



**TEXAS RACING COMMISSION**  
**P. O. Box 12080**  
**Austin, TX 78711-2080**  
**(512) 833-6699**  
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Texas Racing Commission  
Thursday, February 7, 2008  
10:30 a.m.  
JH Reagan Building, Room 120  
105 W. 15<sup>th</sup> Street  
Austin TX 78701

## **AGENDA**

- I. CALL TO ORDER**  
Roll Call
- II. PUBLIC COMMENT**
- III. GENERAL BUSINESS**  
Discussion, consideration and possible action on the following matters:
  - A. Budget and Finance Update Tab 1
  - B. Report on Racetrack Inspections Tab 2
  - C. Report and Update by the Executive Director and Staff  
Regarding Administrative Matters
- IV. PROCEEDINGS ON OCCUPATIONAL LICENSEES**  
Discussion, consideration and possible action on the following matters:
  - A. The Proposal for Decision in SOAH No. 476-07-3913; Tab 3  
*In Re: The Appeal by Milissa Quirk from Stewards' Ruling  
Sam Houston Race Park 3872*
  - B. The Proposal for Decision in SOAH No. 476-07-3912; Tab 4  
*In Re: The Appeal by Jacky Martin from Stewards' Ruling  
Sam Houston Race Park 3871*

- C. TxRC No. 2001-02-14, *In Re: The Appeal by James Donnan from Steward's Rulings Sam Houston Race Park 2667, 2754, and 2756*, on remand from the 126<sup>th</sup> Judicial District Court of Travis County

**V. PROCEEDINGS ON RACETRACKS**

Discussion, consideration and possible action on the following matters:

- A. Request by Valley Race Park to designate an additional Charity Race Day Tab 5
- B. Request by Sam Houston Race Park to Amend its 2008 Live Racing Schedule Tab 6
- C. Request By Retama Park to Amend its 2008 Live Racing Schedule Tab 7
- D. Request by Manor Downs for approval of merger and reorganization of Manor Downs, Inc., and Manor Downs Partners, L.P. Tab 8

**VI. PROCEEDINGS ON RULEMAKING**

Discussion, consideration and possible action on the following rules:

Rule Adoptions

- A. Amendments, New Section, and Repeal Proposed in Conjunction with Rule Review of Chapter 311 Tab 9
  - (i) Amendment to § 311.1, Occupational Licenses
  - (ii) Amendment to § 311.52, Spouse's License
  - (iii) Amendment to § 311.101, Horse Owners
  - (iv) Amendment to § 311.102, Greyhound Owners
  - (v) Amendment to § 311.104, Trainers
  - (vi) Amendment to § 311.105, Jockeys
  - (vii) Amendment to § 311.108, Authorized Agent
  - (viii) Proposed New § 311.111, Jockey Agent
  - (ix) Amendment to § 311.212, Duty to Wear Badge
  - (x) Amendment to § 311.214, Financial Responsibility
  - (xi) Amendment to § 311.216, Conduct in Stable Area
  - (xii) Amendment to § 311.301, Use and Possession Prohibited
  - (xiii) Repeal of § 313.408, Jockey Agent

- B. Amendment to § 313.111, Age Restrictions Tab 10
- C. Amendment to § 319.363, Testing for Total Carbon Dioxide Tab 11
- D. Amendment to § 321.407, Approval of Wagering on Simulcast Import Races Tab 12

**VII. EXECUTIVE SESSION**

The following items may be discussed and considered in executive session or open meeting and have action taken in the open meeting:

- A. Under Government Code Sec. 551.071, the Commission may open an executive session to confer with its attorney regarding pending or contemplated litigation on any matter listed in this agenda.
- B. Under Government Code Sec. 551.071(2), the Commission may open an executive session to discuss all matters identified in this agenda where the commission seeks the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedures Act.
- C. Under Government Code Sec. 551.071, the Commission may open an executive session to confer with its attorney regarding litigation by Trinity Meadows Raceway, Inc., against the Commission in Bankruptcy Case No. 97-41302, Adversary No. 06-04165.

**VIII. OLD/NEW BUSINESS**

Schedule next Commission Meeting

**IX. ADJOURN**

# Texas Racing Commission

LBB-4

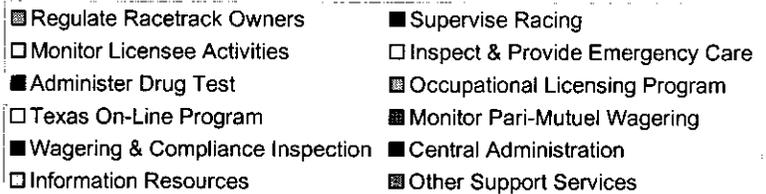
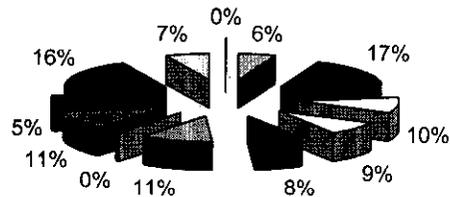
FYE 08/31/2008  
 Cumulative Operating Budget Status  
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 12/31/2007	FY 2008 Unexpended Bal 12/31/2007	With 33.33% of Year Lapsed % of Budget Expended
\$ 0	FTE's = 76.60 Sum Of All Strategies other than A.2.1				
	1001 Salaries and Wages	3,793,297	1,131,835	2,661,462	29.84%
	1002 Other Personnel Cost	142,540	48,239	94,301	33.84%
	2001 Prof Fees and Services	186,242	6,760	179,482	3.63%
	2003 Consumables	27,750	5,306	22,444	19.12%
	2004 Utilities	22,500	5,991	16,509	26.63%
	2005 Travel	228,878	34,089	194,789	14.89%
	2006 Rent Building	105,314	43,484	61,830	41.29%
	2007 Rent Machine	13,500	5,826	7,674	43.16%
	2009 Other Operating Cost	301,128	69,553	231,575	23.10%
	CB Computer Equipment	35,340	7,666	27,674	21.69%
\$ 4,856,488	Total Operating Budget	4,856,488	1,358,747	3,497,741	27.98%
\$ 5,389,159	Strategy A.2.1. TX Bred Incentive	5,389,159	1,468,811	3,920,348	27.25%
\$ 10,245,647	Total All Strategies	10,245,647	2,827,559	7,418,089	27.60%

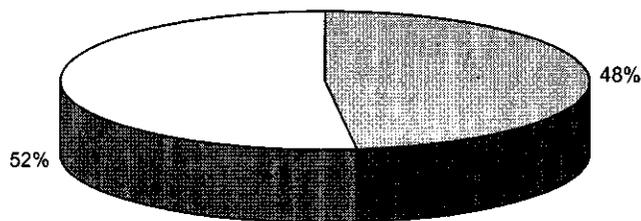
### Expended Operational Budget By Strategy

Regulate Racetrack Owners	\$	80,960
Supervise Racing	\$	220,010
Monitor Licensee Activities	\$	138,020
Inspect & Provide Emergency Care	\$	120,436
Administer Drug Test	\$	105,247
Occupational Licensing Program	\$	155,964
Texas On-Line Program	\$	4,986
Monitor Pari-Mutuel Wagering	\$	151,193
Wagering & Compliance Inspection	\$	64,723
Central Administration	\$	223,626
Information Resources	\$	93,582
Other Support Services	\$	-

### Expended Operational Budget



### Expended Appropriations



Operational Budget ATB Budget

### Expended Appropriations

Operational Budget	\$	1,358,747
ATB Budget	\$	1,468,811

# Texas Racing Commission

LBB-1

FYE 08/31/2008

Cumulative Operating Budget Status  
by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 12/31/2007	FY 2008 Unexpended Bal 12/31/2007	With 33.33% of Year Lapsed % of Budget Expended
	FTE's = 4.00				
A.1.1.	<u>Regulate Racetrack Owners</u>				
	1001 Salaries and Wages	234,022	78,007	156,015	33.33%
	1002 Other Personnel Cost	5,140	1,680	3,460	32.68%
	2001 Prof Fees and Services	5,000	616	4,384	12.31%
	2003 Consumables	250	-	250	0.00%
	2004 Utilities	-	-	-	
	2005 Travel	8,100	411	7,689	5.07%
3.33%	2006 Rent Building	-	-	-	
\$ 4,589	2007 Rent Machine	-	-	-	
\$ 251,055	2009 Other Operating Cost	16,075	246	15,829	1.53%
\$ 12,943	CB Computer Equipment	-	-	-	
\$ 268,587	Total Strategy A.1.1.	268,587	80,960	187,627	30.14%
	FTE's = 0				
A.2.1.	<u>Texas Bred Incentive</u>				
	ATB Money Expended	5,389,159	1,468,811	3,920,348	27.25%
\$ 5,389,159	Total Strategy A.2.1.	5,389,159	1,468,811	3,920,348	27.25%
	FTE's = 12.00				
A.3.1.	<u>Supervise Racing and Licensees</u>				
	1001 Salaries and Wages	706,650	195,715	510,935	27.70%
	1002 Other Personnel Cost	20,800	3,020	17,780	14.52%
	2001 Prof Fees and Services	12,742	2,860	9,882	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	40,817	8,030	32,787	19.67%
-6.56%	2006 Rent Building	-	-	-	
\$ 13,855	2007 Rent Machine	-	-	-	
\$ 849,215	2009 Other Operating Cost	4,875	2,720	2,155	55.80%
\$ (41,847)	CB Computer Equipment	35,340	7,666	27,674	21.69%
\$ 821,224	Total Strategy A.3.1.	821,224	220,010	601,214	26.79%
	FTE's = 7.00				
A.3.2.	<u>Monitor Occupational Licensee Act.</u>				
	1001 Salaries and Wages	389,723	128,671	261,052	33.02%
	1002 Other Personnel Cost	24,300	2,620	21,680	10.78%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	28,719	3,970	24,749	13.82%
-0.77%	2006 Rent Building	-	-	-	
\$ 7,641	2007 Rent Machine	-	-	-	
\$ 434,687	2009 Other Operating Cost	3,875	2,758	1,117	71.19%
\$ 4,289	CB Computer Equipment	-	-	-	
\$ 446,617	Total Strategy A.3.2.	446,617	138,020	308,597	30.90%
	FTE's = 6.80				
A.4.1.	<u>Inspect and Provide Emerg. Care</u>				
	1001 Salaries and Wages	379,651	101,074	278,577	26.62%
	1002 Other Personnel Cost	10,260	8,850	1,410	86.26%
	2001 Prof Fees and Services	23,000	2,471	20,529	10.75%
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	13,500	4,572	8,928	33.86%
-3.82%	2006 Rent Building	-	-	-	
\$ 6,730	2007 Rent Machine	-	-	-	
\$ 436,742	2009 Other Operating Cost	7,125	3,468	3,657	48.68%
\$ (9,937)	CB Computer Equipment	-	-	-	
\$ 433,536	Total Strategy A.4.1.	433,536	120,436	313,100	27.78%

