(1)(a), on 13 occasions from March 13 to October 27, 2013, as alleged in the First Amended Administrative Complaint in Ziadie II.

137. Petitioner's only evidence of the presence of phenylbutazone in any of Respondent's horses was from serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and contrary to Petitioner's rule. Provisions of chapters 120 and 550 prohibit its use. Petitioner failed to prove the presence of phenylbutazone as alleged in Ziadie I or Ziadie II by clear and convincing evidence.

Penalty

138. Florida Administrative Code Rule 61D-6.011(2)(c) provides that for a Class III impermissible substance under the incorporated Uniform Classification Guidelines for Foreign Substances, the penalty schedule shall be:

> First violation--$300 to $500 fine;
>
> Second violation within 12 months of a previous violation--$500 to $750 fine and suspension of license up to 30 days, or revocation of license;
>
> Third violation within 24 months of a second violation, or a fourth or any subsequent violation without regard to the time past (sic) since the third violation--$750 to $1,000 fine and suspension of license up to 180 days, or revocation of license.

139. Rule 61D-2.021, entitled Aggravating and Mitigating Circumstances, provides:

> Circumstances which may be considered for the purposes of mitigation or aggravation of any penalty shall include, but are not limited to, the following:
>
> (1) The impact of the offense to the integrity of the pari-mutuel industry.
>
> (2) The danger to the public and/or racing animals.
>
> (3) The number of repetitions of offenses.
>
> (4) The number of complaints filed against the licensee or permitholder, which have resulted in prior discipline.
>
> (5) The length of time the licensee or permitholder has practiced.

(6) The deterrent effect of the penalty imposed.

(7) Any efforts at rehabilitation.

(8) Any other mitigating or aggravating circumstances.

140. The number of repetitions of offenses was significant and indicates a pattern or practice rather than an occasional oversight. Repeated drug offenses have a direct impact on the integrity of the pari-mutuel industry. Clenbuterol, while a drug with therapeutic value, also has adverse effects, and excessive use presents a danger to racing thoroughbreds.

141. Evidence of 14 prior complaints resulting in discipline was also introduced, another aggravating factor.

142. On the other hand, Respondent has been involved with racing his entire life and has been a trainer for a substantial number of years. It was uncontroverted that his horses were in excellent condition and that he provided them with clean surroundings, quality feed, and excellent care.

143. Another significant mitigating factor arises from the two changes in the level at which the laboratory reported the presence of clenbuterol identified in a serum specimen, made without notice to the horsemen. Petitioner's position that there is no legal threshold in Florida for clenbuterol on race day, and that Petitioner has no authority to set withdrawal times, is accepted. As noted above, Respondent's argument that

Petitioner's failure to publicize the change in reporting level was rejected as a defense to the charges. However, Petitioner must realistically acknowledge that, in practice, the level at which clenbuterol positives are declared establishes a de facto "threshold." Clenbuterol is a legal drug with therapeutic value, and the fact that veterinarians and trainers trying to follow the rules in good faith could suddenly be found in violation following an unannounced change in the level at which positive test results are reported is a substantial mitigating factor. Petitioner can set the testing level as low as can be scientifically justified, but as both Dr. Cole and Dr. Barker testified, it would be prudent and fair to notify horsemen of changes in the testing level as long as the drug concerned has therapeutic value and is only prohibited on race day.

144. While Respondent's violations are predicated upon the subsequent confirmations in urine, had the change in serum reporting level been announced to the horsemen, there may well have been no confirmation in serum for any of the horses in Ziadie I, or for the first five races in Ziadie II; so, no urine testing would have even been ordered. On the other hand, Respondent was fully on notice beginning May 29, 2013, that the testing level had been changed and that Mr. Stirling had recommended a 14-day withdrawal time for at least the six races occurring from June 25 through October 27, 2013. No mitigation

for the testing level change is appropriate as to these violations.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED:

That the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, enter a final order finding Mr. Kirk M. Ziadie guilty of 18 counts of violating section 550.2415(1)(a), Florida Statutes, and Florida Administrative Code Rule 61D-6.002(1); imposing an administrative fine of $18,000; and suspending his license for six years.

DONE AND ENTERED this 15th day of December, 2015, in Tallahassee, Leon County, Florida.

F. Scott Boyd

F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of December, 2015.

ENDNOTES

[1/] Except as otherwise indicated, statutory references in this Recommended Order are to the 2012 Florida Statutes, which text remained unchanged throughout the time the alleged violations occurred.

[2/] Except as otherwise indicated, references to Florida Administrative Code rules are to those in effect at the time the alleged violations occurred, from July 4, 2012, until December 7, 2014.

[3/] Rule 61D-6.005 was amended effective June 15, 2015. The amended rule is not applicable to this proceeding.

[4/] No petition under section 120.56(4) was filed, and the arguments in Petitioner's Proposed Recommended Order appropriate to such a rule challenge proceeding are instead considered under section 120.57(1)(e), to the extent applicable.

[5/] It is not entirely clear from Respondent's proposed recommended order whether he contends that the Manual provisions relating to urine collection and sealing constitute an unadopted rule. In several places, he refers only to the blood sampling procedures. In one place, however, he refers to the urine procedures; so, this contention is addressed briefly.

[6/] Section 550.2415(16) provides that the testing medium for phenylbutazone in horses shall be serum; so, Petitioner failed to prove that testing revealed an overage of that drug as charged in the administrative complaints.

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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.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATI
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent.
_____/

CASE NOS. 2012033990, 2012040949, 2012041931, 2012041948, 2012043730

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent.
_____/

CASE NOS. 2013016106, 2013023790, 2013023875, 2013025104, 2013025126, 2013026031, 2013026525, 2013029114, 2013030616, 2013032774, 2013034195, 2013043815, 2013047021, 2014006345, 2014039033, 2014052733

RESPONDENT KIRK ZIADIE'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 28-106.217, F.A.C., Respondent Kirk Ziadie hereby files his exceptions to the findings of fact and conclusions of law set forth in the Recommended Order, dated December 15, 2015, and states:

1. Respondent takes exception to the finding of fact set forth in paragraph 72 pertaining to the settlement offer made to another trainer (J.N.) who had numerous prior

violations. The offer was made by the Petitioner to J.N. after it was alleged by Petitioner that horses trained by J.N. tested positive for clenbuterol a significant number of times. The offer consisted of the impositions of fines and a short suspension. The ALJ found that there was evidence that the alleged violations were in close proximity and that this would be a mitigating factor making the circumstances surrounding the offer made to J.N. different than the circumstances in the above referenced cases being prosecuted against Respondent. This finding in contrary to the evidenced in the record. See, Respondent's Exhibit 27; the testimony of Jill Blackman regarding trainer J.N. (T. 24 - 25; September 1, 2015); and, the testimony of Bradford Beilly regarding the settlement offer to trainer J.N. (T. 273 - 275; September 24, 2015).

2. Respondent takes exception to the finding of fact in paragraph 82 that the urine test results proved that Mr. Ziadie's horses had clenbuterol in their bodies on race day. This exception is based on the admissibility of the urine evidence obtained in violation of the Division's own "anonymity rule" and is more particularly set forth in the exception below directed to the conclusion of law found in paragraph 133 of the Recommended Order.

3. Respondent takes exception to the conclusion of law set forth in paragraph 102 of the Recommended Order that states that in order to prove selective prosecution that Respondent would need to prove that the prosecution in the above referenced cases was based on some unjustified standard such as race, religion or some other arbitrary classification. This conclusion is contrary to existing law.

In Village of *Willowbrook v Olech*, 528 U.S. 562 (2000), the United States Supreme Court held that an equal protection claim or defense could be raised by a "class of one"

where the party alleges that he or she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment shown. The ALJ failed to make the appropriate analysis of the evidence which showed that Respondent was in fact treated as a "class of one." Respondent was the first trainer to be charged with a clenbuterol positive at less than 25 picograms per cubic milliliter of blood serum. Respondent's single clenbuterol positive from a July 2, 2012 race was taken from the stewards and turned into a complaint for revocation when the disciplinaru guidwline called for a fine. Most clenbuterol positives from 2012 through 2014 were settled with the trainers for a $500 fine per positive, while this offer was never made to the Respondent. See Respondent's Exhibit 13. When Respondent contested the use of the serum evidence obtained against him, the Division retested the frozen urine samples from Respondent's horses for the presence of clenbuterol. This testing in urine was performed in March 2015. When this Urine testing was performed in March of 2015, the existing protocol used for clenbuterol testing for all other horse trainers in the State of Florida, other than Respondent and his father, was to test in blood serum only. It is clear from the evidence that the Division was singling out the Respondent based on malice and his equal protection rights were violated.

4. Respondent takes exception to the conclusion of law in paragraph 133 that the Division's use of urine evidence as the sole basis to find the Respondent guilty was "harmless error." Specifically, the Division violated the anonymity requirement of Rule 61D-6.005(6), F.A.C. when a memorandum was circulated to the senior staff that they were retesting Respondent Ziadie's horses' urine for clenbuterol at the request of the Division. Respondent's Exhibit 7. Despite the ALJ finding a clear violation of the rule and that the

urine testing was not "blind sample" testing as called for by the rule, it was error to find these violations "harmless." Specifically, when the subject urine samples were tested, it was known by the UF Laboratory that the samples were being tested in connection with disciplinary action being taken against Respondent Ziadie. This not only violates Petitioner's own rules of anonymity, but also runs afoul of standard laboratory testing procedure for any laboratory and casts severe doubt on the integrity and fairness of Petitioner's actions as taken against Respondent Ziadie. When the anonymity rule is violated, it allows individuals an opportunity to taint or otherwise interfere with the testing process in a manner adverse to a particular individual. To the contrary, complying with the anonymity rule prevents such a situation from being possible. As is made clear in the ALJ's recommended order, but for the use of the urine evidence, Respondent would not have been found liable.

In discussing the importance of an agency complying with rules and statutes, the 3d DCA, in *Kibler v. Dep't of Prof'l Regulation*, 418 So. 2d 1081, 1084 (Fla. 4th DCA 1982), states as follows:

> The adherence to rules and statutes by the very agency charged with their enforcement is especially necessary if the public and the parties regulated are to maintain respect and confidence in the decisions rendered by the agency. It is one thing to seek the revision or removal of unnecessary or burdensome rules and regulations. But to ignore such rules while they remain in force is to invite disrespect and will ultimately result in a breakdown of the system.

