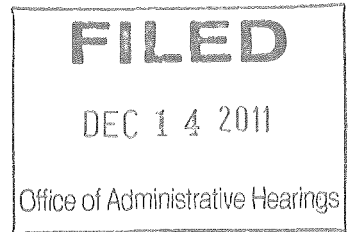


**COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
OFFICE OF ADMINISTRATIVE HEARINGS  
OAH FILE NO. HRC-42289-047  
KHRC-TB-11-003**



**KENTUCKY HORSE RACING COMMISSION**

**COMPLAINANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**JOHN VEITCH**

**RESPONDENT**

\* \* \* \* \*

**INTRODUCTION**

A summary of the issues in this hearing is in the March 10, 2011 notice of violation charging the respondent, John Veitch with

violating the following administrative regulations on November 5, 2010:

810 KAR 1:004 Section 4(1);  
810 KAR 1:004 Section 4(8);  
810 KAR 1:012 Section 9(1);  
810 KAR 1:016 Section 14; and  
810 KAR 1:018 Section 11.

These charges are based on your failure to contact the state veterinarians to examine the horse Life at Ten after receiving information that the jockey John Velazquez was making comments on ESPN regarding her condition, your failure to designate Life at Ten for postrace sampling, and your failure to properly investigate potential statutory and/or regulatory violations associated with Life at Ten's running in the Ladies' Classic.

**Summary of Facts Alleged for Charges**

Although the following are not Findings of Fact, the facts alleged for these charges are:  
  
John Veitch was the chief steward for the Kentucky Racing Commission on Breeders' Cup Day, 2010, at Churchill Downs racetrack in Louisville, Kentucky.

About 10 minutes before one race, the Ladies Classic was run, the horses entered the track for the post parade and to warm up, which are traditional preliminary activities prior to the

actual race competition. Shortly after they entered, ESPN announcers, through a microphone that was located on the lead pony and the outrider<sup>1</sup> assisting Life At Ten, engaged in a live, on air conversation with Life At Ten's jockey, John Velazquez.

During that conversation, an ESPN announcer questioned Mr. Velazquez, asking him how his horse was warming up. Velazquez said "right now I am not sure. To tell you the truth, she is not warming up the way that she normally does."

An ESPN producer placed a phone call at that moment to Veitch, who was inside the stewards stand on the sixth floor of the track. Veitch went outside and used binoculars to look at Life at Ten, but did not call trackside veterinarians and order her to be examined. Life at Ten was eased<sup>2</sup> almost immediately after the race started, and did not finish the race. Despite her poor performance, Veitch did not designate Life at Ten for post-race testing to try to determine why she failed to perform.

### **Post Race-Day Investigation and Hearing**

A few days after the race, the Commission initiated an investigation into whether Veitch's actions violated the Commission's statutes and regulations. As chief steward, Veitch functions as the chief judge for the Racing Commission, responsible for determining if racing participants are competing in accordance with the rules of racing. Recognizing the difficulty in providing for a separate and impartial investigation of its own chief steward, the Commission turned its investigation over to the Office of Inspector General in the Transportation Cabinet.<sup>3</sup> In

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<sup>1</sup> "lead pony" is a non-competing horse which is used to help lead or guide and secure the competing horse.

"outrider" is the rider who is positioned on the lead pony to provide the help of the lead pony.

<sup>2</sup> "Eased" means that the jockey stopped requiring the horse to compete.

<sup>3</sup> At the hearing, Marc Guilfoil, who was then the Deputy Executive Director of the Kentucky Racing Commission, was asked: "Why was it that the stewards were talked to by the persons from the Transportation Cabinet?". He answered: "Again, to stay away from being accused of any impropriety, you know, not to let the staff investigate actually one of the staff. So we chose to find an outside entity to go that route. *Day 2 Transcript*, p. 269.

another procedural step to attempt to provide appropriate procedural due process, the Commission also designated the undersigned to conduct the three-day administrative hearing.<sup>4</sup>

Prior to the hearing, preliminary matters were addressed in multiple pre-hearing conferences which were preserved with digital audio recording, and the decisions reached in those conferences have been documented in pre-hearing orders. All of these orders are incorporated into this recommended decision by reference.

Part of the evidence included testimony by witnesses as a videotape of the race warmup was being shown. In order to properly preserve the video for administrative and judicial review, a dvd of the video was introduced into evidence as *Exhibit 1*. The witnesses also identified the specific times on the video that they were referencing during their testimony.

The Commission at the outset moved for the rule of separation of witnesses, which was granted.<sup>5</sup> Numerous witnesses testified telephonically with the consent of the parties, pursuant to KRS 13B.080(7).

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<sup>4</sup> The undersigned is a full-time employee of the Energy and Environment Cabinet's Office of Administrative Hearings. That Cabinet is a separate entity from both the Commission and the Public Protection Cabinet under which the Racing Commission is administratively organized.

<sup>5</sup> One witness for the Commission, Dr. Mary Scollay, in fact later testified that she had gone online and read reporter's "tweets and news feeds", or accounts summarizing the previous day's testimony, and referenced something she understood another witness to have said. *Day 2 Transcript*, p. 241. At that point, the hearing officer pointed out to the parties that this may have unintentionally violated the rule. Both counsel were allowed to extensively question the witness under oath and on the record about what she read concerning the first day's proceedings. After questioning, opposing counsel agreed no further remedy was required, and parties were reminded to avoid any method of receiving information about previous witness' testimony, including tweets or online feeds. *Day 2 Transcript*, p. 241-247.