# Texas Racing Commission

LBB-2

FYE 08/31/2008  
 Cumulative Operating Budget Status  
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 12/31/2007	FY 2008 Unexpended Bal 12/31/2007	With 33.33% of Year Lapsed % of Budget Expended
A.4.2.	FTE's = 6.50 <u>Administer Drug Testing</u>				
	1001 Salaries and Wages	289,340	96,409	192,931	33.32%
	1002 Other Personnel Cost	12,280	1,860	10,420	15.15%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	32,140	3,493	28,647	10.87%
1.08%	2006 Rent Building	-	-	-	
\$ 5,449	2007 Rent Machine	-	-	-	
\$ 325,703	2009 Other Operating Cost	6,375	3,484	2,891	54.66%
\$ 8,983	CB Computer Equipment	-	-	-	
\$ 340,135	Total Strategy A.4.2.	340,135	105,247	234,888	30.94%
B.1.1.	FTE's = 13.30 <u>Occupational Licensing</u>				
	1001 Salaries and Wages	428,147	139,866	288,281	32.67%
	1002 Other Personnel Cost	29,540	5,450	24,090	18.45%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	2,500	-	2,500	0.00%
	2004 Utilities	-	-	-	
	2005 Travel	33,250	1,586	31,664	4.77%
-4.18%	2006 Rent Building	-	-	-	
\$ 8,127	2007 Rent Machine	11,000	2,587	8,413	23.52%
\$ 547,692	2009 Other Operating Cost	36,625	6,475	30,150	17.68%
\$ (14,757)	CB Computer Equipment	-	-	-	
\$ 541,062	Total Strategy B.1.1.	541,062	155,964	385,098	28.83%
B.1.2.	FTE's = 0 <u>Texas OnLine</u>				
	1001 Salaries and Wages	-	-	-	
	1002 Other Personnel Cost	-	-	-	
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
0.00%	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
\$ 23,250	2009 Other Operating Cost	23,250	4,986	18,264	21.45%
\$ -	CB Computer Equipment	-	-	-	
\$ 23,250	Total Strategy B.1.2.	23,250	4,986	18,264	21.45%
C.1.1.	FTE's = 9.00 <u>Monitor Wagering and Audit</u>				
	1001 Salaries and Wages	412,344	137,448	274,896	33.33%
	1002 Other Personnel Cost	11,780	3,840	7,940	32.60%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	57	(57)	
	2004 Utilities	-	-	-	
	2005 Travel	21,800	5,746	16,054	26.36%
-1.80%	2006 Rent Building	-	-	-	
\$ 8,085	2007 Rent Machine	-	-	-	
\$ 457,218	2009 Other Operating Cost	19,235	4,103	15,132	21.33%
\$ (144)	CB Computer Equipment	-	-	-	
\$ 465,159	Total Strategy C.1.1.	465,159	151,193	313,966	32.50%
C.1.2.	FTE's = 5.00 <u>Wagering &amp; Compliance Inspections</u>				
	1001 Salaries and Wages	228,004	58,171	169,833	25.51%
	1002 Other Personnel Cost	6,060	2,000	4,060	33.00%
	2001 Prof Fees and Services	75,000	-	75,000	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	18,952	1,798	17,154	9.49%
-0.60%	2006 Rent Building	-	-	-	
\$ 3,477	2007 Rent Machine	-	-	-	
\$ 327,143	2009 Other Operating Cost	4,125	2,754	1,371	66.77%
\$ 1,521	CB Computer Equipment	-	-	-	
\$ 332,141	Total Strategy C.1.2.	332,141	64,723	267,417	19.49%

# Texas Racing Commission

LBB-3

FYE 08/31/2008  
 Cumulative Operating Budget Status  
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 12/31/2007	FY 2008 Unexpended Bal 12/31/2007	With 33.33% of Year Lapsed % of Budget Expended
D.1.1.	FTE's = 8.00 Central Administration				
	1001 Salaries and Wages	439,059	119,680	319,379	27.26%
	1002 Other Personnel Cost	16,620	17,078	(458)	102.76%
	2001 Prof Fees and Services	25,500	813	24,688	3.19%
	2003 Consumables	25,000	5,249	19,751	21.00%
	2004 Utilities	22,500	4,608	17,892	20.48%
	2005 Travel	28,500	4,483	24,017	15.73%
0.80%	2006 Rent Building	105,314	43,484	61,830	41.29%
\$ 5,924	2007 Rent Machine	2,500	3,239	(739)	129.57%
\$ 753,938	2009 Other Operating Cost	106,857	24,992	81,865	23.39%
\$ 11,987	CB Computer Equipment	-	-	-	
\$ 771,850	Total Strategy D.1.1.	771,850	223,626	548,224	28.97%
D.2.1.	FTE's = 5.00 Information Resources				
	1001 Salaries and Wages	286,357	76,792	209,565	26.82%
	1002 Other Personnel Cost	5,760	1,840	3,920	31.94%
	2001 Prof Fees and Services	45,000	-	45,000	0.00%
	2003 Consumables	-	-	-	
	2004 Utilities	-	1,383	(1,383)	
	2005 Travel	3,100	-	3,100	0.00%
5.64%	2006 Rent Building	-	-	-	
\$ 5,498	2007 Rent Machine	-	-	-	
\$ 380,469	2009 Other Operating Cost	72,711	13,566	59,145	18.66%
\$ 26,961	CB Computer Equipment	-	-	-	
\$ 412,928	Total Strategy D.1.2.	412,928	93,582	319,347	22.66%
D.1.3.	FTE's = - Other Support Services				
	1001 Salaries and Wages	-	-	-	
	1002 Other Personnel Cost	-	-	-	
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
	2006 Rent Building	-	-	-	
\$ -	2007 Rent Machine	-	-	-	
\$ -	2009 Other Operating Cost	-	-	-	
\$ -	CB Computer Equipment	-	-	-	
\$ -	Total Strategy D.1.3.	-	-	-	
\$ 69,376	Estimated 2% appropriation rider FY-08				
\$ 4,787,112	Operating Budget regular appropriations	4,856,488	1,358,747	2,668,575	27.98%
\$ 5,389,159	Strategy A.2.1. TX Bred Incentive	5,389,159	1,468,811	3,920,348	27.25%
\$ 10,245,647	Total M.O.F.				
\$ 10,245,647	Total All Strategies	10,245,647	2,827,559	6,588,922	27.60%

**Texas Racing Commission**  
**Report on Racetrack Inspection Activities**  
 January 7, 2008

Date of Inspection	Track	Type of Inspection	Number of Unsatisfactory Items	Track Remediation Complete	Inspection resolved
4/12/07	Manor	Administrative	4	Pending	
6/29/07	Corpus Christi	Veterinary	4	2 resolved 11/10/07 2 resolved 11/24/07	11/24/07
7/3/07	Corpus Christi	Administrative	5	3 resolved 7/24/07 1 resolved 9/10/07 1 remains	
11/9/07	Valley	Racing-Judges	3	3 resolved 11/23/07	11/23/07
11/9/07	Valley	Veterinary	2	2 resolved 11/29/07	11/29/07
11/10/07	Sam Houston	Pari-mutuel	2	1 resolved 11/30/07 1 remains	
11/14/07	Sam Houston	Enforcement	0		
11/16/07	Valley	Enforcement	1	1 resolved 12/7/07	12/7/07
11/19/07	Valley	Administrative	0		
11/19/07	Valley	Pari-mutuel	2	1 resolved 11/28/07 1 remains	
11/20/07	Sam Houston	Racing-Stewards	5	5 resolved 11/23/07	11/23/07
11/20/07	Sam Houston	Veterinary	0		
11/26/07	Gulf	Administrative	0		
12/13/07	Gulf	Enforcement	0		
1/4/08	Manor	Pari-mutuel	1		
1/11/08	Gillespie-Barn	Pari-mutuel	1		
1/15/08	Gulf	Pari-mutuel	1		
1/25/08	Retama	Pari-mutuel	0		
1/30/08	Manor	Administrative	1		

**SOAH DOCKET NO. 476-07-3913**

<b>TEXAS STATE RACING COMMISSION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>IN RE: THE APPEAL OF</b>	<b>§</b>	
	<b>§</b>	
<b>MILISSA QUIRK FROM STEWARDS'</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>RULING SAM HOUSTON</b>	<b>§</b>	
	<b>§</b>	
<b>RACE PARK 3872</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Milissa Quirk (Petitioner) appealed Sam Houston Race Park Stewards' Ruling 3872 (Stewards' ruling) to the Texas Racing Commission (Commission). The Stewards' ruling had determined that Petitioner, who holds a license to practice veterinary medicine at race tracks issued by the Commission, should have her license suspended for thirty days because she refused to submit a urine specimen when requested. Petitioner denied that the Commission Staff (Staff) had any basis to request a urine specimen and asserted she had been denied her due process right to confrontation of witnesses at the Steward's hearing. This proposal for decision finds that, despite some procedural irregularities, Petitioner failed to prove the Stewards' decision was clearly erroneous.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On February 9, 2007, the Board of Stewards at the Sam Houston Race Park conducted a hearing to determine if grounds existed to suspend Petitioner's Commission-issued occupational license. Petitioner appeared at the hearing with her attorney. After taking evidence, the Stewards issued ruling 3872, which determined Petitioner's license should be suspended because she had refused to submit a urine sample upon proper request. On February 15, 2007, Petitioner filed her appeal of the Stewards' ruling.

On September 12, 2007, Staff served its notice of hearing on Petitioner for her contested case hearing. The notice of hearing stated the date, time, and location of the hearing in this matter, cited

the applicable law, and referred to the short, plain statement of the factual allegations underlying the contested case.

The contested case hearing in this matter convened October 17, 2007, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros at the SOAH Hearings Facility, 300 W. 15<sup>th</sup> Street, 4<sup>th</sup> Floor, Austin, Texas. Staff was represented by attorney Rhonda Fritsche. Petitioner appeared with her attorney Kevin Bell. The record was left open for submission of additional briefing, which occurred on October 31, 2007, at which time the record closed.

## II. DISCUSSION

### A. Legal Standards

The Commission has authority to discipline its licensees for violations of the Texas Racing Act (Act) or its rules, including for use of a controlled substance or a dangerous drug.<sup>1</sup> The Commission may exclude a person from a race track for violations of the law or its rules.<sup>2</sup> The Commission's Stewards have authority to conduct hearings and impose penalties.<sup>3</sup> The Stewards' rulings are by majority vote and appealable to SOAH for a contested case hearing.<sup>4</sup> In the contested case proceeding, the appellant has the burden of proving that the Stewards' decision was clearly in error.<sup>5</sup> The Commission may reverse, modify, or rescind a penalty imposed by a Stewards' decision.<sup>6</sup>

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<sup>1</sup> TEX. REV. CIV. STAT. ANN. art. 179e §§ 3.14 and 7.04; 16 TEX. ADMIN. CODE (TAC) § 323.1.

<sup>2</sup> Act § 13.01.

<sup>3</sup> Act § 3.07(b); 16 TAC § 307.61.

<sup>4</sup> Act § 3.08; 16 TAC § 307.63.

<sup>5</sup> 16 TAC § 307.67(c).

<sup>6</sup> 16 TAC § 307.69.

Acceptance of a Commission license or entry onto a racetrack facility under the authority of a Commission license constitutes a consent to be searched for prohibited substances or devices or contraband.<sup>7</sup> While performing the duties of the licensee, a licensee may not possess or have in his or her system a controlled substance or dangerous drug.<sup>8</sup> A licensee is subject to testing for drugs at any time while on licensed premises and failure to submit a specimen on request subjects the licensee to a thirty-day license suspension.<sup>9</sup> A licensee may be selected at random for drug testing, based on an established method of selection, or may be selected “on the basis of reasonable belief.”<sup>10</sup> A “reasonable belief” is one that would be held by an ordinary and prudent person in the same circumstances as the actor.<sup>11</sup>

#### **B. Evidence at the Stewards’ Hearing**

The transcription of the Stewards’ hearing was admitted into evidence. The Stewards’ hearing was held February 9, 2007, at the Sam Houston Race Park before David Rollinson, who presided, Stephen O’Malley and Jerry Burgess.

During that hearing, Staff investigator Melvin Bell testified that on January 24, 2007, he had reasonable belief to request Petitioner to provide a urine sample, because two days before a confidential informant (CI) had told him that Petitioner was using illegal drugs. He shared this information with Steward Rollinson, who instructed Mr. Bell to get a urine sample from Petitioner.

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<sup>7</sup> Act § 14.18.

<sup>8</sup> 16 TAC § 311.301. The rule adopts the definition of dangerous drug in the Health and Safety Code, Chapter 483, and the definition of controlled substance in the Texas Controlled Substances Act, Health and Safety Code, Chapter 481.

<sup>9</sup> 16 TAC § 311.302.

<sup>10</sup> 16 TAC § 311.303.

<sup>11</sup> 16 TAC § 301.1(b)(63).

Under cross-examination, Mr. Bell refused to disclose any information about the CI. Mr. Bell stated that at the time of the request, Petitioner was agitated and had open sores on her person, which he believed was consistent with methamphetamine use. He did admit that, prior to January 24, 2007, Petitioner had informed him that she was suffering from a staph infection. On that date, Petitioner informed him that on advice of counsel she would not submit a urine specimen. In addition to Mr. Bell, Sergeant Corey Watts also testified that he was present when Petitioner declined to provide the urine specimen.

**C. Evidence at the SOAH Hearing**

At the contested case hearing, Mr. Bell again refused to disclose the CI's identity. He testified that he had relied on information from the CI in past instances and that information had been 98% reliable. In addition to information provided by the CI, he had information from two other persons confirming the CI's report. Mr. Bell had observed that Petitioner's appearance had changed from neat to disheveled and she had open sores on her person. His informants had told him that Petitioner's job performance had become erratic in that she had missed appointments at the track.