The anonymity requirement set forth in Rule 61D-6.005(6), F.A.C. is a major component to any legitimate laboratory's testing protocol. Accordingly, Petitioner's clear failure to follow the anonymity requirement of Rule 61D-6.005(6), F.A.C. renders the results of the urine samples void. Failing to follow said rule cannot be said to be "harmless" as the importance of the anonymity requirement is self evident and adherence to it is required to maintain any semblance of integrity and fairness with Petitioner's testing procedure. Furthermore, Petitioner's use of the urine samples in the DOAH proceeding was not

harmless as the urine sample results were the only evidence considered by the ALJ in imposing discipline upon Respondent. That is, but for the urine sample test results, no discipline would have been imposed on Respondent Ziadie. See, e.g., *State v. DiGuilio*, 491 So. 2d 1129, 1139 (Fla. 1986) (stating that the question to be asked to determine whether harmless error occurred or not is whether "there is a reasonable possibility that the error affected the verdict").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2015, a copy of the foregoing was emailed to Caitlin Mawn, Esq., Division of Pari-Mutuel Wagering, 1940 North Monroe Street, Suite 40, Tallahassee, Florida 32399-2202 at caitlin.mawn@myfloridalicense.com.

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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGUL
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE
Respondent.
_____/

DOAH Case Nos. 14-4716PL
DBPR Case No. 2012-033990
2012-040949
2012-041931
2012-041948
2012-043730

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE

Respondent.
_____/

DOAH Case Nos. 15-2326PL
DBPR Case No. 2013-016106
2013-023790
2013-023875
2013-025104
2013-025126
2013-026031
2013-026525
2013-029114
2013-030616
2013-032774
2013-034195
2013-043815
2013-047021
2014-006345
2014-039033
2014-052733

DEPARTMENT'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Pursuant to section 120.57(1)(k), Florida Statutes, and Rule 28-106.217(2), Florida Administrative Code, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("the Department"), hereby files its Response to Respondent's Exceptions to

the Recommended Order filed on December 30, 2015, in DOAH case number 15-2326 (previously consolidated with DOAH case number 14-4716).

Response to Exception #1

1. Respondent takes exception "to the finding of fact set forth in paragraph 72 pertaining to the settlement offer made to another trainer (J.N.) who had numerous prior violations...[in which] [t]he ALJ found that there was evidence that the alleged violations were in close proximity and that this would be a mitigating factor making the circumstances surrounding the offer made to J.N. different than the circumstances in the above referenced cases being prosecuted against Respondent." ("Respondent's first exception").

2. Section 120.57(1), Florida Statutes, provides that an agency "may not reject or modify an Administrative Law Judge's findings of fact unless the agency first determines, from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon *competent substantial evidence*." (Emphasis added).

3. Respondent argues that the ALJ's finding in paragraph 72 is contrary to the evidence in the record. However, the issue is not whether the record contains evidence contrary to the ALJ's finding, but whether the finding is supported by *any* competent substantial evidence. See *Florida Sugar Cane League v. State Siting Bd.*, 582 So. 2d. 846 (Fla. 1st Dist. Ct. App. 1991) (Emphasis added). A finding of fact supported by *any* competent substantial evidence from which the finding could be reasonably inferred cannot be rejected. See *Berry v. Dept. of Environmental Regulation*, 530 So. 2d 1019 (Fla. 4th Dist. Ct. App. 1988) (Emphasis added).

4. Contrary to Respondent's assertions, competent substantial evidence exists in the record to support the ALJ's finding of fact in paragraph 72. Specifically, a witness for the

Department testified that J.N. had multiple drug positive violations that occurred in close proximity to one another and was thus facing prosecution by the Division. (*T. 9/1/15: p. 24-25*). Furthermore, this testimony is supported by J.N.'s disciplinary record. (*R. Ex. 27*).

5. Therefore, the Department respectfully requests that the Division of Pari-Mutuel Wagering ("the Division") reject Respondent's first exception.

Response to Exception #2

6. Respondent takes exception to "the finding of fact in paragraph 82 that the urine test results proved that Mr. Ziadie's horses had clenbuterol in their bodies on race day" ("Respondent's second exception").

7. Respondent contends that the ALJ erred in finding the violation of Rule 61D-6.005(6), F.A.C. ("the anonymity rule"), harmless. More specifically, Respondent suggests that the violation of the anonymity rule "casts severe doubt" about the integrity and fairness of the Division's actions and that such violations create the potential for someone to tamper or otherwise interfere with the samples. However, no evidence of tampering or sample interference was introduced at the hearing, and the testimony was clear that while the lab's upper management may have known the identity of the trainer associated with the urine samples, the technicians who handled the samples in 2015 did not. (*T.: p. 327-331, 343-345; R. Ex. 7*). Thus, the spirit of the rule was preserved.

8. Respondent further contends that the Department's introduction of the urine sample evidence at the formal hearing in this matter was not harmless, as Respondent asserts it was the only evidence considered by the ALJ in imposing discipline against Respondent. However, the question is not whether the introduction of the evidence at the hearing was harmless; rather, the question is whether the violation of the anonymity rule was harmless.

As previously discussed, there was no evidence to suggest that the sample was tampered or otherwise interfered with, and the evidence is clear that the technicians who handled the samples were operating "blindly." (*T.: p. 327-331, 343-345; R. Ex.7; P. Ex. 7, 8, 17, and 18*). Furthermore, the urine samples were not the only evidence considered by the ALJ when disciplining Respondent; it is clear from the Recommended Order that the ALJ also considered, among other things, Respondent's disciplinary history and Respondent's own admission of guilt. (*RO at p. 28-29, 34-35; T. 9/24/15 at 222-224, 232-235; P. Ex. 10*).

9. Therefore, the Department respectfully requests that the Division reject Respondent's second exception.

Response to Exception #3

10. Respondent takes exception to "the conclusion of law set forth in paragraph 102 of the Recommended Order that states that in order to prove selective prosecution that Respondent would need to prove that the prosecution in the above referenced cases was based on some unjustified standard such as race, religion, or some other arbitrary classification."

11. Respondent contends that he was treated as a "class of one," in that he was intentionally treated differently from others similarly situated and that there was no rational basis shown for the difference in treatment. In support of his argument, Respondent cites to settlement agreements entered into by the Division with trainers whose horses tested positive for clenbuterol between 2012 and 2014. However, the record indicates that, unlike Respondent, these trainers had little or no disciplinary history, and most had only one clenbuterol positive to be resolved. (*R. Ex. 13*). Respondent's disciplinary history includes fourteen prior drug positive violations, and he faced a total of twenty-one new drug positive

violations in this matter. (*T. p. 222-224; P. Ex. 10; Amended Administrative Complaints*). Clearly, Respondent was not similarly situated with the trainers whose cases were resolved by the settlement agreements cited to by Respondent.

12. Respondent also contends that he was the first trainer to be charged with a clenbuterol positive for a reported concentration of less than twenty-five picograms per cubic milliliter of serum. However, Respondent is incorrect in his assumption that "first" means that he was intentionally targeted or otherwise singled out. The record reflects that, due to scientific advancements, the lab was able to lower its level of detection for clenbuterol in all serum samples around 2012. (*T. 178-179, testimony of Margaret Wilding*). Respondent was subsequently charged with drug violations after serum samples collected from his horses between 2012 and 2014 tested positive for clenbuterol, a prohibited substance, at a level detectable by the lab. (*P. Ex. 1, 2, 3, 4, 5, 7, 8, 10, 17, and 18*). Thus, it was Respondent's own conduct after the implementation of the lab's technological advancements that led to his prosecution.

13. Finally, Respondent asserts that he was also singled out when the lab, at the Division's request, reconfirmed the presence of clenbuterol in frozen urine samples from Respondent's horses in 2015. In support of his argument, Respondent claims that the existing protocol in place in 2015 called for confirming the presence of drugs only through serum samples, and that this protocol was followed for all other trainers, with the exception of Respondent and his father. However, the record reflects that the Department did not single out Respondent when it reconfirmed the urine samples in 2015; rather, the Department reacted to a unique defense raised by Respondent regarding the admissibility of the serum results. (*T. testimony of Jill Blackman and Margaret Wilding; R. Pet. for Formal Hearing*).

14. Therefore, the Department respectfully requests that the Division reject Respondent's third exception.

Response to Exception #4

15. Respondent takes exception to "the conclusion of law in paragraph 133 that the Division's use of urine evidence as the sole basis to find the Respondent guilty was 'harmless error'" ("Respondent's fourth exception").

16. The Department reincorporates its argument set forth in paragraphs 7 and 8 above as though fully set forth herein.

17. Therefore, the Department respectfully requests that the Division reject Respondent's fourth exception.

Respectfully submitted,

/s/ Caitlin R. Mawn

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been sent via electronic mail to: Bradford J. Beilly, Esq., Attorney for Petitioner, 1144 Southeast Thrid Avenue, Fort Lauderdale, Florida 33316, this 8th day of January, 2016.

Caitlin R. Mawn

Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGUL
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE
Respondent.
_____/

DOAH Case Nos. 14-4716PL
DBPR Case No. 2012-033990
2012-040949
2012-041931
2012-041948
2012-043730

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,
Petitioner,

v.

KIRK ZIADIE

Respondent.
_____/

DOAH Case Nos. 15-2326PL
DBPR Case No. 2013-016106
2013-023790
2013-023875
2013-025104
2013-025126
2013-026031
2013-026525
2013-029114
2013-030616
2013-032774
2013-034195
2013-043815
2013-047021
2014-006345
2014-039033
2014-052733

PETITIONER'S EXCEPTIONS TO THE RECOMMENDED ORDER

Pursuant to section 120.57(1)(k), Florida Statutes (2015) and Rule 28-106.217(1) of the Florida Administrative Code, the Department of Business and Professional Regulation, ("the Department") files the following exceptions to the Recommended Order issued by

Administrative Law Judge F. Scott Boyd ("ALJ Boyd") on December 15, 2015, in DOAH case number 15-2326.

Background

On September 10, 2014, the Department filed a six-count Administrative Complaint alleging Mr. Ziadie violated Section 550.2415, Florida Statutes. Subsequently, on March 17, 2015, the Division filed a sixteen-count Administrative Complaint, again alleging Mr. Ziadie violated Section 550.2415, Florida Statutes. Mr. Ziadie petitioned for formal administrative hearings regarding the September 10, 2014, and March 17, 2015, Administrative Complaints.