This decision also recognizes that under KRS Chapter 13B, administrative hearings are public proceedings, and finds no fault in the reporter's actions in covering the hearing. Admonitions against reading electronic sources that may violate the rule of separation of witnesses simply need to become more routine. Such admonitions are the responsibility of the hearing officer. This hearing officer recognizes that he was in error in not adding admonitions to potential witnesses against tweets and electronic information sources to the routine explanations on the rule for separation of witnesses.

After the hearing, both parties requested the opportunity to submit written closing arguments and proposed findings, after which the record was closed and the matter submitted for a decision.

The three-day hearing was hard-fought and contentious, but by counsel who were generally mindful of the need for professionally conducted proceedings. A reminder made at the beginning of the hearing is worth repeating in this decision. Neither the lifelong professional racing reputation of Veitch nor the professionalism of the Kentucky Racing Commission is at issue in this matter. The only matters at issue here are the violations arising from a single race on November 5, 2010.

The parties were informed before the hearing that under Kentucky law, an administrative proceeding does not have jurisdiction to address challenges on the constitutionality of regulations or statutes “as written”. Therefore, the undersigned cannot address arguments on regulations as written. Only judicial authorities can address issues relating to constitutionality of the language of statutes or regulations as written. *St. Luke Hospitals, Inc. v. Com, Cabinet for Health and Family Services*, 254 S.W.3d 830, Ky. Ct. App, 2008, citing *Commonwealth v. DLX, Inc.*, 42 S.W.3d 624, Ky., 2001.

This decision recommends that the Commission find that Veitch has violated the above-referenced regulations, and recommends imposing one-year suspension as the penalty for the violations.

### **FINDINGS OF FACT**

1. John Veitch is licensed by the Commonwealth of Kentucky Horse Racing Commission as a horse racing steward, and has been employed by the Commission as the chief

state steward for Kentucky since July 2005. *Day 1 Transcript, p. 233, Day 3 Transcript, p. 203-207, Exhibits 37 and 38.*

2. Veitch was one of three stewards working the 2010 Breeders' Cup at Churchill Downs in Louisville, Kentucky on November 5, 2010. He was assisted by Brooks Becraft and Richard Leigh, who are stewards licensed by the Kentucky Horse Racing Commission. Becraft and Leigh are both employed by Churchill Downs. The three stewards have worked together frequently since Veitch's licensure and employment in 2005 as the chief state steward in Kentucky.

3. Mary Zimmerman has been involved in reporting on horse racing for various employers since 1981. *Day 1 Transcript, p. 42.*

4. On November 5, 2010, Breeders' Cup Day, Zimmerman was working for ESPN television network. As a producer, Zimmerman's

responsibilities generally are all aspects of what takes place on the racetrack from the coordination of timing, the interfacing with the officials, both the racing official and the track officials. And interfacing with the reporters as to who they are interviewing and where they are being placed throughout the course of the race. ... If there is a problem on the racetrack or if there is a problem in the production truck, any information that needs to be relayed between the 2 will go through me.

*Day 1 Transcript, p. 43, 44.*

5. To insure she had direct contact with the stewards at Churchill Downs, Zimmerman was provided with a "ring down phone", which is a drop line direct telephonic connection, hard wired from her production truck directly to the stewards' stand. *Day 1 Transcript, p. 44.*

6. During the post parade before the Ladies' Classic, while he was riding the horse Life at Ten, jockey Johnny Velazquez was interviewed on live television by Jerry Bailey, an agent of ESPN television. Mr. Bailey asked Mr. Velazquez "Can you tell anything by warming

up if she [the horse] likes it, doesn't like it, what's the story?" Mr. Velazquez replied, "Right now I'm not sure, Jerry, to tell you the truth. She's not warming up the way that she normally does." (*Ex. 1, approximately 41:49 into the video recording of the race "Video"; Ex. 1A, transcript of the Video, page 12.*)

7. The ESPN television coverage was also available on a television located in the stewards stand. After Bailey's interview with Velazquez, Zimmerman called Veitch on the ring down phone, and said "judge, are you listening to this? Johnny said his horse ain't right." Zimmerman testified that Veitch replied: "I know. I am (or we are) watching the show (on ESPN)." *Day 1 Transcript. p. 57, 59.*

8. When asked why she called the stewards stand, Zimmerman replied:

I don't want to assume that they are watching the telecast. I have done this before. Been involved in shows before where things have happened or have been said and the stewards didn't know about it because they weren't watching the telecast. I thought it was information that they should have. *Day 1 Transcript. P. 60-61.*

9. According to Steward Becraft, Veitch turned on ESPN's television reporting in response to Zimmerman's phone call. Veitch and the other stewards did not hear Velazquez' initial interview, but Becraft became concerned when he heard commentators discussing Life at Ten not warming up properly. *Day 1 Transcript. p. 113.*

10. Becraft, who has served as a Kentucky steward for at least 16 years, testified that he believed the stewards should have the trackside veterinarians take a look at Life at Ten. He said:

Well, we all looked. And I said, we should have the veterinarian look at this horse. And that's when John said, if we do that, we might as well go ahead and scratch<sup>6</sup> the horse. ... I said, well, if there is something wrong with her, we need to scratch her. I said, I don't know. And it pretty much stopped right there. *Day 1 Transcript. p. 114.*

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<sup>6</sup> "Scratch" means a horse is removed from competition in a race it has previously been entered in.

11. Becraft explained his disagreement with Veitch. Becraft testified:

A I wanted the veterinarian to just ask the rider, hey, what's going on. You comfortable? What? You like this horse? You don't like him? What's going on?

Q Then why not do that? Why not ask the vet to talk to the jockey?

A I wish we would have.

Q Well, but why didn't you?

A There has to be a board of stewards to make that decision. It can't be one person do it.