Mr. Bell also stated that he is a licensed law enforcement officer and was investigating a possible violation of the law when he used the CI's information to form a reasonable belief that Petitioner had violated the law and should be asked to submit a urine specimen.

Petitioner testified that in January 2007, she was suffering from a staph infection that had been mis-diagnosed and mistreated. She admitted that she did not feel or look well at that time and had open sores on her person, but she denied that it was reasonable to attribute her condition to drug usage.

## D. Due Process

The Stewards' hearing is required to be conducted in such a way as to provide constitutional due process.<sup>12</sup> Petitioner asserted that she was denied her right to due process in that she was not allowed to examine the CI as a witness.

### 1. Due Process and Informant's Privilege

Under TEX. R. EVID. 508, the identity of an informant who provides information about a violation of the law to law enforcement or an agency charged with enforcement of the law is privileged information. The Commission is authorized to investigate and take action based on anonymous complaints.<sup>13</sup>

In this case, Mr. Bell's testimony established that the CI had provided him with information that Petitioner was violating the Act and the Commission's rules against use of controlled substances or dangerous drugs on a racing park grounds. Thus, Staff established that the CI provided information relating to a possible violation of the law and his or her identity was privileged under Rule 508.

Petitioner asserts that Staff's refusal to disclose the CI's identity denied her due process right to cross-examination or confrontation of a witness against her. In both civil and criminal contexts, the identity of confidential informants do not have to be revealed unless the informant (1) participated in the offense, (2) was present at the time of offense or arrest, and (3) was otherwise

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<sup>12</sup>

Act § 3.07 (b). The commission shall make rules specifying the authority and the duties of each official, including the power of stewards or judges to impose penalties for unethical practices or violations of racing rules. A penalty imposed by the stewards or judges may include a fine of not more than \$5,000, a suspension for not more than one year, or both a fine and suspension. **Before imposing a penalty under this subsection, the stewards and judges shall conduct a hearing that is consistent with constitutional due process.** A hearing conducted by a steward or judge under this subsection is not subject to Chapter 2001, Government Code. . . [Emphasis added.]

<sup>13</sup> Act § 3.12; 16 TAC § 323.2(b).

shown to be a material witness to either the transaction or the defendant's knowing commission of the act charged.<sup>14</sup>

Petitioner failed to show that she was entitled to inquire into the identity of the informant as there was no evidence that the informant had participated in or witnessed the alleged use of drugs or was otherwise a material witness. Without such a showing, Petitioner did not have a right to examine Mr. Bell's CI under oath.<sup>15</sup> Petitioner failed to show that her due process rights were violated because she did not have the opportunity to call or examine the CI as a hearing witness.

## 2. Due Process at Stewards' Hearing

The Stewards' hearing was required to be conducted consistent with constitutional due process.<sup>16</sup> The basic elements of due process at the agency level are notice, hearing, and an impartial trier of facts.<sup>17</sup>

In this case, Steward Rollinson could not be considered an impartial trier of fact because he participated in the investigation of Petitioner and actually gave the directive to request her urine sample.

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<sup>14</sup> *Warford v. Childers*, 642 S.W.2d 63, 66-67 (Tex. App.—Amarillo 1983, no writ.).

<sup>15</sup> See *Campbell v. State*, 492 S.W.2d 956, 958 (Tex. Crim. App. 1973). This case did not involve a discovery dispute or an evidentiary objection such as is discussed in the case of *State v. Lowry*, 802 S.W.2d 669, 673 ((Tex. 1991). In *Lowry*, the Texas Supreme Court ruled that in the face of a request for discovery, the State had the burden to show that the informant's privilege barred discovery.

<sup>16</sup> Act § 3.07(b).

<sup>17</sup> *Texas State Board of Dental Examiners v. Silagi*, 766 S.W.2d 280, 284 (Tex. App.—El Paso 1989, writ den.).

The Act requires that a horse racing track have three stewards for each race.<sup>18</sup> The Act and the Commission's rules speak in terms of decisions by *stewards*<sup>19</sup> so it is apparently typical for more than one steward to participate in a stewards' hearing. Thus, the Act's regulatory scheme sets up a system in which a horse race track steward can be involved in both investigating and adjudicating a case

In conformance with the regulatory scheme that imposes both investigatory and adjudicative duties on track stewards, Mr. Rollinson participated in both the investigation of Petitioner and the stewards's hearing that arose out of that investigation.<sup>20</sup> This dual role made it impossible for him to be viewed as an impartial trier of fact at the Stewards' hearing.

To overcome the presumption that the adjudicator is capable of judging a particular controversy fairly based on its own circumstances, there must be a demonstration that the decision-maker's mind is irrevocably closed on the matter at issue.<sup>21</sup> The issue at both the Stewards' and contested case hearings was whether there was a reasonable belief to request that Petitioner give a urine sample. It was Mr. Rollinson's determination that reasonable belief existed to request Petitioner's urine specimen that set this case in motion. In effect, the contested issued at the hearing required Mr. Rollinson to decide whether he had acted correctly in ordering

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<sup>18</sup> Act § 3.07(a).

<sup>19</sup> Act § 308; 16 TAC § 307.63(a).

<sup>20</sup> Had Mr. Rollinson been an attorney-judge or an administrative law judge, it is clear that he would have been disqualified because he had personal knowledge of disputed evidentiary facts. *Gamez v. State*, 644 S.W.2d 879 (Tex. App.-San Antonio 1982), *affirmed*, 737 S.W.2d 315 (Tex. Crim. App. 1987); TEX. R. CIV. PROC. 18b; TEX. GOV'T CODE ANN. § 2001.061. His decision would also have been considered null and void. *McKenna v. State*, 209 S.W.3d 233 (Tex. App.-Waco 2006, pet. granted). The disqualification of a judge cannot be waived and may be raised at any time; the right to recuse a judge can be waived but not until after the grounds for the recusal become known. See *McKenna; Meredino v. Burrell*, 923 S.W.2d 258 (Tex. App.-Beaumont 1996, no pet.).

It appears that Petitioner had no way of determining that Mr. Rollinson had ordered the urine sample be requested until after Mr. Bell testified at the stewards' hearing. Therefore, even if this were a matter of recusal, not disqualification, her motion to recuse was not due until after she learned of Mr. Rollinson's dual role.

<sup>21</sup> *Texas Utility Electric Company v. Public Utility Commission*, 881 S.W.2d 387, 391 (Tex. App.-Austin 1994), *affirmed in part and reversed in part*, 935 S.W.2d 11 (Tex. 1997).

the sample be requested. The fact that he was involved in the decision that was challenged at the hearings sufficiently demonstrated that his mind was irrevocably closed on the contested issue in this case.

The ultimate test of due process of law in administrative hearings is the presence or absence of the rudiments of fair play long known to our law.<sup>22</sup> Allowing a person who participates in an investigation to adjudicate the resulting charge violates the commonly understood rudiments of fair play in the regulatory system.

To cure the violation of Petitioner's constitutional due process right to a hearing before impartial fact-finders, Mr. Rollinson's part in the stewards' hearing must be discounted. Neither the Act nor the Commission's rules specifies that the stewards' decision be made by a three-member panel so the decision of two-member panel may suffice.

The impartiality of Mr. Burgess and Mr. O'Malley was not called into question by the record. Therefore, it is possible to consider only the Burgess-O'Malley votes to review whether the stewards' decision was clearly erroneous. Based on the votes of Mr. Burgess and Mr. O'Malley, the decision to be reviewed is an unanimous finding that there was a reasonable basis for requesting Petitioner's urine sample on January 24, 2007, and that the appropriate penalty for her refusal is a thirty-day license suspension.

#### **E. Analysis**

To prevail, Petitioner must show that the stewards' decision (in this case the decision of Stewards O'Malley and Burgess only) was clearly erroneous. The issue in this case is whether Mr. Bell had a reasonable belief upon which to base his request for Petitioner's urine sample.<sup>23</sup>

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<sup>22</sup> *Guerrero-Ramirez v. Board of Medical Examiners*, 867 S.W.2d 911, 916 (Tex. App.—Austin 1993, no writ).

<sup>23</sup> As noted above, a "reasonable belief" is one that would be held by an ordinary and prudent person in the same circumstances as the actor. 16 TAC § 301.1(b)(63)

Petitioner failed to meet her burden of proof. Mr. Bell articulated the specific facts which caused him to believe Petitioner had drugs in her system while at the race park. He had been told by the CI that Petitioner was using illicit drugs. The CI was a person from whom Mr. Bell had received information on several occasions and whose information had been 98% reliable in the past. Mr. Bell observed that Petitioner's appearance had changed from neat to disheveled and that she had overt signs of illness consistent with use of certain dangerous drugs or controlled substances. Petitioner told him that she had an illness, a staph infection, that typically would require drug treatment.

In addition, Mr. Bell also had information from two other anonymous sources that corroborated his own observations and the CI's information. The information led Mr. Bell to believe that Petitioner had become unreliable in performing her duties as a licensee, which was another change in her demeanor.

The Commission's rule has a zero-tolerance policy towards drug use by licensees, even when that usage is for legitimate medical purposes. The rule prohibits a licensee from having a controlled substance or dangerous drug in the licensee's body while performing the duties of the license. Therefore, while at the race park, Petitioner was subject to testing for suspected use of any dangerous drug or controlled substance, even if that substance was a legitimately prescribed and medically necessary drug. If the licensee had a legitimate prescription for the drug and it is determined that the drug will not impair the performance of the licensee's duties, then the stewards have the discretion not to take disciplinary action for a violation.<sup>24</sup>

On the date she was asked to submit a urine specimen, Petitioner looked ill and admitted she was ill. A reasonable person could conclude that a person with an admitted staph infection would be taking a controlled substance for that infection. Additionally, Mr. Bell had information from a reliable CI that Petitioner was taking illicit drugs. Although not an overwhelming amount,

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<sup>24</sup> 16 TAC § 311.301.

the information Mr. Bell had at the time the request for the sample was made was sufficient to meet the “reasonable belief” standard in the Commission’s rule.

A decision is clearly erroneous if a review of the record leaves a definite and firm conviction that a mistake has been committed.<sup>25</sup> Because Mr. Bell had sufficient information to reasonably believe that Petitioner had drugs in her system when he requested the urine sample, the Sam Houston Race Park Stewards’ Ruling 3872 was not shown to be clearly erroneous.

### III. FINDINGS OF FACT

1. Milissa Quirk (Petitioner) holds an occupational license issued by the Texas Racing Commission (Commission) to work at as a veterinarian at race tracks.
2. On January 22, 2007, Commission investigator Melvin Bell, who works at the Sam Houston Race Park, received information from a confidential informant (CI) that Petitioner was using illicit drugs.
3. Prior to January 22, 2007, Mr. Bell had received information from the same CI and had found that information reliable 98% of the time.
4. Mr. Bell’s investigation of Petitioner after January 22, 2007, revealed that she had open sores on her body, that she claimed to be suffering from a staph infection, and that her appearance had gone from neat to disheveled.
5. In the course of his investigation, Mr. Bell received information from two additional informants who confirmed his observations and the information from the original CI. The information led Mr. Bell to believe that Petitioner had missed appointments and otherwise been unreliable on occasion in performing her duties as a licensee.
6. On January 24, 2007, Mr. Bell shared his information about Petitioner with Sam Houston Race Park Steward David Rollinson, who told Mr. Bell to request Petitioner submit a urine sample.
7. On January 24, 2007, Mr. Bell requested Petitioner submit a urine sample, which she refused to do.

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<sup>25</sup> *Hunter Indus. Facilities Inc. V. TNRCC*, 910 S.W.2d 96 (Tex. App.–Austin 1995, writ den.).