ALJ Boyd convened a formal administrative hearing for the March 17, 2015, Administrative Complaint on August 25 and 26, 2015, and on September 1 and 2, 2015; however, on September 2, 2015, the hearing for the March 17, 2015, Administrative Complaint was consolidated with the hearing for the September 10, 2014, Administrative Complaint. A consolidated final hearing convened on September 23 and 24, 2015.

ALJ Boyd issued a Recommended Order on December 15, 2015, recommending the Department enter a final order finding Mr. Ziadie guilty of 18 of the 21 counts alleged in the combined Administrative Complaints, suspending Mr. Ziadie for a period of six years, and fining him $18,000. However, ALJ Boyd also recommended that the Department find that the serum test results that were part of the evidentiary basis for Mr. Ziadie's violations of Section 550.2415(1)(a), Fla. Stat, were collected pursuant to an unadopted rule set forth in subsection 4.6 of the 2010 Equine Detention Barn Procedure Manual ("the Manual"), and that the Department failed to follow the blood sample collection procedures set forth in Rule 61D-6.005(3), Fla. Admin. Code.

As set forth more fully below, based on a review of the entire record of proceedings, the Department takes exception to the findings of fact and conclusions of law contained in ALJ Boyd's Recommended Order that determine the Department violated Rule 61D-6.005, Fla. Admin. Code, in its blood sample collection process, as well as ALJ Boyd's finding of fact and conclusion of law that Section 4 of the Training Manual constitutes an unadopted rule.

Exceptions to Findings of Fact

Pursuant to Section 120.57(1)(l), Fla. Stat., an agency may not reject or modify findings of fact unless it first determines, from a review of the entire record, and states with particularity, that the findings of fact were not based on competent substantial evidence.

Exception #1

1. The Department takes exception to the findings of fact set forth in the portion of paragraph 20 on page 11-12 of the Recommended Order in which ALJ Boyd found, "after the blood samples were taken by the veterinarian, they were not "sealed" in the collected tubes. The fact that the collection tubes are air tight prior to and after the taking of the blood and initially contain a partial vacuum to facilitate collection, does not constitute "sealing" of the specimen in it's container for the purposes of the rule. Dr. Watson testified... A:...But as far as sealing for legal purposes, they're not sealed at that time...The three collection tubes are not the specimen container."

2. Paragraph #20 is not based upon competent substantial evidence.

3. Rule 61D-6.005 requires the authorized representative to witness the taking and the sealing of the specimen sample. Rule 61D-6.005(3) also requires that, upon taking of a sample of "urine, blood, or other specimen" from a racing animal, that sample be "sealed in its container."

The owner or owner's witness must sign the sample tag "as a witness to the taking and sealing of the specimen."

4. While Dr. Watson testified that the blood samples are not sealed for legal purposes at the time they are drawn into the vacuum collection tubes, this is a legal conclusion that Dr. Watson is not qualified to make. Evidence in the record establishes that the blood specimen containers are the sealed vacuum tubes into which the blood samples are drawn, not the evergreen tubes in which serum, a constituent part of the blood samples, is later poured. (T. p. 110, 115-116, 137, 153, 155; R. Ex. 9) These samples are then labeled with the identifying portion of the sample tag number. (T. p. 116; R. Ex. 9)

5. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #35 of the Recommended Order

Exception #2

6. The Department takes exception to the finding of fact set forth in the portion of paragraph 23 on Pages 12-13 of the Recommended Order in which ALJ Boyd found, "Rule 61D-6.005 does not make any reference to spinning the blood in the centrifuge to extract serum, the pouring of serum into an evergreen tube, the sealing of the evergreen tube with evidence tape, or the freezing of the specimen. The Manual establishes additional policies and procedures not contained in the rule."

7. Paragraph 23 is not supported by competent substantial evidence.

8. Rule 61D-6.005 specifically requires the Division to maintain the samples in a manner that preserves the integrity of the samples.

9. Evidence in the record reflects that the serum extraction procedures are technical procedures designed to maintain the integrity of the sample prior to its shipment to the racing laboratory for testing. (T. p. 116-119, 153, T. 9/1/15 p. 57-58; R. Ex. 9) Thus, the procedures set forth in the manual are not additional, and they are consistent with the requirements of the rule.

10. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #23 of the Recommended Order.

Exception #3

11. The Department takes exception to the findings of fact set forth in the portion of Paragraph #33 on Pages 16-17 of the Recommended Order in which ALJ Boyd found, "[t]he procedures that were followed—set forth in the Manual—which allowed the owner's witness to sign the sample tag after witnessing the taking of the blood but before the sealing of the specimen, were not in compliance with rule 61D-6.005(3), ...which required the owner's representative to sign as a witness to both the taking and the sealing of the specimen."

12. Paragraph #47 is not based upon competent substantial evidence.

13. Rule 61D-6.005 requires the authorized representative to witness the taking and the sealing of the specimen sample. Rule 61D-6.005(3) also requires that, upon taking of a sample of "urine, blood, or other specimen" from a racing animal, that sample be "sealed in its container." The owner or owner's witness must sign the sample tag "as a witness to the taking and sealing of the specimen."

14. Evidence in the record establishes that the blood specimen containers are the sealed

vacuum tubes into which the blood samples are drawn, not the evergreen tubes in which serum, a constituent part of the blood samples, is later poured. (T. p. 110, 115-116, 137, 153, 155; R. Ex. 9)

15. Evidence in the record also reflects that trainers and authorized representatives are advised of their requirement to witness the sealing of the urine and blood specimens and their right to be present to witness the subsequent sealing of the serum. (T. p. 122, 144, 175-176; P. Ex. 6).

16. In discussing the requirement of the witnessing of the taking and sealing of specimens, the Manual only states (in subsection 4.5 not 4.6) that, "[t]he applicable top portions of the form are then separated and applied to the urine specimen cup and/or evergreen blood tube. The bottom portion of the specimen card is completed and appropriately signed..." (R. Ex. 9) Subsection 4.6 of the Manual then goes on to state, "the owner, trainer of record or designated authorized witness may leave with the released animal or may elect to witness the conclusion of the collected blood specimen and sealing cycle." (R. Ex. 9)

17. Subsection 4.6 of the Manual does not reinterpret or revise the requirement imposed upon the owner or authorized representative to witness the taking and sealing of the serum specimen; rather, it merely describes the technical process of the sealing of the serum specimen. (T. p. 129-130, 141; R. Ex. 9). Thus, the Manual advises the division employee – not the owner's witness – what may happen during the collection and sealing process: the owner's witness may choose to leave the detention barn and return for the sealing of the serum. The division employee does not have the authority to compel the owner's witness remain in or return to the detention barn to witness the sealing of the serum sample. As such, the Manual is not in contradiction with Rule 61D-6.005. The Manual is not a directive to the owner's witness; rather,

it is a guideline for the execution of the sample collection process by Division employees. (T. p. 129-130, 141)

18. Allowing the owner's witness to sign at the point of witnessing the taking and sealing of the urine and blood specimens, while allowing the owner's witness to return to the detention barn to witness and sign for the sealing of the serum specimen in accordance with the owner's witness requirements set forth in Rule 61D-6.005(3) is not a violation of Rule 61D-6.005(3).

19. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #33 of the Recommended Order.

Exception #4

20. The Department takes exception to the findings of fact set forth in the portion of Paragraph #33 on Page 17 of the Recommended Order in which ALJ Boyd found, "[t]he requirement that the authorized representative must witness not only the taking, but also the sealing of specimens, is a provision directly related to maintaining integrity in the sample collection process."

21. Paragraph #33 is not based upon competent substantial evidence.

22. The requirement that the authorized representative must witness not only the taking, but also the sealing of the specimens, is only related to maintaining the integrity of the sample collection process in that it places the requirement upon the owner or authorized representative to observe the process so that he or she cannot later claim an issue with the integrity of the sample. (T. p. 235; P. Ex 6; R. Ex. 9) This requirement is not related to the integrity of the Department procedures; rather, it ensures that the owner or authorized representative takes accountability for the process.

23. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #33 of the Recommended Order.

Exception #5

24. The Department takes exception to the findings of fact set forth in the portion of Paragraph #33 on Page 17 of the Recommended Order in which ALJ Boyd found, "[s]uch deliberate disregard of the plain language of the rule directly affects the fairness of the entire blood sampling procedure."

25. Paragraph #33 is not based upon competent substantial evidence.

26. Allowing the owner's witness to sign at the point of witnessing the taking and sealing of the urine and blood specimens, while allowing the owner's witness to return to the detention barn to witness and sign for the sealing of the serum specimen, in accordance with the requirements set forth in Rule 61D-6.005(3), is not a "deliberate disregard of the plain language of the rule" and does not directly affect the fairness of the entire sampling procedure.

27. As previously discussed, evidence in the record reflects that trainers and authorized representatives are advised of their requirement to witness the sealing of the urine and blood specimens and their right to be present to witness the subsequent sealing of the serum. (T. p. 122, 141, 175-176; P. Ex. 6) Any choice on the part of the witness not to observe the sealing of the serum samples is beyond the control of the Division and thus cannot be said to be a "deliberate disregard" of the rule.

28. Furthermore, the witness requirement does not go towards the fairness of the sampling

procedures themselves, but rather towards the obligation of the witness to observe the process in order for the witness to remove any doubts about the integrity of their samples. (T. p. 235; P. Ex. 6)

29. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #33 of the Recommended Order.

Exception # 6

30. The Department takes exception to the finding of fact set forth in Paragraph # 80 on Page 33 of the Recommended Order in which ALJ Boyd concluded, "[s]ubsection 4.6 of the Manual is an unadopted rule."

31. Even though ALJ Boyd lists Paragraph # 80 as a "Finding of Fact," the determination of whether something is an unadopted rule under Section 120. 120.52(20), Fla. Stat, is a conclusions of law. Even if an ALJ includes a conclusion of law as a finding of fact, that does not make the conclusion of law a finding of fact. See generally Stokes v. Bd. of Prof'l Engineers, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007) (holding that "[e]rroneously labeling what is essentially a factual determination a 'conclusion of law' whether by the hearing officer or the agency does not make it so, and the obligation of the agency to honor the hearing officer's findings of fact may not be avoided by categorizing a contrary finding as a 'conclusion of law.'").