Q Okay. Well, there is one saying do it. And there is one saying don't do it. And there is one not saying anything at all apparently?

A Correct.

Q Why is it that the guy (John Veitch) who says don't do it, why is it that he wins as opposed to the guy who says check the horse?

A The state steward (John Veitch) has seniority over you in these decisions.

*Day 1 Transcript, p. 118-119.*

12. After the race, a track veterinarian approached Velazquez, and asked how Life at Ten was doing. Velazquez replied to the veterinarian his horse was fine. Life at Ten did not appear in any distress after the race, other than performing badly in the race. *Day 1 Transcript, p. 223-224.*

13. Veitch's version of the phone call he got from Amy Zimmerman was starkly different from Zimmerman's account:

Q Amy Zimmerman called you, right?

A Correct.

Q What did she say when you picked up that phone?

A To the best of my recollection, she said turn on the ESPN feed.

Q And that's it?

A Yes.

Q What did you say when she made this comment to you?

A I said we will turn it on.

Q Anything else?

A I can't recollect anything else, no.

*Day 2 Transcript, p. 5.*

14. Veitch's version of the call from Zimmerman is not credible. In it, he minimizes the knowledge shared, and effectively denies he was aware that Life at Ten was not warming up properly. However, Veitch later admitted that he personally heard the Velazquez state on television before the race that Life at Ten was not warming up properly. Therefore, the hearing officer finds Veitch was informed before the race that Velazquez said Life at Ten was not warming up properly, and that Veitch did not share that information with the trackside veterinarians.

15. Before the hearing, in statements he made to investigators, Veitch stated that all the stewards had each determined the veterinarian should not be contacted before the race. However, at the hearing Veitch stated that his prehearing statement did not mean Becraft had determined the veterinarian should not be contacted.

16. Veitch's explanation of this discrepancy, saying that after Veitch stated to the other stewards why Veitch did not believe the veterinarian should be contacted before the race, Becraft dropped his request. Veitch did not identify any statements of agreement by Becraft that indicated Becraft had dropped his request, and did not testify about Becraft stating a change of opinion or agreement with Veitch.

17. This decision finds that the change from Veitch's prehearing discovery response and his explanation for it were deceptive and self-serving, to provide the appearance that all the stewards supported Veitch's decision to not call the veterinarians. The deceptive answer and explanation reduce the probative value which can be assigned to Veitch's testimony. *Day 1 Transcript, p. 257-258.*

18. Veitch's explanation was also contradicted by Veitch's own subsequent testimony two days later in the hearing, where he testified that:



Mr. Becraft said as the horses are off riding and being loaded in the gate,<sup>7</sup> that a veterinarian should examine that horse. I said, Butch, we cannot do that. I said, because if we notify a veterinarian, he will have to scratch that horse. And then I went on to further explain that it was the duties of and the responsibilities of the veterinarians to recognize those problems and bring their observation to the stewards, not vice versa.

*Day 3 Transcript, p. 152.*

19. Veitch justified his failure to contact the trackside veterinarian by stating:

My reasoning was that, first of all, we *never* contact a veterinarian on a veterinarian or medical opinion. We are not trained that way. That is not our responsibility. It is the responsibility of the state veterinarians.

*Day 1 Transcript, p. 258.*

20. Veitch then admitted there had been a prior circumstance earlier in 2010 in Kentucky where in fact he as the chief steward had called the trackside veterinarian and directed the veterinarian to examine a horse prior to the race. *Day 1 Transcript, p. 269.*

21. Numerous self-serving contradictions were identified between statements Veitch made to investigators and statements made by Veitch at the hearing.

22. Veitch also admitted the portion of the prerace coverage he watched on the day of the race included video of Life at Ten. He confirmed that Life at Ten was visibly stiff before the race in the video which he watched. *Day 2 Transcript, p. 16.*

23. Despite having been informed that Life at Ten wasn't warming up properly, Veitch did not call the veterinarians to examine her because he thought it would force them to scratch her. He said:

That was *my own determination and my own thinking*. As I explained to Mr. Becraft, that those decisions and observations should – and should only be made by a veterinarian who is in position through education and employment to make those decisions.

*Day 2 Transcript, p. 49.*

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<sup>7</sup> "Gate" is an abbreviated form of starting gate, which is the mechanism horses are placed in to insure that all are able to start at the same instant when the gate opens.

24. Veitch's testimony attempted to deny responsibility, and shift the responsibility to many others involved in the race. Despite the above testimony, he also argued that it wasn't his decision, and that any action always is an action of all three stewards. Then, Veitch went on to say that stewards had to rely on the jockey, the trainer, and the state veterinarians, who Veitch identified as having a duty "to give us the information that we need to make our decision." *Day 2 Transcript, p. 90.*

25. After Life at Ten failed to finish the race, Veitch did not send her to the testing barn for blood and/or urine sampling. Veitch reasoned that since she did not run well, there was the possibility that she might be in distress and needed veterinary care. Veitch agreed that Life at Ten was not in any visible distress or lame after the race. *Day 2 Transcript, p. 98.*

26. Dr. Bryce Peckham, Chief Track Veterinarian for the Kentucky Horse Racing Commission, was the first veterinarian on the track to examine Life at Ten on the track after she failed to finish the race. He found no distress, no lameness, and no need for any veterinary attention, and reported that information by radio to the other veterinarians and to the stewards. Peckham is certain that the stewards could hear his radio report after the race that Life at Ten was not in distress. *Day 2 Transcript, p. 170-172.*

27. Veterinarians lack the authority to designate a horse for testing blood and/or urine sampling after the race. They may only test a horse with a steward's direction to do so. None of the veterinarians working for the Racing Commission received any steward directions or questions after the race inquiring about any distress Life at Ten may have been experiencing. The stewards did not contact the veterinarians to order Life at Ten to be designated for blood and/or urine sampling. *Day 2 Transcript, p. 170-176.*

28. Peckham also testified that if a horse's health is a concern, the stewards can direct that blood be drawn at the horse's barn instead of the test barn, or that a horse can be quickly sampled and dismissed from the test barn. Even if a horse is in distress, testing of blood samples can easily be done.