8. On February 9, 2007, the Sam Houston Race Park Stewards held a hearing to determine whether grounds existed to suspend Petitioner's occupational veterinarian's license.
9. All parties appeared and were represented at the Stewards' hearing.
10. The adjudicators at the Stewards' hearing were David Rollinson, Jerry Burgess, and Stephen O'Malley
11. At the Stewards' hearing, Mr. Bell refused to identify the CI.
12. After an unanimous vote, the three Stewards' issued ruling 3872, which found Petitioner had refused to provide a urine specimen upon request when there was a reasonable belief to ask her to do so.
13. Mr. Rollinson was involved in the investigation of Petitioner's conduct that led to this disciplinary process and served as an adjudicator at the Stewards' hearing on this matter.
14. By virtue of having participated in the investigation of Petitioner's conduct and having served as an adjudicator over Petitioner's case, Mr. Rollinson can not be considered an impartial fact-finder.
15. The impartiality of Stewards Burgess and O'Malley was not called into question by the record.
16. Stewards O'Malley and Burgess both decided that Petitioner violated the Act and the Commission's rules by refusing to submit a urine specimen upon request based on a reasonable belief.
17. Petitioner appealed the Stewards' ruling 3872.
18. On August 26, 2007, Petitioner's counsel of record received Staff's notice of hearing on Petitioner's appeal.
19. Staff's notice of hearing stated the date, time, and location of the hearing in this matter, cited the applicable law, and referred to the short, plain statement of the factual allegations underlying the contested case.
20. All parties appeared and were represented at the contested case hearing held in this matter on October 17, 2007.
21. At the contested case hearing, Staff introduced the record from the Steward's hearing.
22. At the contested case hearing, Mr. Bell refused to identify the CI.

23. Prior to asking for the urine sample, Mr. Bell:
- a). saw that Petitioner looked ill, with open sores on her body;
  - b) saw that Petitioner's appearance had changed from neat to disheveled;
  - c) was told by Petitioner that she was suffering from a staph infection;
  - d) was told by two individuals that Petitioner had missed appointments and become unreliable in her work at the race park;
  - e) was told by the CI that Petitioner was taking illegal drugs.
24. Based on the information Mr. Bell had on January 24, 2007, a reasonable person could conclude that Petitioner might have drugs in her system.

#### IV. CONCLUSIONS OF LAW

1. The Texas Racing Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act), TEX. REV. CIV. STAT. ANN. art. 179e §§ 7.04 and 13.01.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and Act § 13.02.
3. Under TEX. R. EVID. 508, the identity of an informant who provides information about a violation of the law to law enforcement or an agency charged with enforcement of the law is privileged information with certain exceptions.
4. The Commission is authorized to investigate and take action based on anonymous complaints. Act § 3.12; 16 TEX. ADMIN. CODE (TAC) § 323.2(b).
5. In both civil and criminal contexts, the identity of confidential informants do not have to be revealed unless the informant (1) participated in the offense, (2) was present at the time of offense or arrest, and (3) was otherwise shown to be a material witness to either the transaction or the defendant's knowing commission of the act charged. *Warford v. Childers*, 642 S.W.2d 63, 66-67 (Tex. App.—Amarillo 1983, no writ.).
6. Because there was no evidence that the confidential informant had participated in or witnessed Petitioner's alleged misconduct or was otherwise a material witness, Petitioner did not have a right to examine Mr. Bell's confidential informant. See *Campbell v. State*, 492 S.W.2d 956, 958 (Tex. Crim. App. 1973).

7. By virtue of her occupational license issued by the Commission, Petitioner was required to comply with the Act and the Commission's rules and to be subject to testing for alcohol, dangerous drugs, and controlled substances. 16 TAC § 311.1(c).
8. By virtue of holding an occupational license issued by the Commission, Petitioner consented to submit a urine sample when at a racing facility and requested by the stewards or racing judges. 16 TAC § 311.302.
9. Petitioner was subject to being selected for a urine test by random selection or based on reasonable belief, which is a belief that would be held by an ordinary and prudent person in the same circumstances as the actor. 16 TAC §§ 301.1(63) and 311.303.
10. On January 24, 2007, Mr. Bell had a reasonable belief upon which to base a request for a urine sample from Petitioner.
11. The Stewards' hearing was required to be conducted consistent with constitutional due process. Act § 3.07(b).
12. The basic elements of due process at the agency level are notice, hearing, and an impartial trier of facts. *Texas State Board of Dental Examiners v. Silagi*, 766 S.W.2d 280, 284 (Tex. App.—El Paso 1989, writ den.).
13. Mr. Rollinson's dual role in the investigation and adjudication of this matter denied Petitioner her constitutional due process right to a hearing before an impartial fact-finder.
14. To provide Petitioner with due process, Mr. Rollinson's vote at the Stewards' hearing should not be considered.
15. A decision is clearly erroneous if a review of the record leaves a definite and firm conviction that a mistake has been committed. *Hunter Indus. Facilities Inc. V. TNRCC*, 910 S.W.2d 96 (Tex. App.—Austin 1995, writ den.).
16. The Sam Houston Race Park Stewards' Ruling 3872 is not clearly erroneous and should stand.

SIGNED November 1, 2007



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ANN LANDEROS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 476-07-3912

TEXAS STATE RACING COMMISSION	§	BEFORE THE STATE OFFICE
	§	
IN RE: THE APPEAL OF	§	
	§	
JACKY MARTIN FROM STEWARDS'	§	OF
	§	
RULING SAM HOUSTON	§	
	§	
RACE PARK 3871	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Jacky Martin (Petitioner) appealed Sam Houston Race Park Stewards' Ruling 3871 (Stewards' ruling) to the Texas Racing Commission (Commission). The Stewards' ruling determined that Petitioner, who holds a jockey license issued by the Commission, is disqualified from holding a Commission license because he has a felony conviction for possession of a controlled substance. Due to Petitioner's failure to appear or be represented at the hearing, Staff's allegations were deemed true. There was no evidence that the Stewards' ruling was clearly erroneous so the ruling should be upheld.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On February 3, 2007, the Board of Stewards at the Sam Houston Race Park conducted a hearing to determine if grounds existed to suspend Petitioner's jockey's license. Despite having been duly noticed of the hearing, Petitioner did not appear and was not represented. The Stewards issued ruling 3871, which determined Petitioner's license should be suspended because he had been convicted of felony possession of a controlled substance. On March 9, 2007, Petitioner filed his appeal of the Stewards' ruling.

On August 28, 2007, Staff's notice of hearing on Petitioner's appeal was delivered to Petitioner's attorney of record, Robert Ford. The notice of hearing stated the date, time, and location of the hearing in this matter, cited the applicable law, and referred to the short, plain statement of the factual allegations underlying the contested case.

The hearing in this matter convened October 10, 2007, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros at the SOAH Office, 300 W. 15<sup>th</sup> Street, 4<sup>th</sup> Floor, Austin, Texas. Staff was represented by attorney Rhonda Fritsche. After Petitioner failed to appear in person or by representative, Staff presented evidence as to notice, jurisdiction, and the appropriate sanctions, then moved for a default under 1 TEX. ADMIN. CODE (TAC) § 155.55. The record closed October 12, 2007, after Staff submitted its affidavit of costs.

## II. MOTION FOR DEFAULT AND SANCTIONS

### A. Default

Based on Staff's proof that Petitioner received proper notice of hearing in this matter and on Petitioner's failure to appear at the hearing, Staff's motion for default should be granted under 1 TAC § 155.55. All factual allegations in Staff's complaint and notice of hearing are deemed admitted and discussed only in the Findings of Fact and Conclusions of Law herein.

### B. Legal Standards

The Commission may discipline its licensee for violating the Texas Racing Act (Act), TEX. REV. CIV. STAT. ANN. art. 179e, or the Commission's rules or guidelines. It is a violation of the Act and the Commission's rules for a licensee to have a felony conviction for possession of a controlled substance.<sup>1</sup>

The Commission's Stewards have authority to conduct hearings and impose penalties.<sup>2</sup> The Stewards' rulings are by majority vote and appealable to SOAH for a contested case

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<sup>1</sup> Act at § 7.04; 16 TEX. ADMIN. CODE (TAC) § 303.202.

<sup>2</sup> Act § 3.07(b); 16 TAC § 307.61.

hearing.<sup>3</sup> In the contested case proceeding, the appellant has the burden of proving that the Stewards' decision was clearly in error.<sup>4</sup> A decision is clearly erroneous if a review of the record leaves a definite and firm conviction that a mistake has been committed.<sup>5</sup> The Commission may reverse, modify, or rescind a penalty imposed by a Stewards' decision.<sup>6</sup>

### C. Costs

Based on Staff's evidence in its affidavit of costs, Staff incurred \$100 in court reporter fees for having a court reporter at the contested case hearing. Although TEX. GOV'T CODE ANN. § 2001.059 authorizes the recovery of transcript costs, it does not mention recovery of the court reporter's fee for attending the hearing. Generally, costs are only recoverable when expressly provided for by statute, under equitable principles, or by contract.<sup>7</sup> While court reporter's fees are recoverable as court costs under the Texas Rules of Civil Procedure, those rules do not control in contested case proceedings at SOAH.<sup>8</sup> Staff failed to cite to a law authorizing its request to recover the court reporter's fee in this matter, so the request for costs should be denied.

## III. FINDINGS OF FACT

1. Jacky Martin (Petitioner) holds a jockey's license issued by the Texas Racing Commission (Commission).
2. In August 2006, Petitioner pled guilty to, and was convicted of, the felony criminal offense of possession of a controlled substance in the 415<sup>th</sup> Judicial District Court of Parker County, Texas, in cause number CR-06-0412.

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<sup>3</sup> Act § 3.08; 16 TAC § 307.63.

<sup>4</sup> 16 TAC § 307.67(c).

<sup>5</sup> *Hunter Indus. Facilities Inc. V. TNRCC*, 910 S.W.2d 96 (Tex. App.-Austin 1995, writ den.).

<sup>6</sup> 16 TAC § 307.69.

<sup>7</sup> *Shenandoah Associates v. J&K Properties, Inc.*, 741 S.W.2d 470, 486 (Tex. App.-Dallas 1987, writ den.).

<sup>8</sup> *Shenandoah* at 487; *Allen v. Crabtree*, 936 S.W.2d 6, 7-8 (Tex. App.-Texarkana 1996, no writ). 1 TEX. ADMIN. CODE ch. 155.

3. On February 3, 2007, the Sam Houston Race Park Stewards held a hearing to determine whether grounds existed to suspend Petitioner's jockey's license.
4. Despite being duly notified of the Stewards' hearing, Petitioner did not appear and was not represented at that hearing.
5. As a result of the hearing, the Stewards issued their ruling 3871, which found Petitioner had been convicted of the felony criminal offense of possession of a controlled substance and suspended his jockey's license until August 8, 2011.
6. Petitioner appealed the Stewards' ruling 3871.
7. On August 26, 2007, Petitioner's counsel of record received Staff's notice of hearing on Petitioner's appeal.
8. Staff's notice of hearing stated the date, time, and location of the hearing in this matter, cited the applicable law, and referred to the short, plain statement of the factual allegations underlying the contested case.
9. The hearing in this matter convened October 10, 2007. Staff was represented by attorney Rhonda Fritsche, but Petitioner failed to appear or be represented.
10. Based on Petitioner's failure to appear, Staff presented evidence as to notice, jurisdiction, and the appropriate sanctions, then moved for a default under 1 TEX. ADMIN. CODE § 155.55.
11. Staff's motion for default was granted.
12. Staff incurred costs of \$100 in court reporter's fees in this matter.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Racing Commission has jurisdiction over this matter pursuant to the Texas Racing Act (Act), TEX. REV. CIV. STAT. ANN. art. 179e § 3.08.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. The Commission's Stewards have authority to conduct hearings and impose penalties. Act § 3.07(b); 16 TEX. ADMIN. CODE (TAC) § 307.61.

4. The Stewards' rulings are by majority vote and appealable to SOAH for a contested case hearing. Act § 3.08; 16 TAC § 307.63.
5. In the contested case proceeding, the appellant has the burden of proving that the Stewards' decision was clearly in error. 16 TAC § 307.67(c).
6. A decision is clearly erroneous if a review of the record leaves a definite and firm conviction that a mistake has been committed. *Hunter Indus. Facilities Inc. V. TNRCC*, 910 S.W.2d 96 (Tex. App.—Austin 1995, writ den.).
7. The Commission may discipline its licensee for violating the Texas Racing Act (Act) or the Commission's rules or guidelines. It is a violation of the Act and the Commission's rules for a licensee to have a felony conviction for possession of a controlled substance. Act § 7.04; 16 TAC § 303.202.
8. Sam Houston Race Park Stewards' ruling 3871, suspending Petitioner's license until August 8, 2011, should be upheld.
9. Generally, costs are only recoverable when expressly provided for by statute, under equitable principles, or by contract. *Shenandoah Associates v. J&K Properties, Inc.*, 741 S.W.2d 470, 486 (Tex. App.—Dalla 1987, writ den.).
10. There is no express authority for awarding court reporter's fees in a contested case proceeding brought under the Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001, and the Texas Rules of Civil Procedure, which do authorize recovery of court reporter's fees as costs of court, do not apply to this contested case proceeding at SOAH. TEX. GOV'T CODE ANN. § 2001.059. *Shenandoah* at 4871; *Allen v. Crabtree*, 936 S.W.2d 6, 7-8 (Tex. App.—Texarkana 1996, no writ); 1 TEX. ADMIN. CODE ch. 155.
11. Staff's request for recovery of costs should be denied.