32. Furthermore, the basis for ALJ Boyd's finding that subsection 4.6 of the Manual is an unadopted rule is that, according to ALJ Boyd, the Manual "restructured" the sampling requirements in Rule 61D.6.005(3), and therefore, constituted an "agency statement." See Recommended Order Paragraph #117. However, the Manual does not restructure the sampling

requirements of Rule 61D-6.005(3); rather, it is merely a guideline which describes the technical steps of the blood sample collection process. (T. p. 129-130, 141)

33. As set forth in the Manual, the owner's witness is allowed to sign at the point of witnessing the taking and sealing of the urine and blood specimens and is also permitted to remain in or return to the detention barn to witness and sign for the sealing of the serum specimen. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241; R. Ex. 9) These technical steps for sample collection comply with and do not restructure the witness requirements set forth in Rule 61D-6.005(3), and therefore, the Manual is not an unadopted rule.

34. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #80 of the Recommended Order.

Exception # 7

35. The Department takes exception to the finding of fact set forth in Paragraph # 81 on page 33 of the Recommended Order in which ALJ Boyd found, "[t]he only evidence of the presence of phenylbutazone in any of Mr. Ziadie's horses was from serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and in a manner contrary to the Division's own rule."

36. Paragraph #81 is not supported by competent substantial evidence.

37. Evidence in the record shows that phenylbutazone was detected in serum derived from the blood samples collected from Mr. Ziadie's horses. (T. p. 16-17, 19-20, 177, 280; T. 9/1/15 p. 46; P. Ex. 7, 17, and 18) The record also reflects that a representative of Mr. Ziadie or the horses' owners witnessed the collection and sealing of these blood samples and had the option to either

remain in the detention barn or return later to witness the sealing of the serum. (P. Ex. 7, 17, and 18)

38. As previously discussed, allowing the owner's witness to sign at the point of witnessing the taking and sealing of the urine and blood specimens, while allowing the owner's witness to return to the detention barn to witness and sign for the sealing of the serum specimen, accords with the requirements set forth in Rule 61D-6.005(3).

39. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the finding of fact set forth in Paragraph #81 of the Recommended Order.

Exceptions to Conclusions of Law

40. Pursuant to Section 120.57(1)(l), Fla. Stat., when rejecting or modifying conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable that that which was rejected or modified.

Exception # 8

41. The Department takes exception to the conclusion of law set forth in Paragraph #103 on Pages 40-41 of the Recommended Order in which ALJ Boyd found, "[t]he evidence clearly showed that the sampling procedures followed here, as set forth in the Manual, had the witness sign the card before the sealing of the serum specimen."

42. Evidence in the record shows that the Department does not "have" the witness sign the card before the sealing of the blood specimen; rather, the Department allows the owner's witness to sign the card after observing the sealing of the urine and blood samples, as required by

Rule 61D-6.005(3), and to remain in the Detention Barn or return later to observe the sealing of the serum sample. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241)

43. Even though the witness may elect not to sign the sample tag prior to the sealing of the serum specimen, the point at which the sample tag is signed is the point at which signature is contemplated by rule. The witness then has the option remain to witness the extraction and sealing of the serum sample. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241)

44. Based on the record, a more reasonable conclusion of law would be that the sample collection procedures followed in these cases complied with the requirements of Chapter 61D-6.

45. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #103 of the Recommended Order.

Exception # 9

46. The Department takes exception to the conclusion of law set forth in Paragraph #107 on Page 42 of the Recommended Order in which ALJ Boyd found, "Petitioner's argument that it cannot "force" the authorized representative to witness the sealing of the specimen is unpersuasive. The rule clearly states that 'the sample tag shall be detached and signed by the owner, trainer, groom, or the authorize person as a witness to the taking and sealing of the specimen.' A witness's refusal to do so would be one thing, but here the procedure followed—as established in great detail by the Manual—routinely secures the signature of the witness long before the serum is even extracted."

47. Evidence in the record reflects that the Department allows a witness to sign the sample tag after observing the taking and sealing of the urine and blood specimens, which is what happened in the instant case. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241; P.

Ex. 7, 17, and 18) While the Department does not generally secure the signature of the witnesses after the serum is extracted and sealed, this is not contrary to the requirements of Rule 61D-6.005(3), which only requires the witness to sign the sample tag after the urine and blood samples are sealed.

48. Furthermore, witnesses have the option to remain in or return to the detention barn to witness and sign for the sealing of the serum specimen. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241)

49. Based on the record, a more reasonable conclusion of law would be that the sample collection procedures followed in the instant case complied with the requirements of Chapter 61D-6.

50. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #107 of the Recommended Order.

Exception # 10

51. The Department takes exception to the conclusion of law set forth in Paragraph #109 on Page 43 of the Recommended Order in which ALJ Boyd found, "[u]nder all of the circumstances of this case, it is not difficult to conclude that the systematic and regular violation of the rule's requirement that the authorized representative witness the sealing of the serum sample constituted a significant procedural error that effected the fairness of the proceeding."

52. The record does not support a finding that the Department engaged in "systematic and regular" violations of the rule's requirement that the authorized representative witness the sealing of the serum sample."

53. As stated previously, Rule 61D-6.005(3) does not require that the authorized

Representative witness the sealing of the serum sample; rather, the rule requires that the authorized representative witness the sealing of the urine and blood samples. The record reflects that this is the procedure followed by the Division, and that this is what happened in the instant case. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241; P. Ex. 7, 17, and 18)

54. Based on the record, a more reasonable conclusion of law would be that the sample collection procedures followed by the Division complied with the requirements of Chapter 61D-6.

55. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #109 of the Recommended Order.

Exception # 11

56. The Department takes exception to the conclusion of law set forth in paragraph 110 on page 43 of the Recommended Order in which ALJ Boyd found, "with respect to the blood samples, Petitioner failed to identify restricted drugs in specimens collected in the manner required by its rules."

57. Rule 61D-6.005(3) requires the witness to observe and sign for the collection and sealing of the urine and blood samples, and requires that the blood samples be collected by a Florida licensed veterinarian.

58. The evidence in the record reflects that, in the instant case, the witnesses were present for and did observe the collection and sealing of the urine and blood samples, after which they signed the sample tags. (P. Ex. 7, 17, and 18) The record also reflects that the blood samples were all collected in accordance with the requirements of Rule 61D-6.005. (T. p. 105, 110-115, 122, 142, 152-154, 167, 175-176, 233-234, 241)

59. Based on the record, a more reasonable conclusion of law would be that the blood sample collection procedures followed by the Department complied with Chapter 61D-6, and thus, the Department identified, through the serum results, that Mr. Ziaide raced horses with restricted drugs in specimens collected in accordance with the rule.

60. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #110 of the Recommended Order.

Exception # 12

61. The Department takes exception to the conclusion of law set forth in Paragraph #117 on Page 46 of the Recommended Order in which ALJ Boyd found, "...the rule explicitly requires that the owner's representative witness the sealing of the sample and says nothing of procedures to extract serum from the blood. Because the witnessing of the sealing of the serum sample is not merely a matter of technical implementation, the Manual's restructuring of this important rule requirement constitutes an important policy change that does constitute an "agency statement."

62. Rule 61D-6.005(3) requires the witness to observe and sign for the collection and sealing of the urine and blood samples. The rule also requires that the Division maintain the samples in a manner that preserves the integrity of the samples.

63. As discussed in Exception # 1, the Manual is a guideline setting forth the technical procedures for the execution of the blood sample collection process by Division employees. (T. p. 116-119, 129-130, 141, 153; T. 9/1/2015 p. 57-58; R. Ex. 9) The Manual provides for the signing of the sample tag after the witness has observed the sealing of the urine and blood specimens, as required by rule, and permits a witness to remain in or return to the Detention Barn to witness and sign for the extraction and the sealing of the serum. (R. Ex. 9) Evidence in the

record reflects that the serum extraction procedures are technical procedures designed to maintain the integrity of the sample prior to its shipment to the racing laboratory for testing. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241)

64. Based on the record, a more reasonable conclusion of law would be that serum extraction procedures set forth in the manual are technical requirements for sample maintenance that do not alter the witness requirement set forth in Rule 61D-6.005(3), and as such, subsection 4.6 of the Manual is not an unpromulgated rule.

65. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #117 of the Recommended Order.

Exception # 13

66. The Department takes exception to the conclusion of law set forth in Paragraph #125 on Page 49 of the Recommended Order in which ALJ Boyd found, "[d]iscipline of Respondent's license may not be based upon test results of serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and contrary to Petitioner's adopted rule."

67. As previously discussed, the Manual is a guideline setting forth the technical procedures for the execution of the blood sample collection process by Division employees. (T. p. 129-130, 141) The Manual provides for the signing of the sample tag after the witness has observed the sealing of the urine and blood specimens, as required by rule, and permits a witness to remain in or return to the Detention Barn to witness and sign for the extraction and the sealing of the serum. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241) Evidence in the record reflects that the serum extraction procedures are technical procedures designed to

maintain the integrity of the sample prior to its shipment to the racing laboratory for testing. (T. p. 110-114, 122, 142, 152-154, 167, 175-176, 233-234, 241)

68. Based on the record, a more reasonable conclusion of law would be that serum extraction procedures set forth in the manual are technical requirements for sample maintenance that do not alter the witness requirement set forth in Rule 61D-6.005(3), and as such, the serum evidence relied upon by the Division in the instant case was not obtained in accordance with an unpromulgated rule.

69. Therefore, the Department respectfully requests that the Division enter a Final Order granting the Department's Exception to the conclusion of law set forth in Paragraph #125 of the Recommended Order.

Respectfully submitted,

/s/ Caitlin R. Mawn

Caitlin R. Mawn
Assistant General Counsel
Florida Bar No.
Department of Business and
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1940 N. Monroe St., Ste. 42
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been sent via electronic mail to: Bradford J. Beilly, Esq., Attorney for Petitioner, 1144 Southeast Thrid Avenue, Fort Lauderdale, Florida 33316, this 29th day of December, 2015.

Caitlin R. Mawn

Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATI
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent.
_____/

CASE NOS. 2012033990, 2012040949, 2012041931, 2012041948, 2012043730

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent.
_____/

CASE NOS. 2013016106, 2013023790, 2013023875, 2013025104, 2013025126, 2013026031, 2013026525, 2013029114, 2013030616, 2013032774, 2013034195, 2013043815, 2013047021, 2014006345, 2014039033, 2014052733

RESPONDENT'S RESPONSES TO PETITIONER'S EXCEPTIONS

Pursuant to Rule 28 - 106.217, F.A.C., Respondent Ziadie hereby responds to the exceptions to the ALJ's Recommended Order that were filed by Petitioner on December 29, 2015.