29. One condition identified as a possible cause of Life at Ten's failure to run was "tying up". Although he did not agree that tying up was the cause, another veterinarian, Foster Northrop explained the term:

The technical name is rhabdomyolysis. It is where the muscles cramp and actually start breaking down in severe cases. But generally a race horse ties up much less severe than the bad case. And they just start walking very tight. And if you stop them, they have a hard time starting back walking.

*Day 3 Transcript, p. 47.*

30. Veitch's counsel argued at Ten was "tying up" on race day and needed immediate veterinary care, and therefore couldn't be sent to the testing barn to be sampled or tested after the race. There was no evidence introduced at the hearing that was consistent with "tying up", and the hearing failed to establish that "tying up" was the basis of her poor performance, although in one report says the treating veterinarian attributed the racing failure of Life at Ten to "tying up".

31. However, even if a horse were "tying up" and in need of immediate veterinary attention, that horse could still be tested quickly at the testing barn, and, in an emergency situation, could be treated there. *Day 2 Transcript, p. 187-188.*

32. Dr. Peckham was asked if he would want a steward to alert him as a veterinarian about a jockey making a live television statement about his concern for a horse not warming up properly. He was asked if that was the type of information he would like to know as a veterinarian, and said:

A Absolutely.

Q Why do you say absolutely?

A Because, again, any time where there is a probable or possible situation with the health, safety, or welfare of the racehorse, we want and need to know about it. Because that's why we are there.

*Day 2 Transcript, p. 206.*

33. Dr. Peckham completely disagreed with the premise that having the stewards identify a horse for inspection would automatically result in that horse being scratched from the race. *Day 2 Transcript, p. 163.*

34. Dr. Peckham also testified that blood and urine samples can be collected from a horse either at the testing barn or at the own barn of the racehorse, but only with express authorization from the stewards. The stewards did not authorize sampling of Life at Ten after the race. *Day 2 Transcript, p. 175-176.*

35. Charles Scott Chaney has served as a racing steward in California for six or seven years, with most of his duties at the Southern California tracks such as Hollywood Park, Santa Anita, and Del Mar. Chaney is also nationally accredited as a senior flat racing steward, and served as an instructor in national training classes for stewards. Chaney testified that Ms. Zimmerman regularly called the stewards during her work for ESPN:

We are lucky enough to have Amy Zimmerman. She is the executive producer of HRTV, horse racing television, which is located -- has their headquarters at Santa Anita. And she is also a bit of a horse lover if you will. And she will call on occasion -- I would say about once a month -- if she sees a horse warming up that doesn't quite look right to her. So it is not uncommon for her to call and say, hey, judge. You know, number 3 kind of looks funny jogging off there. And so, you know, as part of a sort of normal procedure, we get on the radio, whoever happens to take the call, just get on the radio and say, steward to doc, can you take a second look at number 3, please.

So it is not speculative to say what I would do. I know what I would do because it happens on a somewhat frequent basis.

*Day 3 Transcript, p. 14.*

36. Chaney's testimony was based on how stewards handled similar situations across the country, and was not predicated on any regulations that were specific to California. Part of his testimony provides a succinct and descriptive summary of the problem presented by Veitch's actions on November 5, 2010:

A If we are given any what we view as credible information that a horse on the track could be unsound or unfit to race, you simply pass that information along to the racing veterinarian on duty that day.

If you are in the stands at the Breeder's Cup at Churchill Downs and you have some credible information -- and I think -- I believe that, you know, if a Hall of Fame jockey or one of the best jockeys in the world says this horse might not be right, you pass that information along to the vet and allow them to make the decision of whether the horse is sound enough or fit enough to run.

Q Aren't you concerned that if you call the state veterinarian that you are going to influence the state veterinarian's decision?

A You know, I suppose that's a slight concern. Because calling sort of any attention to one particular horse does that, just does that, just that. I mean it calls attention to that particular horse. But the alternative is far worse. I mean, you know, the veterinarians are paid professionals. Although I have a horse background, I don't have a veterinary license, you know. So the practice should be to give them all of the information and allow them to make the determination about whether the horse is sound enough. The alternative is ludicrous.

If the steward has some information that the horse is not sound or not fit enough to run, that's incredible information. To sort of stick your head in the sand and not say anything or do anything is just not up to standard.

*Day 3 Transcript, p. 15-17.*

37. Dr. Mary Scollay is the Veterinarian Equine Medical Director for the Kentucky Horse Racing Commission. Based on her position and past experience as a racetrack veterinarian, Scollay testified that if a jockey says before a race that a horse is not warming up normally, that is the kind of information a veterinarian needs to have to realize that horse needs further scrutiny and examination. Only the stewards can scratch a horse, but the veterinarians

can make a recommendation to the stewards of horses they inspect and examine. *Day 2 Transcript*, p. 222.

38. Dr. Foster Northrop is an equine racing veterinarian and member of the Kentucky Racing Commission. On November 5, 2010, he was working as the backside on-call veterinarian for the American Association of Equine Practitioners. His job was to treat any injured horse and then consult with another American Association Equine Practitioner veterinarian and report that information. After the race, Life at Ten walked perfectly normal all the way back to the barn, and was not in distress, uncomfortable or lame, and looked like a normal horse walking. Based on his 22 years of experience, Northrop also did not feel Life at Ten had tied up. *Day 3 Transcript*, p. 43, 46, 60.