**SIGNED November 1, 2007**

  
\_\_\_\_\_  
**ANN LANDEROS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



January 17, 2008

Ms. Charla Ann King  
Executive Secretary  
Texas Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin TX 78754

Dear Charla Ann:

Valley Race Park, Inc. requests an amendment to our 2008 Charity dates to be placed on the February 7, 2008 Texas Racing Commission agenda. We inadvertently only scheduled four Charity dates instead of the statutorily required five. We hereby request the designation of Rio Fest as the Charity recipient on our March 13, 2008 performance.

Thank you for your cooperation in this matter.

Sincerely,

Milt Roth  
Assistant General Manager  
Valley Race Park, Inc.

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JAN 11 PM 2:35  
TM

1/8/2008

Ms. Charla Ann King  
Executive Director  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

RE: Addition to the 2008 Thoroughbred Meet

Dear Ms. King,

Sam Houston Race Park respectfully requests to add live racing for December 31, to the 2008 Thoroughbred schedule. Due to the tremendous success of our inaugural New Years Eve blowout, we feel it is a great addition to our program.

Respectfully,

Eric M. Johnston  
Vice President of Racing

Cc: Andrea Young, C.O.O. SHRP  
John Ferrara, Director of Racing  
TommyAzopardi, Executive Director T.H.P



RETAMA PARK™  
2007 NOV 27 PM 1:35

November 20, 2007

Mr. Mark Fenner  
General Counsel  
Texas Racing Commission  
P.O. Box 12080  
Austin, Tx 78711-2080

Dear Mr. Fenner:

Retama Park would like to request that the following item be added to the next Texas Racing Commission agenda:

Request by Retama Park for a change in 2008 Thoroughbred Race Dates

Specifically, Retama would like to add August 29, 30, 31 and delete November 20, 21 and 22.

Please let me know if you have any questions.

Yours truly,

Bryan P. Brown  
Chief Executive Officer

BPB/bs



P.O. Box 141309

Austin, Texas 78714

512/272-5581

January 28, 2008

Charla Ann King  
Executive Director  
Texas Racing Commission  
8505 Cross Park Dr. #110  
Austin, TX 78711

Dear Charla Ann:

Manor Downs requests that its conversion/reorganization request, originally submitted and approved at the September 2004 Texas Racing Commission meeting, be put on the agenda for the February 7, 2008, Commission meeting.

Manor Downs requests that the conversion/reorganization be amended to eliminate the two limited partners' interests held by financial institutions. These units were acquired by Frances C Tapp, principal and majority owner.

The attached charts reflect these changes.

Respectfully,

Howard Phillips  
President

# DOUGLAS E. LEDLIE

1250 Capital of Texas Hwy South, Building 3, Suite 400, Austin, Texas 78746 • (512) 329-0049 • E-mail: [dledlie@austin.rr.com](mailto:dledlie@austin.rr.com)

January 25, 2008

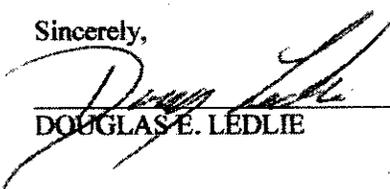
Mark Fenner, Esq.  
General Counsel, Texas Racing Commission  
8505 Cross Park Dr.  
Suite 110  
Austin, TX 78754

Dear Mr. Fenner:

Enclosed please find the Memorandum sent to Ms. Flowerday in connection with the reorganization of Manor Downs. The only change that occurred since the date of the memo is that Ms. Carr Tapp acquired the limited partnership interests of Wells Fargo Bank Texas, N.A., Trustee for Bruce B. Baxter III Marital Deduction Trust and Sterling Trust, Trustee for the Howard Phillips IRA No 15481 (each having a 1.371% interest for a total of 2.742%).

I believe the memo sets out the means of carrying out the reorganization, but if you have any questions or if I can be of any further assistance, please let me know.

Sincerely,



DOUGLAS E. LEDLIE

Cc: Howard Phillips

## MEMORANDUM

To: Ms. Paula Flowerday, Esq.  
Executive Secretary, Texas Racing Commission

Ms. Nicole Galwardi, Esq.  
General Counsel, Texas Racing Commission

From: Douglas E. Ledlie

Date: September 21, 2004

Re: Proposed Reorganization of Manor Downs, Inc.

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### I. SUMMARY

Manor Downs, Inc., a Texas corporation (the "Licensee"), holds a license (the "License") issued by the Texas Racing Commission (the "Commission") to conduct wagering at the Class 2 racetrack in Manor, Texas. The Licensee leases its racetrack facilities from Manor Downs Partners, L.P., a Texas limited partnership (the "Lessor"). Frances R. Carr Tapp, an individual residing in Travis County, Texas ("Carr Tapp") owns 100% of the Licensee and owns and/or controls approximately 88% of the Lessor. Carr Tapp, the Licensee, the Lessor, and the other owners of the Lessor (the "Parties to the Reorganization") believe that there would be substantial cost savings if the Licensee and the Lessor were to combine so that the same entity owned both the License and the racetrack facilities.

This Memorandum, along with the attachments, sets forth the steps the Parties to the Reorganization propose to take to combine the entities and the reasoning as to the conclusion that the reorganization will not result in a transfer of the License.

### II. REORGANIZATION STEPS

Organization Chart No. 1, attached hereto, shows the existing ownership structure of the Licensee and the Lessor. The Parties to the Reorganization propose to enter into the transactions set forth below (the "Transactions") resulting in the ownership structure set forth on Organization Chart No. 2:

(a) Formation of Manor Downs Operating, Inc. as a Holding Company

Carr Tapp would form a new Texas corporation under the name of Manor Downs Operating, Inc. (the "Holding Company") and contribute all of the issued and outstanding stock of the Licensee to the Holding Company. Following this transaction, the Licensee will be the wholly owned subsidiary of the Holding Company, of which Carr Tapp will be the sole shareholder.

(b) Merger of the Licensee and the Lessor into Manor Downs, Ltd.

Following formation of the Holding Company, the Licensee and the Lessor would merge (the "Merger") into a new Texas limited partnership named "Manor Downs, Ltd." (the "Partnership"), which would be formed as part of the Merger.

The Plan of Merger and Reorganization, attached hereto, sets forth in more detail each of the above the Transactions. The exhibits to the Plan of Merger and Reorganization set forth the documentation that the Parties to the Reorganization propose to execute in connection with the Merger

### **III. ISSUES RELATED TO THE FORMATION OF THE HOLDING COMPANY**

The formation of the Holding Company and the contribution by Carr Tapp of all of her interests in the Licensee is necessary as a first step for two primary reasons. First, it is necessary in order for Carr Tapp to continue to have the liability protection of operating the racetrack in corporate form. Second, it is necessary to keep both the Licensee and Carr Tapp from unnecessarily recognizing gain on which there could be significant federal income taxes assessed.

With regard to liability issue, if Carr Tapp does not form another corporation prior to the Merger she would receive individually the general partnership interest in the Partnership. This, unlike the current structure, would subject Carr Tapp to personal liability associated with the operation of the racetrack. By forming the Holding Company and contributing her interests in the Licensee to it prior to the Merger, the Holding Company would receive the general partnership interest, providing her with the same liability protection that she has under the current structure.

With regard to the federal tax issues, both the Licensee and Carr Tapp could incur significant Federal income tax liability if she does not form the Holding Company and contribute to it her interests in the Licensee prior to the Merger. When a corporation merges into a partnership, federal income tax law treats the corporation as liquidated. If an individual owns such a corporation, such as in this case where Carr Tapp owns the Licensee, the individual and the corporation must recognize gain at the time of such deemed liquidation. However, if a corporation owns all such a corporation, neither party is required to recognize any gain. Therefore, by Carr Tapp forming the Holding Company and contributing to it her interests in the Licensee prior to the Merger, neither the Licensee nor Carr Tapp will recognize any gain as a result of the Merger.

The contribution by Carr Tapp of all of her interests in the Licensee would result in a change of ownership requiring approval of the Commission. Carr Tapp is requesting that approval based upon the fact that such contribution will not result in any change in control over the Licensee. Both before and after the contribution, Carr Tapp would continue to controls 100% of the Licensee by virtue of her 100% ownership of the Holding Company.

### **IV. ISSUES RELATED TO THE MERGER**

The proposed Merger of the Licensee and the Lessor into the Partnership would combine ownership of the Licensee and the property currently leased to the Licensee by the Lessor. In addition, the owners of each of the Licensee and the Lessor would become owners in the

Partnership. This also results in a change of ownership for which each of the Parties to the Reorganization requests approval by the Commission. The Parties to the Reorganization request this approval based upon the following factors:

- Carr Tapp would own 100% of the sole general partner of the Partnership and, individually or through other entities owned 100% by Carr Tapp, would continue to own approximately 88% of all partnership interests.
- The partnership interests owned by others would be limited partnership interests that do not allow the owners of such interests to exercise control over the Partnership.
- The Commission has previously approved each of the other partners as equity owners of a lessor of real property to a licensee pursuant to Section 6.07 of the Texas Racing Act (the "Act").

#### **V. ISSUES RELATED TO WHETHER THE TRANSACTIONS RESULT IN A TRANSFER OF THE LICENSE**

Pursuant to Section 6.12 of the Act, a racetrack license is not transferable. Although the License will vest in the Partnership as a result of the proposed Merger, no "transfer" of the License under Texas law, as discussed below, will occur from such Merger.

Art. 5.01 of the Texas Business Corporation Act ("Corporation Act") authorizes the Licensee, as a Texas corporation, to merge into the Partnership, providing, in part:

A domestic corporation may adopt a plan of merger and ... merge with one or more ... corporations or other entities ...

Art. 5.06 A. (2) of the Corporation Act provides that, as a result of the proposed Merger, the assets of the Licensee, including the License, will vest in the Partnership, but that this occurs without any transfer or assignment, stating, in part:

all rights, title and interests to all real estate and other property owned by each ... corporation and ... other entity that is a party to the merger shall be ... vested in ... the surviving ... [entity] ... without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred ... (emphasis added)

Sections 2.11(a)<sup>1</sup> and 2.11(g)(2)<sup>2</sup> of the Texas Revised Limited Partnership Act, which apply to the Lessor, contain language virtually identical to the language quoted above in Articles 5.01 and

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<sup>1</sup> Section 2.11(a) of the Texas Revised Limited Partnership Act states, in part:

A domestic limited partnership may adopt a plan of merger and ... merge with one or more ... limited partnerships or other entities

<sup>2</sup> Section 2.11(g)(2) of the Texas Revised Limited Partnership Act states, in part:

5.06 A.(2) of the Corporation Act. Therefore, the vesting of the License in the Partnership as a result of the proposed Merger is not a “transfer” under Texas law and the restrictions on transfer contained in Section 6.12 of the Act do not apply to the proposed Merger.