1. With respect to Exception 1, Petitioner states that there is no competent substantial evidence to support the ALJ's finding that "after the blood samples were taken

by the veterinarian, they were not 'sealed' in the collection tubes." However, there is ample substantial competent evidence in the record that directly supports the ALJ's finding that the blood samples are not "sealed" when initially put into the collection tubes. As testified to by Dr. Watson, the Veterinarian Manager of the detention barn and Ivan Urrutia, the Chief Veterinarian Assistant, after the blood is put into the collection tubes, it is spun on a centrifuge, its serum *is then removed from the collection tube* and placed in another container where it is sealed and sent to the University of Florida. (Watson T. 115 - 118, 137 - 138; Urrutia T. 161 - 163). It is undisputed that the second "evergreen" container, as opposed to the collection tube, is what the Division *seals* with evidence tape and affixes the official sample number tag portion from form RL 172 - 03 and then ships to the University of Florida. Accordingly, it defies common sense to interpret "sealing," as used in Rule 61D-6.005(3), F.A.C., to mean when the blood is initially taken in the collection tubes.

Furthermore, the initial sample collection tube itself cannot be considered "sealed" based on a purely physical analysis. This is the case as Dr. Watson testified that he uses a double-ended needle to pierce the top end of the glass tube to collect the blood, meaning that the sample collection tube has a rubber stopper on one end into which there is a hole that a needle enters and exits; clearly, this not a "sealed" container. (T. 115 - 118).

2. In Exception 2, Petitioner states that there is no competent substantial evidence in the record to support the ALJ's finding that "Rule 61D-6.005 does not make any reference to spinning the blood in the centrifuge to extract serum, the pouring of serum into an evergreen tube, the sealing of the evergreen tube with evidence tape, or the freezing of the specimen. The Manual establishes additional policies and procedures not

contained in the rule." However, contrary to Petitioner's claim, there is ample competent substantial evidence to support this finding by the ALJ. Namely, the text of Rule 61D-6.005, F.A.C. speaks for itself. Nowhere does said rule mention a centrifuge or transferring the blood sample into another container after it is collected. These procedure utilized by Petitioner pursuant to its Detention Barn Manual (hereinafter the "Manual") (Respondent's Exhibit 9) are not mere technical implementations; rather, they are additional and substantively different procedures that what is set forth in Rule 61D - 6.00f, F.A.C.

3. With respect to Exception 3, Petitioner alleges that there was no competent substantial evidence in the record to support the ALJ's finding that the procedures set forth in the Manual, which were followed by Division employees and which mandated that the witness sign the sample tag "before" the sealing of the specimen (serum), were not in compliance with Rule 61D-6.005(3), F.A.C. This exception is premised upon Respondent's position that the blood sample is "sealed" when first put in the collection tubes, as opposed to the "evergreen" tube in which serum is poured and sealed with evidence tape and then sent to the University of Florida laboratory. However, in Respondent's reply to Exception 1 above, it was shown that there is substantial competent evidence to support the ALJ's finding that the sealing of the blood sample does not occur when the blood sample is initially put into the collection tube. Accordingly, likewise, there is substantial competent evidence to support the ALJ's finding here that the procedures of the Manual are in conflict with Rule 61D-6.005(3), F.A.C. as the Manual provides that the witness be present for the taking of the sample but not the "sealing" of the sample, as mandated by Rule 61D-6.005(3), F.A.C. In addition, the requirement of Rule 61D-6.005(3), F.A.C. is clear and

speaks for itself. The witness's signature on the sample tag is to indicate that the witness has observed both the taking and sealing of the specimen. In fact, Rule 61D-6.005(3), F.A.C. mandates that "the racing animal and authorized person shall remain in the detention enclosure until the sample tag is signed." Section 4.6 of the Manual, on page 19, expressly states that "only after blood sampling is completed, or aborted in the case of an unruly animal, will the veterinary assistant immediately have the trainer's designate sign the collection card identifying themselves as having witnessed the collection of both urine and blood." Subsequent to the witness being permitted to leave the detention barn, as also set forth on Page 19 of the Manual, the final step in processing the blood commences. The last step, per the Manual, is that "serum is poured into applicable (numbered) 'evergreen' tubes. Each 'evergreen' tube is immediately and properly **sealed** with evidence tape." (emphasis added).

Also in Exception 3, Petitioner argues that the Manual is not a rule, but simply a "guideline." However, the argument that the Manual is a guideline for the sample collection process is directly contrary to Division employee testimony. William Watson, the State Veterinarian barn manager working within the Detention Barn, testified that the requirements of the Manual are in fact mandatory, that all employees located in the testing barn are required to read and follow the Manual, and that said employees could be sanctioned for not following the procedures set forth in the Manual. See testimony of William Watson (T. 129 - 131). The Manual itself and the testimony of the witnesses as a whole provide substantial competent evidence to support the ALJ's finding that the Manual is a rule and that it is contrary to Rule 61D-6.005(3), F.A.C.

Any language in the Manual itself that states that the owner, trainer, or a designated witness may elect to witness the blood processing and sealing cycle is clearly irrelevant to the ALJ's finding of fact as the Manual is not a public document.

The portion of Petitioner's Exception 3, as set forth in paragraph 18, suggests that the witness should sign the tag after the taking of the blood, then leave the barn, and return hours later to witness and then sign again as a witness to the sealing of the serum specimen. This is a concept not supported by any evidence. Neither Rule 61D-6.005, the Manual, nor any testimony by any witness suggests that the witness is required to sign the sample tag twice.

4. With respect to Exception 4, Petitioner states that there is no competent substantial evidence to support the ALJ's finding of fact that the Rule 61D-6.005(3), F.A.C. requirement that the witness observe both the taking and sealing of the specimen is a requirement directly related to maintaining the integrity of the sample collection process. The ALJ's finding, supported by substantial competent evidence, is that it is fundamentally unfair to ask the trainer, owner or authorized representative to be accountable for a process that they are not required to observe and do not in fact observe. The testimony of William Watson that in his five years serving in the detention barn that not one witness has observed the pouring of serum from blood tubes to a separate container is telling and supports the ALJ's finding. (T. 152) See also testimony of Ivan Urrutia, T. 167 - 168, that no owner's representative has witnessed the pouring and sealing of the serum sample.

5. With respect to Exception 5, Petitioner states that there is no substantial competent evidence to support the ALJ's finding of fact that "[s]uch deliberate disregard

of the plain language of the rule directly affects the fairness of the entire sampling procedure." However, the ALJ's finding is supported by substantial competent evidence as set forth in the response to Petitioner's Exception 2 above. Put simply, the Manual sets forth procedures inconsistent with Rule 61D-6.005(3), F.A.C., which is intended to ensure the fairness of the sample testing procedures. Furthermore, contrary to Petitioner's assertion, there was no competent substantial evidence in the record that "trainers and authorized representatives are advised of their requirement to witness the sealing of the urine and blood specimens and their right to be present to witness the subsequent sealing of the serum." Specifically, to the contrary, Kevin Scheen, a state steward at Gulfstream Park for 15 years, testified that he was completely unaware of the fact that blood tubes were centrifuged in the testing barn and serum was free poured to different tubes by the veterinary assistant after the state veterinarian left the testing barn. (September 23, 2015 at T. 164 - 165).

6. With respect to Exception 6, Petitioner states that it disagrees with the ALJ's finding that the Manual is an unadopted rule. Although Respondent agrees that the conclusion that the Manual is an unadopted rule is a conclusion of law, the legal conclusion cannot be made until the ALJ makes the requisite findings of fact. That said, it is clear that Section 4.6 of the Manual sets forth procedures in plain English, which do in fact restructure the sample collection process set forth in Rule 61D-6.005(3), F.A.C. Among other evidence in the record of the proceedings, the testimony of William Watson, the State Veterinarian in charge of the Detention Barn, makes it clear, beyond doubt, that the Manual is an unadopted rule. His testimony on this point is found at T. 129 - 131. Therein he

testified that the Division uses the Manual at all horse racing facilities in the State of Florida, the Division provided this Manual to all of its employees that work at Division-licensed horse racing tracks (state veterinarian, detention barn supervisor, chief veterinary assistant and other veterinary assistants included), that the Manual is a document that is prepared by the Division, and that each track follows the Manual's provisions for sampling and testing procedures.

7. With respect to Exception 7, Petitioner states that there is no substantial competent evidence in the record to support the ALJ's finding that "[t]he only evidence of the presence of phynylbutazone in any of Mr. Ziadie's horses was from serum obtained pursuant to the unadopted rule procedures of subsection 4.6 of the Manual and in a manner contrary to the Division's own rule." Petitioner's exception is premised on Petitioner's earlier exception to the Manual being found an unadopted rule. However, the ALJ found that the Manual was an unadopted rule and there was ample substantial evidence to support this finding. See Respondent's response to Petitioner's Exception 6 above. Accordingly, as there was substantial competent evidence to support the ALJ's finding that the Manual was an unadopted rule, the ALJ's finding in Paragraph 81 of the Recommended Order (as quoted above) necessarily follows per Fla. Stat. 120.57(1)(e)(1).

8. In Exception 8, Petitioner takes issue with the ALJ's legal conclusion that Respondent "clearly showed that the sampling procedures followed here, as set forth in the Manual, has the witness sign the card before the sealing of the serum specimen." This finding is supported by substantial competent evidence in the record. Specifically, the Manual, at Section 4.6, requires the witness to sign the sample tag before the blood is

processed into serum and thereafter poured into and sealed in a separate container for shipment to the University of Florida Laboratory. In addition, both William Watson, the State Veterinarian detention barn and, Ivan Urrutia, the chief veterinary assistant, testified that the sample tag is signed by the witness immediately after the State veterinarian draws the whole blood from a horse and prior to the serum sample being poured into and sealed in a separate container for shipment to the UF Laboratory. (T. 143 - 144, 167 - 168).

In short, Petitioner's counsel urges a reading of Rule 61D-6.005(3) that is contrary to its express language and requests the Division to adopt a position that is certainly not a more reasonable conclusion of law than that found by the ALJ.

9. In Exception 9, Petitioner takes issue with the ALJ's legal conclusion that the issue was not of a witness's "refusal" to sign a sample tag but that the "procedure" actually followed, as established in detail by the Manual, routinely secures the witness's signature, long before the serum is even extracted. Implicit in Exception 9 is the Petitioner's position that it is possible for the Division to "seal" the samples, for the purpose of Rule 61D - 6.005(3), F.A.C., prior to the blood being spun on a centrifuge and then poured into another container where it is sealed and then sent to the UF Laboratory. As explained in the response to Exception 1, there is substantial competent evidence in the record to support the ALJ's finding that the blood samples are not "sealed" for the purposes of Rule 61D - 6.005, F.A.C. when the whole blood is first extracted from the horse and put in a container.