39. Life At Ten was the second favorite at the start of the race, and had pronounced recent success in racing. (*Ex. 1A*, p. 7 “Life At Ten leads the way, a five year old...has won seven of her last eight.” See also, *Ex. 3*.)

40. After the race, however, Veitch took no action to require Life At Ten to be examined or sampled by any veterinarian. Becraft recalled that after the race “something came over the radio [that] she is fine.” *Day 1 Transcript*, p. 123. Becraft said there was no discussion among the stewards whether to have the horse examined or sampled. *Day 1 Transcript*, p. 124. Leigh testified there was no discussion about having Life At Ten examined or sampled after the race. *Day 1 Transcript*, p. 175.

41. Subsequent to these events, the jockey, Johnny Velazquez, entered an Agreed Disposition, filed April 13, 2011, in which he admitted to violating “one or more rules” by his actions in the 2010 Ladies’ Classic. By the terms of this Agreed Disposition, Mr. Velazquez paid the Commission a fine of \$10,000.00. (*Ex. 26*.) The information that Life at Ten’s jockey

was concerned about how she was warming up was information which the trackside veterinarians should have known to determine whether she should race.

42. The sampling of blood and urine from Life at Ten after the race was necessary to determine the cause of her failure to perform.

43. In his testimony, John Veitch made several criticisms of others at the track and explanations to deflect responsibility, often in ways that were facially illogical. Veitch found it significant that he had never directed a track veterinarian to examine a horse based on a comment made by a jockey on television. *Day 3 Transcript, p. 98*. Instead of addressing his refusal to act once he was provided with information, Veitch chose to criticize the fact that information from the jockey was available before the race. He also found fault by pointing out that he had not been invited to ESPN's pre-production meeting prior to the races. *Day 3 Transcript, p. 99*. Veitch says that he would never have given permission for a pre-race interview to be conducted with a jockey. This was his explanation:

Because I think that it borders on the integrity of the sport where the information the jockey may be giving might be pertinent, might not be pertinent, might be truthful, might not be truthful.  
*Day 3 Transcript, p. 100.*

44. Veitch was asked "When a jockey says a horse is not warming up the way she normally does, does that create a concern for you?" His response was as simple as it was impossible to understand. He answered simply "No." *Day 3 Transcript, p. 103*.

45. However, a moment later, Veitch testified that the veterinarians were responsible to react to "evidence of any abnormality." *Day 3 Transcript, p. 105*. But such evidence cannot be shared by a steward, according to Veitch:

If there is a problem, the problem will be reported to the state veterinarian by the jockey who has more information than we have. And we make it a policy never

to call a veterinarian. Because we feel that it will influence their decision, which is inappropriate.

*Day 3 Transcript, p. 110.*

46. Veitch was asked about Breeders' Cup Day, and why after the race he didn't go to the barn, jockey quarters or hotel that day to inquire about why Life at Ten had not performed well. He did not investigate immediately after the race because

Mr. Pletcher (the trainer) is going to be terribly upset. Mr. Velazquez (the jockey) is going to be terribly upset. There is going to be the possibility of the owners being there. I know that the veterinarians are there. They are trying to evaluate the horse. They don't need me to instantaneously be on the spot to ask those questions.

*Day 3 Transcript, p. 122.*

47. Veitch also thought it was unnecessary to do any investigation the next day either, because it was another Breeders' Cup Day and a high pressure day for the trainer and jockey. He further reasoned that

We didn't feel it was appropriate on that day (the next day) for us to go or send an investigator to that barn. It just looks bad. And it puts them -- it puts Mr. Pletcher and Mr. Velazquez and the owners in a position that we felt was unnecessary. Courtesy.

*Day 3 Transcript, p. 123-124.*

48. A little more than two months after the race, Veitch was interviewed by the Transportation Cabinet investigators in January 2011. Veitch testified at the hearing under oath and admitted that at six different times during that interview, Veitch denied saying the horse would have to be scratched if the stewards called the veterinarians. Veitch agreed that he stated "That's not in my character to say something like that". *Day 3 Transcript, p. 142.*

49. Those earlier statements by Veitch denying his actions were later contradicted by the interviews and testimony of the other stewards. At the hearing, Veitch's only explanation



for inconsistent version was “At the time I could not remember that I said that. But I do remember now.” *Day 3 Transcript, p. 143.*

50. Veitch was asked about his refusal to order any post-race testing of Life at Ten:

Q And what you are telling us is that conducting a relatively simple blood test, even at that horse's own home to help insure the public's faith in the integrity of the system, was something that you did not feel was necessary?

A I felt it was necessarily for her to go home immediately and get the attention that she needed as quickly as possible.

Q Well, my question is that's for the horse. Secondarily, though, you are responsible to the betting public. What did you do to help them?

A There was nothing I could do to help them.

Q Like have a blood test be taken from the horse?

A How would that help them?

*Day 3 Transcript, p. 163.*

### CONCLUSIONS OF LAW

1. Under KRS 230.215(1), “it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane.”

2. KRS 230.215(2) vests the Kentucky Horse Racing Commission with the plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth.

3. One of the most difficult challenges for any entity to perform is to review its own actions critically, and to insure that the entity complies with the same rules it is obligated to enforce for others.

4. The Kentucky Horse Racing Commission is an independent agency of state government created to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. KRS 230.225.

5. The Kentucky Horse Racing Commission is vested with jurisdiction and supervision over all persons on association grounds. KRS 230.260(1).