## VI. CONCLUSION

The Licensee requests approval of the Commission to the changes in ownership resulting from:

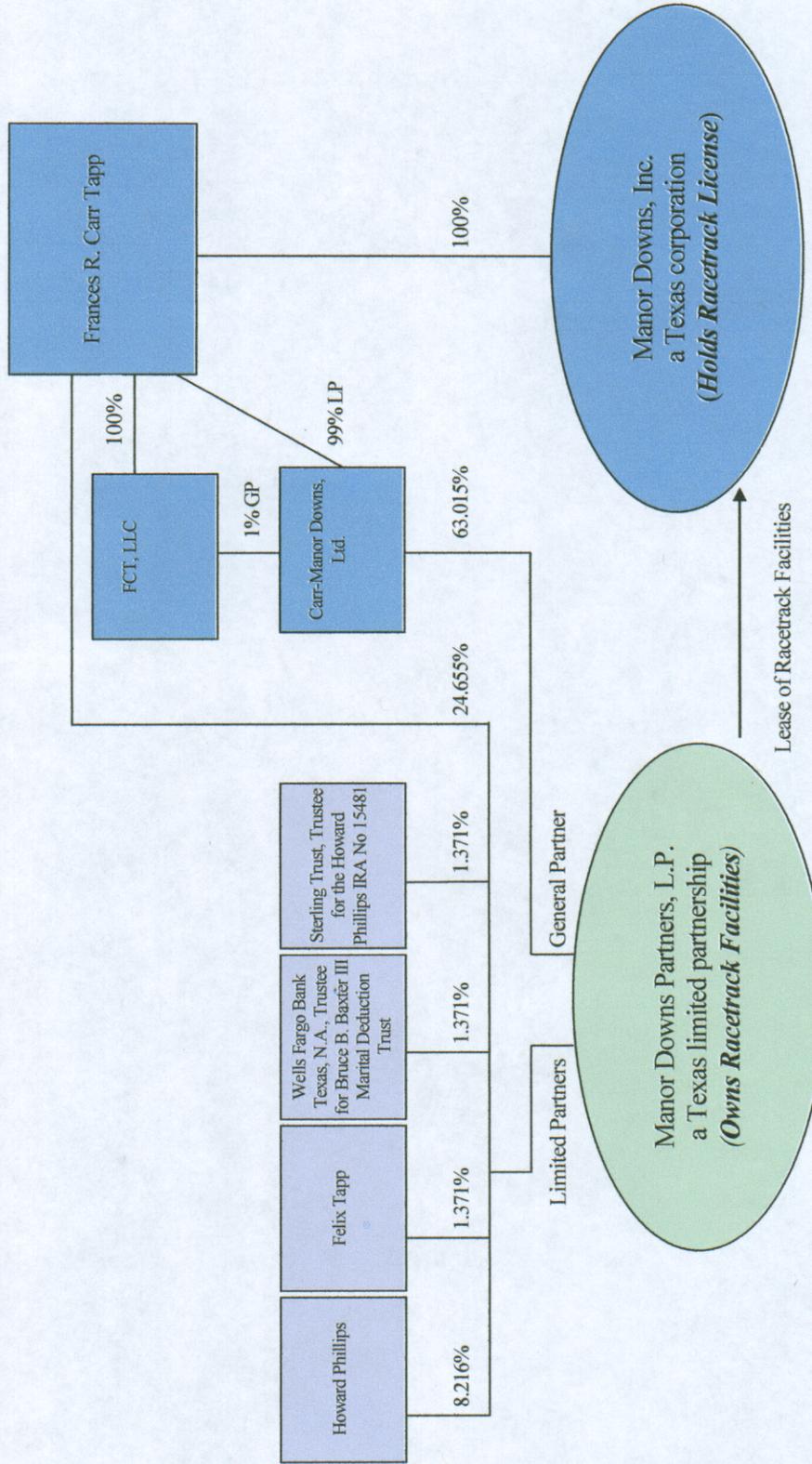
- (a) the contribution by Carr Tapp of all of the issued and outstanding stock in the Licensee to the Holding Company, which will be owned 100% by Carr Tapp; and
- (b) the Merger of the Licensee and the Lessor into the Partnership, as a result of which:
  - (i) the Holding Company will be the sole general partner;
  - (ii) Carr Tapp will own or control approximately 88% of the equity interests; and
  - (iii) the owners of the other equity interests will be persons that the Commission has previously approved as owners of a lessor of real estate to a licensee.

The Licensee also requests concurrence by the Commission that the Transactions, including the Merger, will not constitute a transfer of the License under the Act.

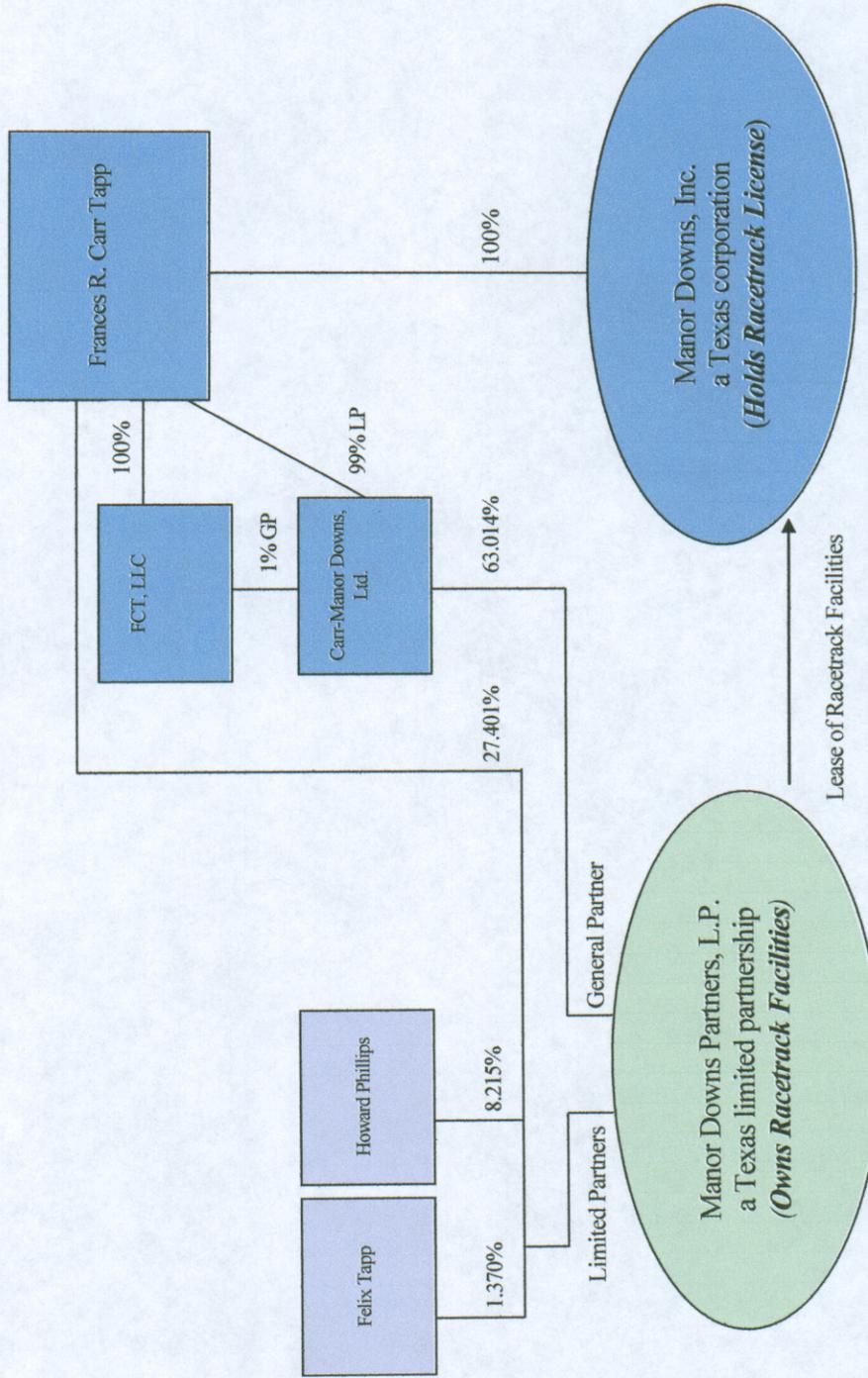
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all rights, title, and interests to all real estate and other property owned by each ... limited partnership and ... other entity that is a party to the merger shall be ... vested in ... the surviving [entity] ... without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred (emphasis added)