Petitioner's Exception 9 is premised entirely on its dispute with a factual finding made by the ALJ for which there was substantial competent evidence to support. As a

result, Respondent's Exception 9 fails and does not allege legal error nor otherwise suggest a more reasonable conclusion of law.

10. In Exception 10, Petitioner takes issue with the ALJ's legal conclusion of law that "[u]nder all of the circumstances of this case, it is not difficult to conclude that the systematic and regular violation of the rule's requirement that the authorized representative witness the sealing of the serum sample constituted a significant procedural error that affected the fairness of the proceedings." This exception is based on Petitioner's argument that Rule 61D - 6.005(3) only required that the authorized representative witness the sealing of the urine and whole blood sample as opposed to the blood serum. This argument urges a strained and disingenuous interpretation of Rule 61D - 6.005(3), F.A.C. that, under no circumstance, can be considered a more reasonable interpretation than that given to the rule by the ALJ. Accordingly, the position advocated in Exception 10 is not a more reasonable conclusion of law than that made by the ALJ.

11. In Exception 11, Petitioner takes issue with the ALJ's legal conclusion that "[t]he evidence was clear that Respondent failed to identify restricted drugs in specimens collected in the manner required by its rules." Again, this exception is premised upon the Respondent's position that it is possible for the Division to "seal" the samples, for the purpose of Rule 61D - 6.005(3), F.A.C., prior to the blood being spun on a centrifuge and then poured into another container where it is sealed and then sent to the University of Florida Laboratory. However, as explained in the response to Exception 1, there is substantial competent evidence in the record to support the ALJ's finding that the blood

samples are not "sealed" for the purposes of Rule 61D - 6.005, F.A.C. when the whole blood is first extracted from the horse into the blood tubes.

Petitioner is again ignoring the clear language of Rule 61D-6.005(3) as to the requirement that the witness observe both the taking and sealing of all specimens. The purpose of the requirement is also clear. The trainer, as the absolute insurer of the horses' condition during the race, should be certain that once his witness observes the taking of any specimen, that it is sealed in the witness's presence, and that the seal is not broken until the sample arrives at the laboratory and is logged in for testing.

Accordingly, Petitioner does not offer a more reasonable conclusion of law than the conclusion reached by the ALJ.

12. In Exception 12, Petitioner takes issue with the ALJ's legal conclusion that "the rule explicitly requires that the owner's representative witness the sealing of the sample and says nothing of serum extraction procedures. Because the witnessing of the sealing of the sample is not merely a technical implementation, the Manual's restructuring of this important rule requirement constitutes an important policy change that constitutes an 'agency statement." Petitioner argues that the Manual is merely a guideline setting forth "technical procedures for the execution of the blood sample collection process by Division employees." However, as explained by the ALJ, the Manual literally restructures the sample collection procedure set forth in Rule 61D - 6.005(3), F.A.C. Further, the ALJ's conclusion of law is based on findings of fact made by the ALJ that were supported by competent substantial evidence. Accordingly, the Petitioner does not offer a more reasonable conclusion of law.

13. In Exception 13, Petitioner takes issue with the ALJ's conclusion of law that "[d]iscipline of Respondent's license may not be based upon the test results of serum obtained pursuant to the unadopted procedures of subsection 4.6 of the Manual and contrary to Petitioner's adopted rule." Again, this exception is based upon Petitioner's argument that the Manual is simply a "guideline setting forth technical procedures for the execution of the blood sample collection process by Division employees." As set forth in the response to Exception 6, the ALJ found that the Manual is an unadopted rule and this finding was supported by competent substantial evidence in the record.

In addition, the portion of the Petitioner's Exception set forth in paragraph 67 suggests that the witness should sign the tag after taking of the blood, then leave the barn, and return hours later to witness and then sign again as a witness to the sealing of the serum specimen is a concept not supported by any evidence. Neither Rule 61D-6.005, the manual, nor any testimony by any witness suggests that the witness is required to sign the sample tag twice. Accordingly, the Petitioner does not offer a more reasonable conclusion of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2016, a copy of the foregoing was emailed to Caitlin Mawn, Esq., Division of Pari-Mutuel Wagering, 1940 North Monroe

Street, Suite 40, Tallahassee, Florida 32399-2202 at caitlin.mawn@myfloridalicense.com.

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STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATI
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent,
_____/

DBPR CASE NO. 2012033990
2012040949
2012041931
2012041948
2012043730

SECOND AMENDED ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Division"), files this Administrative Complaint against Kirk M. Ziadie ("Respondent"), and alleges as follows:

1. Division is the state agency charged with regulating pari-mutuel wagering, pursuant to Chapter 550, Florida Statutes.

2. At all times material hereto, Respondent held a pari-mutuel wagering trainer/ thoroughbred license, number 701515-1021, issued by the Division.

COUNT I
(DBPR Case No. 2012033990)

3. At all times material hereto, Respondent was the trainer of record for the thoroughbred "I CAN AND I WILL".

4. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

5. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

6. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race."

7. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "I CAN AND I WILL" on July 4, 2012.

8. On July 4, 2012, "I CAN AND I WILL" was entered in the eighth (8^{th}) race at Calder Race Course.

9. "I CAN AND I WILL" finished third (3^{rd}) in the eighth race at Calder Race Course on July 4, 2012.

10. "I CAN AND I WILL" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

11. Urine/serum sample number 777376 was collected from "I CAN AND I WILL" and was processed in accordance with established procedures and forwarded to the lab for analysis.

12. The University of Florida Racing Laboratory tested urine/serum sample number 777376, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

13. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance

based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

14. Based on the foregoing, July 4, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "I CAN AND I WILL" with Clenbuterol in the horse's body in the eighth (8^{th}) race at Calder Race Course.

15. Based on the foregoing, July 4, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "I CAN AND I WILL" with Clenbuterol in the horse's body in the eighth (8^{th}) race at Calder Race Course.

COUNT II
(DBPR Case No. 2012033990)

16. At all times material hereto, Respondent was the trainer of record for the thoroughbred "I CAN AND I WILL".

17. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

18. Phenylbutazone is an anti-inflammatory and a Class Four drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

19. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race."

20. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "I CAN AND I WILL" on July 4, 2012.

21. On July 4, 2012, "I CAN AND I WILL" was entered in the eighth (8th) race at Calder Race Course.

22. "I CAN AND I WILL" finished third (3rd) in the eighth race at Calder Race Course on July 4, 2012.

23. "I CAN AND I WILL" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

24. Urine/serum sample number 777376 was collected from "I CAN AND I WILL" and was processed in accordance with established procedures and forwarded to the lab for analysis.

25. The University of Florida Racing Laboratory tested urine/serum sample number 777376, and found that it contained Phenylbutazone, an anti-inflammatory and Class Four drug.

26. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

27. Based on the foregoing, on July 4, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "I CAN AND I WILL" with Phenylbutazone in the horse's body in the eighth (8th) race at Calder Race Course.

28. Based on the foregoing, on July 4, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "I CAN AND I WILL" with Phenylbutazone in the horse's body in the eighth (8th) race at Calder Race Course.

COUNT III
(DBPR Case No. 2012040949)

29. At all times material hereto, Respondent was the trainer of record for the thoroughbred "FIVES AND NINES."

30. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

31. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

32. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race."

33. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "FIVES AND NINES" on August 17, 2012.

34. On August 17, 2012, "FIVES AND NINES" was entered in the first (1^{st}) race at Calder Race Course.

35. "FIVES AND NINES" finished first in the first race at Calder Race Course on August 17, 2012.

36. "FIVES AND NINES" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

37. Urine/serum sample number 779722 was collected from "FIVES AND NINES" and was processed in accordance with established procedures and forwarded to the lab for analysis.

38. The University of Florida Racing Laboratory tested urine/serum sample number 779722, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

39. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

40. Based on the foregoing, on August 17, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "FIVES AND NINES" with Clenbuterol in the horse's body in the first (1st) race at Calder Race Course.

41. Based on the foregoing, on August 17, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "FIVES AND NINES" with Clenbuterol in the horse's body in the first (1st) race at Calder Race Course.

COUNT IV
(DBPR Case No. 2012041931)

42. At all times material hereto, Respondent was the trainer of record for the thoroughbred "HE'S SPECTACULAR".

43. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

44. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

45. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race.

46. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "HE'S SPECTACULAR" on August 30, 2012.

47. On August 30, 2012, "HE'S SPECTACULAR" was entered in the fifth (5th) race at Calder Race Course.

48. "HE'S SPECTACULAR" finished first (1st) in the fifth race at Calder Race Course on August 30, 2012.

49. "HE'S SPECTACULAR" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

50. Urine/serum sample number 779882 was collected from "HE'S SPECTACULAR" and was processed in accordance with established procedures and forwarded to the lab for analysis.

51. The University of Florida Racing Laboratory tested urine/serum sample number 779882, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

52. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

53. Based on the foregoing, on August 30, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "HE'S SPECTACULAR" with Clenbuterol in the horse's body in the fifth (5th) race at Calder Race Course.

54. Based on the foregoing, on August 30, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "HE'S SPECTACULAR" with Clenbuterol in the horse's body in the fifth (5th) race at Calder Race Course.

COUNT V
(DBPR Case No. 2012041948)

55. At all times material hereto, Respondent was the trainer of record for the thoroughbred "SOLE RUNNER".

56. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

57. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

58. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race.

59. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "SOLE RUNNER" on September 14, 2012.

60. On September 14, 2012, "SOLE RUNNER" was entered in the first (1st) race at Calder Race Course.

61. "SOLE RUNNER" finished first (1st) in the first race at Calder Race Course on September 14, 2012.

62. "SOLE RUNNER" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

63. Urine/serum sample number 780135 was collected from "SOLE RUNNER" and was processed in accordance with established procedures and forwarded to the lab for analysis.

64. The University of Florida Racing Laboratory tested urine/serum sample number 780135, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

65. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

66. Based on the foregoing, on September 14, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "SOLE RUNNER" with Clenbuterol in the horse's body in the first (1st) race at Calder Race Course.

67. Based on the foregoing, on September 14, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "SOLE RUNNER" with Clenbuterol in the horse's body in the first (1st) race at Calder Race Course.

COUNT VI
(DBPR Case No. 2012043730)

68. At all times material hereto, Respondent was the trainer of record for the thoroughbred "ARI'S PRIDE".

69. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

70. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

71. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race.

72. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "ARI'S PRIDE" on September 27, 2012.