6. All racing licenses are subject to all administrative regulations and conditions as prescribed by the Commission. KRS 230.290(2).

7. A steward, as a participant in horse racing, is required to be licensed by the Commission. KRS 230.310; 810 KAR 1:001(54).

8. Licenses granted by the Commission are subject to denial, revocation, or suspension by the Kentucky Horse Racing Commission in any case where it has reason to believe that any provision of this Chapter, administrative regulation, or condition of the Commission affecting it has not been complied with or has been broken or violated. The Commission, in the interest of honesty and integrity of horse racing, may promulgate administrative regulations under which any license may be denied, suspended or revoked. KRS 230.320(1).

9. The Commission “may at any time order that any case pending before the stewards be immediately transferred to the racing commission for an administrative hearing conducted in accordance with KRS Chapter 13B.” KRS 230.320(4).

10. The Commission is authorized to promulgate any reasonable and necessary administrative regulation for the enforcement of the provisions of KRS Chapter 230 and the conduct of hearings held before it. KRS 230.370.

11. Complaints against stewards shall be referred to the Kentucky Horse Racing Commission. 810 KAR 1:017 Section 8.

12. The Kentucky Horse Racing Commission has full investigative powers to determine if any racing regulations have been violated. 810 KAR 1:024 Section 9.

13. When the Commission holds a hearing, it shall be conducted pursuant to KRS 13B. Written notice must be provided to the parties, listing the time and place of the hearing, the authority and jurisdiction for holding the hearing, the specific statute or administrative regulation alleged to be violated, and a clear and concise factual statement supporting the allegations. 810 KAR 1:029 Section 3.

14. KRS 13B.030 authorizes the agency head, in this case, the Kentucky Horse Racing Commission, to exercise all powers conferred on an agency to conduct an administrative hearing, or to delegate those powers to a hearing officer, so long as the agency head does not delegate the power to issue a final order. Subsection 2 allows the agency to contract with another agency, in this case, the Office of Administrative Hearings, for hearing officers.

15. A hearing officer at the appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement, and may also give the parties opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended orders. KRS 13B.080.

16. For administrative hearings, findings of fact are based exclusively on the evidence in the record. Evidence may be received in written form if doing so will expedite the hearing without prejudice to the interests of any party. KRS 13B.090(1)-(4).

17. In all administrative hearings, unless otherwise provided by law, the agency (here the Commission) bears

the burden to show the propriety of a penalty imposed or the removal of a benefit previously granted. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.  
KRS 13B.090(7).

18. 810 KAR 1:004 Section 4(1) states that:

In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of race meetings, and without limiting the authority of the stewards to perform these and other duties enumerated in these administrative regulations, the stewards shall have the following specific duties and responsibilities:

(1) To take appropriate action on all misconduct or administrative regulation infractions, to cause investigations to be made of all instances of possible infractions, and to take appropriate action to prevent an administrative regulation infraction;

19. 810 KAR 1:004 Section 4(8) adds the following specific responsibility:

To supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to declarations and scratches. The stewards may in their discretion refuse the entry of any horse by any person, refuse to permit a declaration or scratch, or may limit entries;

20. 810 KAR 1:012 Section 9(1) states that “a horse shall not be entered or raced that is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person.”

21. 810 KAR 1:016 Section 14 states that:

Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all

other persons connected with the horse. If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards;

22. 810 KAR 1:018 Section 11 directs that “the commission veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.”

23. 10 KAR 1:004 Section 3(1) requires stewards to “exercise immediate supervision, control and regulation of racing...authority over all horses and all persons, licensed or unlicensed, on association grounds during a race meeting as to all matters relating to racing.”

24. Jockey Johnny Velazquez breached his statutory and regulatory duties in the Ladies’ Classic, and paid a substantial fine. (*Ex. 26.*) That breach does not excuse Veitch’s failures as steward. He was aware the jockey expressed concerns about his mount, and failed to share that information with the trackside veterinarians.

25. Veitch knew it was important to inspect Life at Ten. He testified that from six stories up, using binoculars, he looked at her after hearing the statements of the jockey. Veitch acknowledged that he is not a veterinarian, and that he would want a veterinarian to make such an evaluation of the horse, which makes his breach of duty by his conscious refusal to contact the veterinarians even more inexplicable.

26. Veitch states veterinarians should be left exclusively to their own observations, and that information should be withheld from them. Such an argument is contrary to Kentucky’s regulations which prohibit unsound horses from racing. 810 KAR 1:012 Section 10(1) codifies the prohibition against an unsound horse from racing. This regulation states that “the stewards may at any time cause a horse on association grounds to be examined by a qualified person.” The

on-track veterinarian is the qualified person to examine the horse. This regulation requires the stewards to tell the on-track veterinarians to examine a horse if there is a question about whether the horse is “serviceable” or in “sound racing condition.”

27. 810 KAR 1:016 Section 14 places a duty on stewards to

take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse. If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized...

28. The duty here is the same whether the race has a \$20,000 purse or, as in this case, a \$2,000,000 purse. The only factual significance of the high profile nature of the race at issue in this appeal is that due to the newsworthy nature of the Breeders’ Cup Races, extra information was available to the public *and to the stewards* that day. The same duty of the stewards must apply if the race involved was one which is at the lower levels of competition, such as a maiden claiming race at Ellis Park, so long as there was information to alert stewards to a problem which required investigation. That same obligation exists to designate a horse for post-race sampling.

29. 810 KAR 1:130, Section 6 requires that for post-race sampling, “the chief state steward, or his or her designee, shall consider all information available, including: (a) The performance of a horse favored to win the race by the wagering patrons;... and (e) Security intelligence.