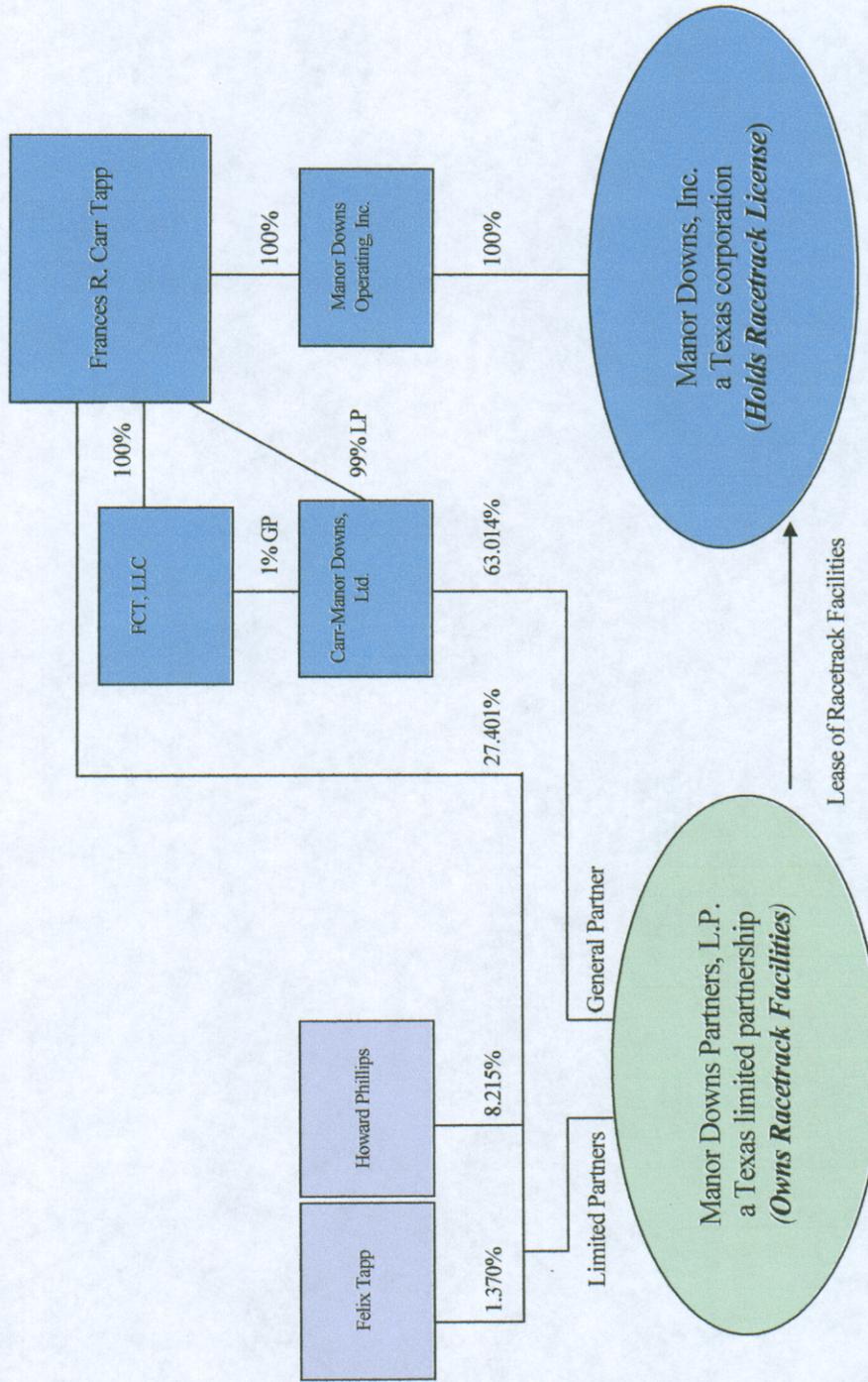
**ORGANIZATIONAL CHART NO 1  
CURRENT STRUCTURE**



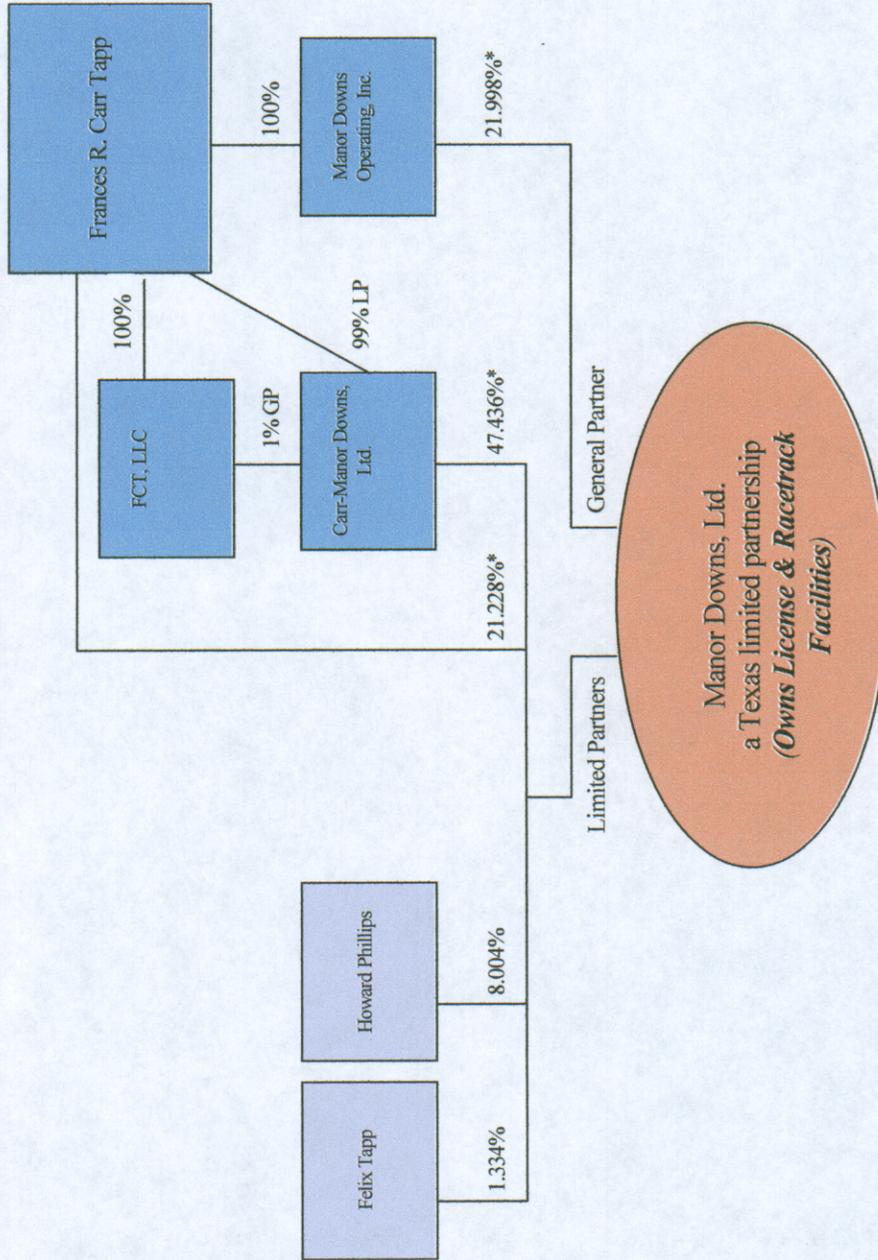
**ORGANIZATIONAL CHART NO 1  
CURRENT STRUCTURE**



**ORGANIZATIONAL CHART NO 2  
AFTER FORMATION OF THE HOLDING COMPANY**



**ORGANIZATIONAL CHART NO 3  
AFTER MERGER**



\* After the proposed merger, the total beneficial interest of Frances R. Carr Tapp in Manor Downs, Ltd., which would hold the License, would be 90.662% computed as follows:

- 21.228% directly as a limited partner
- 47.4366% through the limited partnership interest of Carr-Manor Downs, Ltd., and
- 21.998% through the general partnership interest of Manor Downs Operating, Inc.
- 90.662%

1 **Subchapter A. Licensing Provisions**

2 **Division 1. Occupational Licenses**

3 **Sec. 311.1. Occupational Licenses.**

4 (a) License Required.

5 (1) A person other than a patron may not participate in  
6 racing at which pari-mutuel wagering is conducted unless the  
7 person has a valid license issued by the Commission. Any  
8 individual who enters an animal is deemed to be a participant in  
9 racing.

10 (2) A licensee may not employ a person to work at a  
11 racetrack at which pari-mutuel wagering is conducted unless the  
12 person has a valid license issued by the Commission.

13 (b) - (d) (No change.)

14

1 **Subchapter A. Licensing Provisions**

2 **Division 2. Other Licenses**

3 **Sec. 311.52. Spouse's License.**

4 The spouse of a licensed owner may apply for a Spouse's License  
5 by completing the license application, a fingerprint card, and  
6 paying the license fee. The Spouse's License does not allow the  
7 spouse to participate in racing.

8

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.101. Horse Owners.**

3 (a) General Provisions.

4 (1) The owner of a horse, as listed on the animal's  
5 registration paper, must obtain an owner's license from the  
6 Commission. Except as otherwise provided by § 313.301(a)(2) of  
7 this title (relating to Officials and Rules of Horse Racing), a  
8 [-A-] person may not be licensed as an owner if the person is  
9 not the owner of record of a properly registered horse that the  
10 person intends to race in Texas. Except as otherwise provided by  
11 this subsection, the owner must be licensed one hour prior to  
12 the post time of the first race of the day in which the owner  
13 intends to race the animal.

14 (2) If the owner is not an individual, each individual who  
15 is a director, officer, or partner of the owner or who has an  
16 ownership interest in the horse of 5.0% or more must be licensed  
17 by the Commission.

18 (3) If the owner is not an individual, the owner must  
19 provide to the Commission:

20 (A) a sworn statement by the chief executive officer  
21 of the owner or by one of the partners of the owner that  
22 the officer or partner represents the owner and is  
23 responsible for the horse;

24 (B) a statement that the owner is authorized by law to  
25 do business in Texas; and

26 (C) a list of the names and addresses of all  
27 individuals having an ownership interest in the horse.

28 (4) If the owner is not an individual, the ownership entity  
29 must:

30 (A) designate a representative; or

1 (B) file an authorized agent form with the Commission  
2 and pay the prescribed fee.

3 (5) If the registered owner of a horse is a minor, a  
4 financial responsibility form approved by the executive  
5 secretary must be signed by the parent or guardian of the owner  
6 assuming financial responsibility for the debts incurred for the  
7 training and racing of the horse.

8 (b) - (c) (No change.)

9 (d) Change of Trainer. An owner may change the trainer of his or  
10 her horse registered at a licensed race meeting provided:

11 (1) the request to change trainers is submitted for  
12 approval to the stewards on a form provided by the association  
13 and approved by the stewards [~~executive secretary~~];

14 (2) the trainer from whom the horse is being transferred  
15 signs the form releasing custody of the horse;

16 (3) the trainer to whom the horse is being transferred  
17 signs the form accepting responsibility for the horses; and

18 (4) the stewards approve the transfer.

19 (e) - (g) (No change.)

20

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.102. Greyhound Owners.**

3 (a) General Provisions.

4 (1) Except as otherwise provided by this subsection, the  
5 owner of a greyhound, as listed on the animal's registration  
6 paper, must obtain an owner's license from the Commission. A  
7 person may not be licensed as an owner if the person is not the  
8 owner of record of a properly registered greyhound that the  
9 person intends to race in Texas. The owner must be licensed one  
10 hour prior to the post time of the first race of the day in  
11 which the owner intends to race the animal.

12 (2) If the owner is not an individual, each individual who  
13 is a director, officer, or partner of the owner or who has an  
14 ownership interest in the greyhound of 5.0% or more must be  
15 licensed by the Commission.

16 (3) If the owner is not an individual, the owner must  
17 provide to the Commission:

18 (A) a sworn statement by the chief executive officer  
19 of the owner or by one of the partners of the owner that  
20 the officer or partner represents the owner and is  
21 responsible for the greyhound;

22 (B) a statement that the owner is authorized by law to  
23 do business in Texas; and

24 (C) a list of the names and addresses of all  
25 individuals having an ownership interest in the greyhound.

26 (4) If the owner is not an individual, the ownership entity  
27 must:

28 (A) designate a representative; or

1                   (B) file an authorized agent form with the Commission  
2                   and pay the prescribed fee.

3                   (5) If the registered owner of a greyhound is a minor, a  
4                   financial responsibility form approved by the executive  
5                   secretary must be signed by the parent or guardian of the owner  
6                   assuming financial responsibility for the debts incurred for the  
7                   training and racing of the greyhound.

8                   (b) - (d) (No change.)

9

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.104.Trainers.**

3 (a) Licensing

4 (1) Except as otherwise provided by this subsection, a  
5 trainer must obtain a trainer's license before the trainer may  
6 enter a horse or greyhound in a race. A trainer may enter a  
7 horse or greyhound in a stakes race without first obtaining a  
8 license, but must obtain a license before the horse or greyhound  
9 may start in the stakes race. Except as otherwise provided by  
10 this section, to be licensed by the Commission as a trainer, a  
11 person must:

12 (A) be at least 18 years old;

13 (B) satisfactorily complete a written examination  
14 prescribed by the Commission; and

15 (C) satisfactorily complete a practical examination  
16 prescribed by the Commission and administered by the  
17 stewards or racing judges or designee of the stewards or  
18 racing judges.

19 (2) The standard for passing the written examination must  
20 be printed on the examination. An applicant who fails the  
21 examination may not take the examination again before the 60th  
22 day after the date the applicant failed the examination. The  
23 Commission may waive the requirement of a written and/or  
24 practical examination for a person who has a current license  
25 issued by another pari-mutuel racing jurisdiction. If a person  
26 for whom the examination requirement was waived demonstrates an  
27 inability to adequately perform the duties of a trainer, through  
28 excessive injuries, rulings, or other behavior, the stewards or  
29 racing judges may require the person to take the written  
30 examination. If such a person fails the examination, the

1 stewards or racing judges shall suspend the person's license for  
2 60 days with reinstatement contingent upon passing the written  
3 examination .

4 (3) A trainer must use the trainer's legal name to be  
5 licensed as a trainer. A trainer who is also an owner may use a  
6 stable name or kennel name in the capacity of owner.

7 (4) To be licensed as an assistant trainer, a person must  
8 qualify in all respects for a trainer's license and be in the  
9 employ of a licensed trainer. An assistant trainer's license  
10 carries all the privileges and responsibilities of a trainer's  
11 license.

12 (b) - (j) (No change.)

13 (k) Other Responsibilities - A trainer is responsible for:

14 (1) the condition and contents of stalls/kennels, tack  
15 rooms, feed rooms, and other areas which have been assigned by  
16 the association;

17 (2) maintaining the assigned stable/kennel area in a clean,  
18 neat and sanitary condition at all times;

19 (3) ensuring that fire prevention rules are strictly  
20 observed in the assigned stable/kennel area;

21 (4) disclosure of the true and entire ownership of each  
22 animal in the trainer's care, custody or control. Any change in  
23 ownership shall be reported immediately to, and approved by, the  
24 stewards/judges and recorded by the racing secretary;

25 (5) training all animals owned wholly or in part by the  
26 trainer that are participating at the race meeting;

27 (6) ensuring that, at the time of arrival at a licensed  
28 racetrack, each animal in the trainer's care is accompanied by a  
29 valid health certificate/certificate of veterinary inspection;

1       (7) using the services of those veterinarians licensed by  
2 the Commission to attend animals that are on association  
3 grounds;

4       (8) promptly notifying the official veterinarian of any  
5 reportable disease and any unusual incidence of a communicable  
6 illness in any animal in the trainer's charge;

7       (9) immediately reporting to the stewards/judges and the  
8 official veterinarian if the trainer knows, or has cause to  
9 believe, that a animal in the trainer's custody, care or control  
10 has received any prohibited drugs or medication;

11       (10) maintaining a knowledge of the medication record and  
12 status of all animals in the trainer's care;

13       (11) ensuring the fitness of a animal to perform creditably  
14 at the distance entered;

15       (12) ensuring that the trainer's horse are properly shod,  
16 bandaged and equipped; and

17       (13) notifying owners upon the revocation or suspension of  
18 the trainer's license. Upon application by the owner, the  
19 stewards/judges may approve the transfer of such animal to the  
20 care of another licensed trainer, and upon such approved  
21 transfer, such animal may be entered to race.

22

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.105. Jockeys.**

3 (a) License

4 (1) To be licensed as a jockey or apprentice jockey, an  
5 individual must be at least 16 years of age and provide proof of  
6 a satisfactory physical examination as described in subsection  
7 (b) of this section.

8 (2) An individual licensed as a jockey or apprentice jockey  
9 may not be licensed in another capacity.