73. On September 27, 2012, "ARI'S PRIDE" was entered in the eighth (8^{th}) race at Calder Race Course.

74. "ARI'S PRIDE" finished first (1^{st}) in the eighth race at Calder Race Course on September 27, 2012.

75. "ARI'S PRIDE" was immediately thereafter sent to a Division employee for the taking of a urine/serum sample.

76. Urine/serum sample number 780373 was collected from "ARI'S PRIDE" and was processed in accordance with established procedures and forwarded to the lab for analysis.

77. The University of Florida Racing Laboratory tested urine/serum sample number 780373, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

78. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to

be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

79. Based on the foregoing, on September 27, 2012, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "ARI'S PRIDE" with Clenbuterol in the horse's body in the eighth (8^{th}) race at Calder Race Course.

80. Based on the foregoing, on September 27, 2012, Respondent violated Rule 61D-6.011(2), F.A.C., by racing "ARI'S PRIDE" with Clenbuterol in the horse's body in the eighth (8^{th}) race at Calder Race Course.

RESPONDENT'S HISTORY OF DRUG OFFENSES

81. Prior to the violations charged in this Second Amended Administrative Complaint, Respondent has accumulated fourteen (14) previous violations of Section 550.2415, Florida Statutes, involving drugs, in the following DBPR case numbers.

1. Case No. 2004028212 (flunixin, class 4 drug; $100 fine).
2. Case No. 2004057550 (Glycopyrrolate, class 3 drug; $500 fine and 15 day suspension).
3. Case No. 2004060610 (Glycopyrrolate, class 3 drug; $500 fine).
4. Case No. 2005030701 (Clenbuterol, class 3 drug; $300 fine).
5. Case No. 2005064692 (Phenylbutazone, class 4 drug; $250 fine).
6. Case No. 2006005191 (Dimethyl Sulfoxide, class 5 drug; $100 fine).
7. Case No. 2006006449 (Dimethyl Sulfoxide, class 5 drug; $1,000 fine).
8. Case No. 2006007718 (Dimethyl Sulfoxide, class 5 drug; $250 fine).

9. Case No. 2006019839 (Phenylbutazone/Oxypenbutazone, class 4 drug; $500 fine).

10. Case No. 2006060434 (Phenylbutazone, class 4 drug; $1,000 fine).

11. Case No. 2006067518 (Phenylbutazone, class 4 drug; $100 fine).

12. Case No. 2007008307 (Clenbuterol, class 3 drug; $250 fine).

13. Case No. 2007025004 (Acepromazone, class 3 drug; $1,000 fine and 60 day suspension).

14. Case No. 2009048213 (Boldenone, class 4 drug; $250 fine).

WHEREFORE, Petitioner respectfully requests the Division enter an Order imposing one or more of the following penalties against the Respondent as specified in Section 550.2415(3)(a), Florida Statutes and Rule 61D-6.011(2), Florida Administrative Code, including revoke or suspend the license of the violator; impose a fine against the violator for each count; require the full or partial return of the purse, sweepstakes, and trophy of each race at issue; or impose against the violator any combination of such penalties.

<signature page to follow>

Signed this 8 day of September 2014

KEN LAWSON, Secretary
Department of Business and
Professional Regulation

By: _____

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NOTICE OF RIGHTS

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

Please be advised that Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Any request for an administrative proceeding to challenge or contest the charges contained in the Administrative Complaint must conform to Rule 28-106.2015, Florida Administrative Code. Rule 28-106.111, Florida Administrative Code, provides in part that if Respondent fails to request a hearing within 21 days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATIO
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

v.

KIRK M. ZIADIE,

Respondent,

DBPR CASE NO. 2013016106
2013023790
2013023875
2013025104
2013025126
2013026031
2013026525
2013029114
2013030616
2013032774
2013034195
2013043815
2013047021
2014006345
2014039033
2014052733

_____/

FIRST AMENDED ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Department"), files this Administrative Complaint against Kirk M. Ziadie ("Respondent"), and alleges as follows:

AVERMENTS COMMON TO ALL COUNTS

1. Division is the state agency charged with regulating pari-mutuel wagering, pursuant to Chapter 550, Florida Statutes.

2. At all times material hereto, Respondent held a pari-mutuel wagering trainer/ thoroughbred license, number 701515-1021, issued by the Division.

3. At all times material hereto, Respondent raced horses at facilities which held

Florida Pari-Mutuel Wagering permits issued by the Division and were authorized to conduct pari-mutuel wagering in this state.

4. Rule 61D-6.002(1), Florida Administrative Code, provides, "[t]he trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . horses he/she enters to race."

5. Clenbuterol is a bronchodilator and a Class Three drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

6. Phenylbutazone is an anti-inflammatory and Class Four drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners, Inc.

7. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug . . . is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug . . . to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

8. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race."

9. Any amount of prohibited substance found in a race-day specimen taken from a racing animal is a violation of Florida law; there are no acceptable threshold levels for prohibited substances. Section 550.2415(1)(a), Florida Statutes.

COUNT 1
(DBPR Case No. 2013016106)

10. At all times material hereto, Respondent was the trainer of record for the thoroughbred "DREAMING OF LUCY".

11. On March 13, 2013, "DREAMING OF LUCY" was entered in the eighth race at Gulfstream Park.

12. "DREAMING OF LUCY" finished second in the eighth race at Gulfstream Park on March 13, 2013.

13. "DREAMING OF LUCY" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

14. Sample number 785589 was collected from "DREAMING OF LUCY" and was processed in accordance with established procedures and forwarded to the lab for analysis.

15. The University of Florida Racing Laboratory tested sample number 785589, and found that it contained Clenbuterol, a bronchodilator and a Class Three drug.

16. Respondent requested independent laboratory confirmation of serum sample number 785589.

17. On July 18, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 785589.

18. Based on the foregoing, on March 13, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "DREAMING OF LUCY" in the eighth race at Gulfstream Park.

COUNT 2
(DBPR Case No. 2013023790)

19. At all times material hereto, Respondent was the trainer of record for the thoroughbred "MONTY'S TUNE."

20. On April 26, 2013, "MONTY'S TUNE" was entered in the fourth race at Calder Race Course.

21. "MONTY'S TUNE" finished third in the fourth race at Calder Race Course on April 26, 2013.

22. "MONTY'S TUNE" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

23. Sample number 788695 was collected from "MONTY'S TUNE" and was processed in accordance with established procedures and forwarded to the lab for analysis.

24. The University of Florida Racing Laboratory tested sample number 788695, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

25. Respondent requested independent laboratory confirmation of serum sample number 788695.

26. On December 17, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 788695.

27. Based on the foregoing, on April 26, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "MONTY'S TUNE" in the fourth race at Calder Race Course.

COUNT 3
(DBPR Case No. 2013023875)

28. At all times material hereto, Respondent was the trainer of record for the thoroughbred "STARSHIP LUNA".

29. On May 10, 2013, "STARSHIP LUNA" was entered in the first race at Calder Race Course.

30. "STARSHIP LUNA" finished third in the first race at Calder Race Course on May 10, 2013.

31. "STARSHIP LUNA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

32. Sample number 786406 was collected from "STARSHIP LUNA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

33. The University of Florida Racing Laboratory tested sample number 786406, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

34. Respondent requested independent laboratory confirmation of serum sample number 786406.

35. On August 16, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 786406.

36. Based on the foregoing, on May 10, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "STARSHIP LUNA" in the first race at Calder Race Course.

COUNT 4
(DBPR Case No. 2013025104)

37. At all times material hereto, Respondent was the trainer of record for the thoroughbred "CENTAUR MAN".

38. On May 24, 2013, "CENTAUR MAN" was entered in the third race at Calder Race Course.

39. "CENTAUR MAN" finished first in the third race at Calder Race Course on May 24, 2013.

40. "CENTAUR MAN" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

41. Sample number 786847 was collected from "CENTAUR MAN" and was processed in accordance with established procedures and forwarded to the lab for analysis.

42. The University of Florida Racing Laboratory tested sample number 786847, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

43. Respondent requested independent laboratory confirmation of serum sample number 786847.

44. On July 24, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 786847.

45. Based on the foregoing, on May 24, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "CENTAUR MAN" in the third race at Calder Race Course.

COUNT 5
(DBPR Case No. 2013025126)

46. At all times material hereto, Respondent was the trainer of record for the thoroughbred "ENTRADA".

47. On May 26, 2013, "ENTRADA" was entered in the eighth race at Calder Race Course.

48. "ENTRADA" finished second in the eighth race at Calder Race Course on May 26, 2013.

49. "ENTRADA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

50. Sample number 786920 was collected from "ENTRADA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

51. The University of Florida Racing Laboratory tested sample number 786920, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

52. Respondent requested independent laboratory confirmation of serum sample number 786920.

53. On July 24, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 786920.

54. Based on the foregoing, on May 26, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "ENTRADA" in the eighth race at Calder Race Course.

COUNT 6
(DBPR Case No. 2013026031)

55. At all times material hereto, Respondent was the trainer of record for the thoroughbred "SIR EDGAR".

56. On June 9, 2013, "SIR EDGAR" was entered in the third race at Calder Race Course.

57. "SIR EDGAR" finished first in the third race at Calder Race Course on June 9, 2013.

58. "SIR EDGAR" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

59. Sample number 786600 was collected from "SIR EDGAR" and was processed in accordance with established procedures and forwarded to the lab for analysis.

60. The University of Florida Racing Laboratory tested sample number 786600, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

61. Respondent requested independent laboratory confirmation of serum sample number 786600.

62. On July 24, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 786600.

63. Based on the foregoing, on June 9, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "SIR EDGAR" in the third race at Calder Race Course.

COUNT 7
(DBPR Case No. 2012026525)

64. At all times material hereto, Respondent was the trainer of record for the thoroughbred "DREAMING OF SOPHIA".

65. On June 8, 2013, "DREAMING OF SOPHIA" was entered in the eighth race at Calder Race Course.

66. "DREAMING OF SOPHIA" finished second in the eighth race at Calder Race Course on June 8, 2013.

67. "DREAMING OF SOPHIA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

68. Sample number 786584 was collected from "DREAMING OF SOPHIA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

69. The University of Florida Racing Laboratory tested sample number 786584, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

70. Respondent requested independent laboratory confirmation of serum sample number 786584.

71. On July 24, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 786584.

72. Based on the foregoing, on June 8, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "DREAMING OF SOPHIA" in the eighth race at Calder Race Course.