30. Life at Ten was the second favorite in the field and failed to compete, which is a factor under 810 KAR 1:130 Section 6(a). Although “security intelligence” is not defined in the regulation, the interview with the Velasquez before the race where he repeatedly stated the horse was not warming up properly is a factor appropriate to be considered under 810 KAR 1:130 Section 6(e).

31. 810 KAR 1:018 Section 11 states that “Sample collection shall be done in accordance with the instructions provided by the commission veterinarian. The commission veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.”

32. The above regulation is designed to protect against a horse being raced under the influence of illegal substances that could alter outcomes and endanger the people and horses that participate in racing. Under the regulation and 810 KAR 1:016(14), only the stewards may designate a horse to be sampled after the race.

33. Under 810 KAR 1:130, Section 6, Veitch, as the chief steward is specifically named as the individual official who may (along with his or her designee) authorize post-race sampling.

34. Was Life at Ten given any prohibited substance on Breeders Cup Day? No evidence was presented at the hearing that suggests such a violation occurred, but unfortunately, no one will ever know. Because Veitch failed in his duty to designate Life at Ten for sampling (and failed to alert the veterinarians before the race), the public and racing participants will never be assured of what the true answer is to that question. The public will never know if there were any acts surrounding this race which violated racing’s integrity.

35. During the hearing, Veitch asked how designating Life at Ten for sampling could have helped the betting public. Veitch’s failure to understand how post-race testing of horses by sampling helps the betting public is inexplicable, given that he has for five years been in charge of racing’s oversight system that includes post-race testing as a method of protecting horse racing’s integrity.

36. Veitch's claim that he is being singled out is not supported by the record. One of the other stewards specifically objected to Veitch, and specifically recognized the stewards' duty to contact the veterinarians. That steward, Butch Becraft, realized their duty was to allow the veterinarians to make an inspection and recommendation on whether Life at Ten should be scratched. Veitch admitted in his testimony that he as chief steward responded by telling Becraft the stewards were not going to contact the veterinarians. Nor did Veitch establish facts which would raise an Equal Protection argument of discriminatory application of the statutes and regulations. As the chief steward charged with enforcing the rules, Veitch was the only person in a position to insure the veterinarians were informed to the need to investigate, and by regulation was the only person in a position to order the sampling of Life at Ten after her failure to perform.

37. Veitch violated 810 KAR 1:004 Section 4(1), when knowing that the jockey of Life At Ten was commenting on her fitness for racing, he failed to exercise his duty to "take appropriate action on all misconduct or administrative regulation infractions, to cause investigations to be made of all instances of possible infractions, and to take appropriate action to prevent an administrative regulation infraction." He also violated this regulation by failing to send the horse to the detention barn after her poor performance. Mr. Veitch had a duty to investigate whether the horse had been administered a prohibited substance. His failure to send the horse to the detention barn was a breach of this duty.

38. Veitch violated 810 KAR 1:004 Section 4(8) when he overruled Butch Becraft's request to have Life At Ten examined by the state veterinarians. By doing this, Veitch failed "to supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to declarations and scratches."



39. Veitch violated 810 KAR 1:012 Section 9(1). He not only failed to pass along the critical information to veterinarians that Life at Ten should be inspected, he actively blocked the direction of a fellow steward that such information must be directed to the veterinarians. Such information was needed so that Life at Ten could be examined to determine whether she was “in serviceable, sound racing condition.”

40. The regulation provides that “the stewards may at any time cause a horse on association grounds to be examined by a qualified person.” Veitch is not qualified to conduct an examination of this horse. Veitch had a duty to request that one of the veterinarians on the track examine the horse to determine that she was in serviceable, sound racing condition. His failure to do so is a violation of this regulation.

41. Veitch violated 810 KAR 1:016(14). Despite the marked reversal of form in Life At Ten, Veitch failed to order veterinarians to collect post-race samples of Life At Ten to determine whether any regulations were violated, and also failed to investigate after the race or the next day.

42. Veitch violated 810 KAR 1:018 Section 11 by failing to require KHRC veterinarians to collect blood and/or urine samples from Life At Ten “to determine if there has been a violation of this administrative regulation [pertaining to medications].” Veitch’s reasoning that the horse was in distress is in no way supported by any proof from the hearing.

### **PENALTY RECOMMENDATION**

43. The above-referenced violations are subject to the range of penalties provided for in 810 KAR 1:028 Section 10, which states:

Section 10. (1) Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating

to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation; or

(c) Eject or exclude persons from association grounds for a length of time the commission deems necessary.

(2) The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

44. In establishing a recommended penalty, one required factor is consideration of the purpose and intent of the legislature in creating the Kentucky Horse Racing Commission, as stated in KRS 230.215(2):

The purpose and intent of this chapter ... (is) to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth.

45. Veitch's original conduct was not proven to be intentional. While Veitch intended for the veterinarians to not be informed about the concerns with Life at Ten, the proof did not suggest he was doing so with a malicious intent. Although his failure to act before the race is grossly negligent and harmful to the purpose of the Commission, there was no proof that he was taking part in an intentionally corrupt scheme. That level of intent must be considered in determining the appropriate penalty.

46. For Veitch's post-race violations, his reasons for not promptly investigating afterwards were unconvincing. His failure to designate Life at Ten for sampling and his failure to investigate on November 5, 2010 or November 6, 2010 are inexplicable. His failure was consistent with someone who was aware of making a previous error and was unwilling to conduct a basic post-race investigation to address that previous error. Veitch's actions and post-race violations were grossly negligent, and must be considered in determining the appropriate penalty.