10 (3) To be licensed as a jockey or apprentice jockey, an  
11 individual must have a certificate of proficiency issued by a  
12 starter licensed in this state or be currently licensed in  
13 another state as a jockey or apprentice jockey.

14 (b) Physical Examination.

15 (1) To be eligible to ride in a race, a jockey or  
16 apprentice jockey must have on file with the Commission proof of  
17 a satisfactory physical examination conducted during the 12-  
18 month period preceding the date of the race.

19 (2) An examination required by this section must be  
20 performed by a licensed physician and include tests for visual  
21 acuity and hearing.

22 (3) The Commission or the stewards may require a jockey or  
23 apprentice jockey to be reexamined at any time and may refuse to  
24 permit a jockey or apprentice jockey to ride until proof of a  
25 satisfactory examination is submitted.

26 (c) Apprentice Jockeys.

27 (1) An apprentice jockey is a rider of thoroughbreds who:

28 (A) is permitted to ride with the apprentice weight  
29 allowance in accordance with Chapter 313 of this title  
30 (relating to Officials and Rules of Horse Racing); and

1 (B) is otherwise qualified to be licensed as a jockey.

2 [~~(2) To be licensed as an apprentice jockey, an individual~~  
3 ~~must submit with the application.~~]

4 [~~(A) proof of a satisfactory physical examination as~~  
5 ~~required for a jockey's license: and]~~

6 [~~(B) a certificate of proficiency issued by a starter~~  
7 ~~licensed in this state.~~]

8 (2) [~~(3)~~] The Rules relating to a jockey apply to  
9 apprentice jockeys.

10 (d) (No change.)

11

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.108. Authorized Agent.**

3 (a) To be appointed an authorized agent, an individual must be  
4 at least 18 years old and licensed as [~~either~~] an individual  
5 owner, stable foreman, assistant trainer, or a trainer. A  
6 written agency appointment authorizing him or her to act on  
7 behalf of a licensed owner or licensed trainer in racing matters  
8 not directly related to the care and training of horses must  
9 accompany the appointment. The authorization shall be on a form  
10 provided by the Commission and shall define the agent's powers  
11 and limits. The authorization must be signed by the principals  
12 and the agent.

13 (b) - (c) (No change.)

14

1 **Subchapter B. Specific Licenses**

2 **Sec. 311.111. Jockey Agent.**

3 (a) Eligibility.

4 (1) An applicant for a license as a jockey agent shall:

5 (A) demonstrate to the stewards that the applicant has  
6 a contract for agency with at least one jockey who has been  
7 licensed by the Commission; and

8 (B) be qualified, as determined by the stewards or  
9 other Commission designee, by reason of experience,  
10 background and knowledge. A jockey agent's license from  
11 another jurisdiction may be accepted as evidence of  
12 experience and qualifications. Evidence of qualifications  
13 may require passing one or both of the following:

14 (i) a written examination; or

15 (ii) an interview or oral examination.

16 (2) Applicants not previously licensed as a jockey agent  
17 shall be required to pass a written and oral examination.

18 (b) Limit on Contracts.

19 (1) During a thoroughbred or mixed race meet a jockey agent  
20 may serve as agent for no more than two jockeys and one  
21 apprentice jockey.

22 (2) During a quarter horse meet a jockey agent may serve as  
23 agent for no more than three jockeys.

24 (c) Responsibilities.

25 (1) A jockey agent shall not make or assist in making  
26 engagements for a jockey other than those the agent is licensed  
27 to represent.

28 (2) A jockey agent shall file written proof of all  
29 engagements and changes of engagements with the stewards.

1       (3) A jockey agent shall maintain current and accurate  
2 records of all engagements made, such records being subject to  
3 examination by the stewards at any time.

4       (4) A jockey agent may make entries for an owner or trainer  
5 with prior permission from the owner or trainer.

6       (5) When making an entry, a jockey agent shall sign the  
7 entry card and shall be responsible for the accuracy of the  
8 information provided on the entry card.

9       (d) Prohibited Areas. A jockey agent is prohibited from entering  
10 the jockey room, winner's circle, racing strip, paddock or  
11 saddling enclosure during the hours of racing, unless permitted  
12 by the stewards.

13       (e) Agent Withdrawal (Termination). When any jockey agent  
14 withdraws from representation of a jockey, the jockey agent  
15 shall immediately notify the stewards and shall submit to the  
16 stewards a list of any unfulfilled engagements made for the  
17 jockey.

18

1 **Subchapter C. Responsibilities of Individuals**

2 **Sec. 311.212. Duty to Wear Badge.**

3 (a) Except as otherwise provided by this section, a licensee  
4 shall display his or her license badge in a conspicuous place on  
5 his or her body at all times that the licensee is engaged in  
6 performing duties or is in a restricted area. [~~on the~~  
7 ~~association grounds.~~]

8 (b) This section does not apply to a licensee who is:

9 (1) performing duties as an assistant starter; or

10 [~~(1) not engaged in performing the licensee's duties and is~~  
11 ~~in the grandstand area of the association grounds; or]~~

12 (2) mounted on a horse.

13

1 **Subchapter C. Responsibilities of Individuals**

2 **Sec. 311.214. Financial Responsibility.**

3 (a) This section applies to the financial responsibility of  
4 licensees of the Commission for debts legally owed the transfer,  
5 purchase or lease of a race animal or for services or supplies  
6 relating to the care, transportation, or maintenance provided to  
7 ~~[-of-]~~ a race animal ~~[-participating-]~~ while racing or in  
8 training at a licensed facility ~~[-at a licensed race meeting-]~~ in  
9 this state. Services and supplies to which this section applies  
10 include, but are not limited to:

11 (1) veterinary services, medication, and veterinary  
12 supplies;

13 (2) transportation services;

14 (3) farrier services and supplies;

15 (4) feed and nutritional supplements; and

16 (5) racing supplies.

17 (b) - (e) (No change.)

18

1 **Subchapter C. Responsibilities of Individuals**

2 **Sec. 311.216. Conduct in Stable Area.**

3 (a) - (b) (No change.)

4 (c) A licensee who is mounted on a horse or stable pony on  
5 association grounds must wear an A.S.T.M. approved safety helmet  
6 at all times. [~~galloping or ponying a horse or riding a horse~~  
7 ~~in a race shall wear a properly fastened helmet, of a type~~  
8 ~~approved by the executive secretary, at all times.~~]

9 (d) A licensee may not hold a horse in a starting gate unless  
10 the licensee wears properly fastened safety helmet approved by  
11 A.S.T.M. [~~of a type approved by the executive secretary.~~]

12 (e) (No change.)

13

1 **Subchapter D. Alcohol and Drug Testing**

2 **Division 1. Drugs**

3 **Sec. 311.301. Use and Possession Prohibited.**

4 (a) Except as otherwise provided by this section, an  
5 occupational licensee may not, while performing duties required  
6 of the licensee, have present in his or her system a dangerous  
7 drug as defined by the Health and Safety Code, Chapter 483, or a  
8 controlled substance as defined by the Texas Controlled  
9 Substances Act, Health and Safety Code, Chapter 481. The  
10 Commission, stewards, or racing judges may decline to take  
11 disciplinary action against a licensee who violates this  
12 subsection if the Commission, stewards, or racing judges  
13 determine that:

14 (1) the licensee holds a current prescription for the drug  
15 or substance, which was issued by a physician licensed to  
16 practice in the United States and authorized to dispense or  
17 prescribe controlled substances as provided by 21 USC 801 et  
18 seq. and the physician is acting in the course of the  
19 physician's [~~licensed physician acting in the course of the~~  
20 ~~physician's~~] professional practice;

21 (2) - (3) (No change.)

22 (b) An occupational licensee may not possess, while on  
23 association grounds, a dangerous drug as defined by the Health  
24 and Safety Code, Chapter 483, or a controlled substance as  
25 defined by the Texas Controlled Substances Act, Health and  
26 Safety Code, Chapter 481. This subsection does not apply to:

27 (1) a licensee who holds a current prescription for the  
28 drug or substance, which was issued by a physician licensed to  
29 practice in the United States and authorized to dispense or  
30 prescribe controlled substances as provided by 21 USC 801 et

1 seq. and the physician is acting in the course of the  
2 physician's [~~licensed physician acting the course of the~~  
3 ~~physician's~~] professional practice; or

4 (2) a veterinarian licensed by the Commission who has  
5 obtained permission to possess a controlled substance or  
6 dangerous drug under § 319.14 of this title (relating to  
7 Possession of Controlled Substances).

1 **Subchapter D. Running of the Race**

2 ~~**Sec. 313.408. Jockey Agents.**~~

3 ~~(a) During a thoroughbred or mixed race meeting, a jockey agent~~  
4 ~~may represent only two jockeys and one apprentice jockey at any~~  
5 ~~given time. During a quarter horse race meeting, a jockey agent~~  
6 ~~may represent only three jockeys at any given time. A jockey~~  
7 ~~agent shall maintain a record of all engagements for each jockey~~  
8 ~~and apprentice jockey the agent represents and make the records~~  
9 ~~available for examination by the stewards at any time. The~~  
10 ~~record must specify first or second calls for each race.~~

11 ~~(b) The stewards or racing secretary shall require a jockey~~  
12 ~~agent to file first or second calls with the racing secretary~~  
13 ~~and may require the agent to display the record of engagements.~~

14 ~~(c) A jockey is bound by engagements made by the jockey's agent~~  
15 ~~on the jockey's behalf.~~

16 ~~(d) A jockey must notify the stewards in writing on a form~~  
17 ~~prescribed by the executive secretary if the jockey intends to~~  
18 ~~sever a business relationship with an agent. The notification~~  
19 ~~must be signed by both the jockey and agent.~~

1 **Subchapter B. Entries and Allowances**

2 **Sec. 313.111. Age Restrictions.**

3 (a) A yearling is not eligible to start in a race.

4 (b) A two-year-old horse may not start in a pari-mutuel race in  
5 Texas before March 1.

6 (c) A racing secretary may not schedule:

7 (1) a race for two-year old quarter horses longer than 350  
8 yards before May 1 or longer than 400 yards before August 1; or

9 (2) a race for two-year old thoroughbreds longer than 4 1/2  
10 furlongs before May 1 or at one mile or longer before August 1.

11 (d) A horse that is more than 12 years of age may not start in a  
12 pari-mutuel race in this state[~~—~~] unless:

13 (1) the horse has finished first, second, or third in an  
14 officially sanctioned pari-mutuel race during the 12-month  
15 period preceding the race in which the horse is to start; or

16 (2) upon due consideration of the horse's prior  
17 performance, the board of stewards has given specific  
18 authorization for the horse to start. [~~the horse has won a race~~  
19 ~~at an officially sanctioned pari-mutuel racetrack during the 12-~~  
20 ~~month period preceding the race in which the horse is to start.]~~

1 **Subchapter D. Drug Testing**

2 **Division 3. Provisions for Horses**

3 **Sec. 319.363. Testing for Total Carbon Dioxide.**

4 (a) Findings and Presumptions.

5 (1) The commission finds that a total carbon dioxide level  
6 of 37 [~~39~~] millimoles per liter or more in equine serum can be  
7 achieved only through the administration, by any means, of a  
8 bicarbonate-containing substance or other alkalinizing  
9 substance.

10 (2) A horse entered or participating in a race may not be  
11 administered a bicarbonate-containing substance or other  
12 alkalinizing substance which causes it to carry in its body an  
13 excess level of total carbon dioxide.

14 (3) A positive finding by a chemist of total carbon dioxide  
15 level at or above 37 [~~39~~] millimoles per liter in a race horse  
16 serum specimen is an excess level of total carbon dioxide and  
17 prima facie evidence that the race horse was administered a  
18 bicarbonate-containing substance or other alkalinizing substance  
19 in violation of this section.

20 (b)-(d) (No change.)

1 **Subchapter D. Simulcast Wagering**

2 **Division 1. General Provisions**

3 **Sec. 321.407. Testing for Total Carbon Dioxide.**

4 (a) To receive approval to conduct pari-mutuel wagering on a  
5 simulcast import, an association must file a request for  
6 approval to import to the executive secretary on a form  
7 prescribed by the executive secretary. A request for approval to  
8 import a simulcast must be filed at least one day [~~three days~~]  
9 before the first simulcast race covered by the request.  
10 (b)-(e) (No change.)