COUNT 8
(DBPR Case No. 2013029114)

73. At all times material hereto, Respondent was the trainer of record for the thoroughbred "MUSICAL FLAIR".

74. On June 25, 2013, "MUSICAL FLAIR" was entered in the seventh race at Gulfstream Park.

75. "MUSICAL FLAIR" finished first in the seventh race at Gulfstream Park on June 25, 2013.

76. "MUSICAL FLAIR" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

77. Sample number 791513 was collected from "MUSICAL FLAIR" and was processed in accordance with established procedures and forwarded to the lab for analysis.

78. The University of Florida Racing Laboratory tested sample number 791513, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

79. Respondent requested independent laboratory confirmation of serum sample number 791513.

80. On October 10, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 791513.

81. Based on the foregoing, on June 25, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "MUSICAL FLAIR" in the seventh race at Gulfstream Park.

COUNT 9
(DBPR Case No. 2013030616)

82. At all times material hereto, Respondent was the trainer of record for the thoroughbred "ENTRADA".

83. On July 1, 2013, "ENTRADA" was entered in the sixth race at Gulfstream Park.

84. "ENTRADA" finished first in the sixth race at Gulfstream Park on July 1, 2013.

85. "ENTRADA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

86. Sample number 791530 was collected from "ENTRADA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

87. The University of Florida Racing Laboratory tested sample number 791530, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

88. Respondent requested independent laboratory confirmation of serum sample number 791530.

89. On October 10, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 791530.

90. Based on the foregoing, on July 1, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "ENTRADA" in the sixth race at Gulfstream Park.

COUNT 10
(DBPR Case No. 2013034195)

91. At all times material hereto, Respondent was the trainer of record for the thoroughbred "BLACK KARMA".

92. On August 3, 2013, "BLACK KARMA" was entered in the first race at Gulfstream Park.

93. "BLACK KARMA" finished first in the first race at Gulfstream Park on August 3, 2013.

94. "BLACK KARMA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

95. Sample number 791655 was collected from "BLACK KARMA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

96. The University of Florida Racing Laboratory tested sample number 791655, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

97. Respondent requested independent laboratory confirmation of serum sample number 791655.

98. On October 23, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 791655.

99. Based on the foregoing, on August 3, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "BLACK KARMA" in the eighth race at Gulfstream Park.

COUNT 11
(DBPR Case No. 2013032774)

100. At all times material hereto, Respondent was the trainer of record for the thoroughbred "COMMENCE FIRING".

101. On July 19, 2013, "COMMENCE FIRING" was entered in the second race at Calder Race Course.

102. "COMMENCE FIRING" finished first in the second race at Calder Race Course on July 19, 2013.

103. "COMMENCE FIRING" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

104. Sample number 790510 was collected from "COMMENCE FIRING" and was processed in accordance with established procedures and forwarded to the lab for analysis.

105. The University of Florida Racing Laboratory tested sample number 790510, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

106. Respondent requested independent laboratory confirmation of serum sample number 790510.

107. On October 10, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 790510.

108. Based on the foregoing, on July 19, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "COMMENCE FIRING" in the second race at Calder Race Course.

COUNT 12
(DBPR Case No. 2013043815)

109. At all times material hereto, Respondent was the trainer of record for the thoroughbred "BLACK KARMA".

110. On October 12, 2013, "BLACK KARMA" was entered in the third race at Tropical Park.

111. "BLACK KARMA" finished first in the third race at Tropical Park on October 12, 2013.

112. "BLACK KARMA" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

113. Sample number 787098 was collected from "BLACK KARMA" and was processed in accordance with established procedures and forwarded to the lab for analysis.

114. The University of Florida Racing Laboratory tested sample number 787098, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

115. Respondent requested independent laboratory confirmation of serum sample number 787098.

116. On December 4, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 787098.

117. Based on the foregoing, on October 12, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "BLACK KARMA" in the third race at Tropical Park.

COUNT 13
(DBPR Case No. 2013047021)

118. At all times material hereto, Respondent was the trainer of record for the thoroughbred "DISTINCTIVE MOVE".

119. On October 27, 2013, "DISTINCTIVE MOVE" was entered in the sixth race at Tropical Park.

120. "DISTINCTIVE MOVE" finished first in the sixth race at Tropical Park on October 27, 2013.

121. "DISTINCTIVE MOVE" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

122. Sample number 787233 was collected from "DISTINCTIVE MOVE" and was processed in accordance with established procedures and forwarded to the lab for analysis.

123. The University of Florida Racing Laboratory tested sample number 787233, and found that it contained Clenbuterol, a bronchodilator and Class Three drug.

124. Respondent requested independent laboratory confirmation of serum sample number 787233.

125. On December 17, 2013 the University of California, Davis laboratory reported confirmation that Clenbuterol was present in serum sample number 787233.

126. Based on the foregoing, on October 27, 2013, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "DISTINCTIVE MOVE" in the sixth race at Tropical Park.

COUNT 14
(DBPR Case No. 2014006345)

127. At all times material hereto, Respondent was the trainer of record for the thoroughbred "LOOK OUT LIGHT".

128. On January 19, 2014, "LOOK OUT LIGHT" was entered in the fifth race at Tampa Bay Downs.

129. "LOOK OUT LIGHT" finished second in the fifth race at Tampa Bay Downs on January 19, 2014.

130. "LOOK OUT LIGHT" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

131. Sample number 795544 was collected from "LOOK OUT LIGHT" and was processed in accordance with established procedures and forwarded to the lab for analysis.

132. The University of Florida Racing Laboratory tested sample number 795544, and found that it contained Phenylbutazone, an anti-inflammatory and Class Four drug.

133. Based on the foregoing, on January 19, 2014, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "LOOK OUT LIGHT" in the fifth race at Tampa Bay Downs.

COUNT 15
(DBPR Case No. 2014039033)

134. At all times material hereto, Respondent was the trainer of record for the thoroughbred "ROCK DIAMOND".

135. On September 5, 2014, "ROCK DIAMOND" was entered in the fourth race at Gulfstream Park.

136. "ROCK DIAMOND" finished second in the fourth race at Gulfstream Park on September 5, 2014.

137. "ROCK DIAMOND" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

138. Sample number 799956 was collected from "ROCK DIAMOND" and was processed in accordance with established procedures and forwarded to the lab for analysis.

139. The University of Florida Racing Laboratory tested sample number 799956, and found that it contained Phenylbutazone, an anti-inflammatory and Class Four drug.

140. Based on the foregoing, on September 5, 2014, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "ROCK DIAMOND" in the fourth race at Gulfstream Park.

COUNT 16
(DBPR Case No. 2014052733)

141. At all times material hereto, Respondent was the trainer of record for the thoroughbred "MORNIN BREW".

142. On December 7, 2014, "MORNIN BREW" was entered in the second race at Gulfstream Park.

143. "MORNIN BREW" finished first in the second race at Gulfstream Park on December 7, 2014.

144. "MORNIN BREW" was immediately thereafter sent to a Division employee for the taking of urine and serum samples.

145. Sample number 028332 was collected from "MORNIN BREW" and was processed in accordance with established procedures and forwarded to the lab for analysis.

146. The University of Florida Racing Laboratory tested sample number 028332, and found that it contained Phenylbutazone, an anti-inflammatory and Class Four drug.

147. Based on the foregoing, on December 7, 2014, Respondent violated section 550.2415(1)(a), Florida Statutes, by racing "MORNIN BREW" in the second race at Gulfstream Park.

148. Rule 61D-6.011(2), Florida Administrative Code, provides as follows:

(2) The penalty for any medication or drug which is not described in subsection (1) above shall be based upon the classification of the medication or drug found in the Uniform Classification Guidelines for Foreign Substances, revised January 2010, as promulgated by the Association of Racing Commissioners International, Inc., which is hereby incorporated and adopted by reference, https://www.flrules.org/gateway/reference.asp?No=Ref-00308. A copy of this document may be obtained at www.myfloridalicense.com/dbpr/pmw or by contacting the Division of Pari-Mutuel Wagering at 1940 North Monroe Street, Tallahassee, Florida 32399-1035. The penalty schedule shall be as follows:

(a) Class I impermissible substances:	
1. First violation	$1,000 to $3,000 fine and suspension of license up to one year, or revocation of license;
2. Second violation	$3,000 to $5,000 fine and suspension of license of no less than one year, or revocation of license.
3. Third or subsequent violation	$3,000 to $5,000 fine and revocation of license.
(b) Class II impermissible substances:	
1. First violation	$250 to $1,000 fine and suspension of license up to 180 days;
2. Second violation within 36 months of a previous violation	$500 to $1,000 fine and suspension of license of no less than 180 days, or revocation of license;
3. Third violation within 36 months of a second violation, or a fourth or any subsequent violation without regard to the time past since the third violation	$1,000 to $5,000 fine and suspension of license of no less than one year, or revocation of license.
(c) Class III impermissible substances:	
1. First violation	$300 to $500 fine;
2. Second violation within 12 months of a previous violation	$500 to $750 fine and suspension of license up to 30 days, or revocation of license;
3. Third violation within 24 months of a second violation, or a fourth or any subsequent violation without regard to the time past since the third violation	$750 to $1,000 fine and suspension of license up to 180 days, or revocation of license.
(d) Class IV or V impermissible substances:	
1. First violation	$100 to $250 fine;
2. Second violation in a 12-month period	$250 to $500 fine and suspension of license up to 10 days;
3. Third or subsequent violation in a 12-month period	$500 to $1,000 fine and suspension of license up to 60 days.

WHEREFORE, Petitioner respectfully requests the Division enter an Order imposing one or more of the following penalties against the Respondent as specified in Section 550.2415(3)(a), Florida Statutes and Rule 61D-6.011(2), Florida Administrative Code, including revoke or suspend the license or permit of the violator or deny a license or permit of the violator; impose a fine against the violator for each count in an amount not exceeding $5,000; require the full or partial return of the purse, sweepstakes, and trophy of each race at issue; or impose against the violator any combination of such penalties.

<signature page to follow>

Signed this 16 day of March, 2015.

KEN LAWSON, Secretary
Department of Business and
Professional Regulation

By: _____

Richard McNelis
Assistant General Counsel
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ZiadieK
Admin Complaint
Ziadie II

NOTICE OF RIGHTS

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

Please be advised that Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Any request for an administrative proceeding to challenge or contest the charges contained in the Administrative Complaint must conform to Rule 28-106.2015, Florida Administrative Code. Rule 28-106.111, Florida Administrative Code, provides in part that if Respondent fails to request a hearing within 21 days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.