47. In *Deaton v. Kentucky Horse Racing Authority (now Racing Commission)*, 172 S.W.3d 803, (Ky. Ct. App. 2005), the Kentucky Court of Appeals considered a challenge to a 150-day suspension for a trainer who was negligent in connection with an illegal substance being administered to a horse he was training.

Even considering the trainer's conduct was negligent and not intentional does not make the penalty unreasonable. "While the fines imposed may be intended to punish appellants, they are also designed to deter similar conduct in the future." *Vanhoose v. Commonwealth*, Ky.App., 995 S.W.2d 389, 393 (1999). "The assessment of a penalty is particularly delegated to the administrative agency. Its choice of sanction is not to be overturned unless 'it is un-warranted in law' or 'without justification in fact.' The assessment is not a factual finding but the exercise of a discretionary grant of power." *Id.*, quoting *Panhandle Coop. Ass'n v. Environmental Protection Agency*, 771 F.2d 1149, 1151 (8th Cir.1985) (citations omitted).  
*Deaton*, at 808.

48. In *Deaton*, the trainer was found to have been negligent in supervising his stable, which resulted in his horse being able to be administered an illegal item, and a 150 day suspension was reasonable. Here, Veitch has shown gross negligence in his pre-race oversight duties, and has shown gross negligence in his post-race failure to direct Life at Ten for sampling and failure to properly investigate. Veitch also has been repeatedly deceptive and contradictory in his statements during the investigation, and steadfastly refused to acknowledge his mistake or

responsibility. Veitch's level of culpability and negligence is much higher than that found in *Deaton*, and his factual violations are more significant.

49. The position of chief steward is one which is at the center of all oversight of horse racing. This case shows that failures or violations by the chief steward are nearly impossible to immediately correct. Therefore, the chief steward must be able to be relied upon to provide oversight without immediate supervision from the Commission. The penalty for violations by the chief steward must be sufficient to provide deterrence against future violations by those in the role of chief steward.

50. Veitch argues his special position as chief steward qualifies him for absolute and unfettered discretion. The regulations do provide latitude to the steward in his determinations, but within a framework of mandatory duties and items which must be considered that are described above. The chief steward has broad but not absolute power. Absent the effort by the Commission to use the provided regulatory authority to separate the investigation and to police the steward who is in charge of policing horse racing, Veitch's actions may never have been subject to a critical evaluation. This is another reason that the penalty for violations by the chief steward must be sufficient to provide deterrence against future violations by those in the role of chief steward.

51. The initial mistake of refusing to contact the veterinarians before the race was gross negligence. After the race, Veitch refused to designate Life at Ten for sampling and refused for two days to do investigation. Veitch's post-race conduct shows he was aware his original actions were wrong, and shows he was unwilling to investigate the situation around his wrongful actions. The post-race conduct dramatically compounded the error, and greatly

increased the harm to the integrity of racing. Veitch's post-race conduct must also be considered as a factor in determining the appropriate penalty.

52. Because of Veitch's violations, the uncertainty over Life at Ten's performance will never be fully resolved. Such a consequence does not maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth, and must also be considered as a factor in determining the appropriate penalty.

53. Considering the above factors, this decision recommends a one-year suspension for Veitch's violations of the above-referenced regulations.

#### **FINE IN LIEU OF SUSPENSION**

54. 810 KAR 1:028 Section 10(2), the penalty portion of the regulation also refers to fines as a penalty:

(2) The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

55. Subsection 2 is the provision which authorized the jockey of Life at Ten to agree with the Commission to payment of a \$10,000 fine in lieu of a suspension for his failure to inform the veterinarians of his concerns about Life at Ten prior to the race. This provision is only available as an alternative to suspension if both the Commission and the licensee "enter into an agreement to payment of a fine".

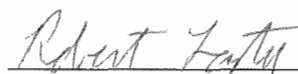
56. This recommended decision lacks authority to consider a fine as a penalty, and therefore makes no recommendation about what fines may be appropriate under these facts.

Such resolution remains a possibility prior to the entry of a final order by the Commission, but only by agreement of the parties.

### **RECOMMENDATION**

This decision recommends that the Kentucky Horse Racing Commission adopt the above Findings of Fact and Conclusions of Law, and recommends that the Commission enter a final order affirming the March 16, 2011 charges against John Veitch, and imposing a one-year suspension on John Veitch for the violations referenced in this recommended decision.

**DATE OF MAILING OF RECOMMENDED ORDER: DECEMBER 14, 2011.**

  
\_\_\_\_\_  
ROBERT LAYTON  
CHIEF HEARING OFFICER  
OFFICE OF ADMINISTRATIVE HEARINGS  
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### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to the authority of KRS 13B.110(4), each party shall have a period of fifteen (15) days from the mailing of this recommended order within which to file exceptions to the recommendations with the agency head, the Executive Director of the Kentucky Horse Racing Commission. A copy of the exceptions should also be served on the Office of Administrative Hearings. A failure to timely file exceptions to this report with the agency head may constitute a waiver of appeal rights to the extent the agency head adopts the recommendations of the hearing officer in the agency's final order. See *Ranier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Pursuant to the authority of KRS 13B.140, all final orders of agencies are subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue within thirty (30) days after the final order is mailed or delivered by personal service. Some courts, pursuant to the language of KRS 23A.010(4), which requires that an appeal to circuit court be docketed as an original action, require that a summons be served when filing the appeal petition in said Circuit Court.

KRS 230.330 states: Any licensee or any applicant aggrieved by any final order of the racing commission may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing RECOMMENDED ORDER, was, on this 14<sup>th</sup> day of December, 2011, sent by electronic scanned email service and also was mailed by first class mail, postage prepaid to:

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