

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)**

810 KAR 2:030. Chemical dependency.

RELATES TO: KRS 230.215, 230.260(1), 230.290(2), (3), 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(1), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.260(1) vests the racing commission with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the racing commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which a license may be denied, suspended, or revoked. This administrative regulation prohibits licensees of the commission from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

Section 1. Definitions.

(1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Crimes involving drugs and drug paraphernalia" means all activities involving drugs and drug paraphernalia which are illegal under KRS Chapter 218A or other statutes or administrative regulations of this Commonwealth, and similar laws and regulations of other states and the United States, and which include the use of, possession of, or trafficking in marijuana, cocaine, or any other controlled substances; possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.

(3) "Documentation" means proof of regular attendance at meetings, counseling sessions, clean drug test results (if suspended for a drug violation), and certification from the treatment program indicating full compliance with treatment and completion of the program.

(4) "Drug paraphernalia" is defined by KRS 218A.500(1)..

(5) "Under the influence of intoxicants" means a person's mental or physical abilities are impaired by the presence of alcohol or other drugs in his body to the degree that the person is not able to safely and properly perform his job functions.

Section 2. Prohibited Activities. A licensee shall not:

(1) Be under the influence of intoxicants while:

(a) Engaged in the activities for which the license is held; or

(b) On association grounds;

(2) Commit any crime involving drugs or drug paraphernalia;

(3) Fail to comply with substance abuse treatment required pursuant to an evaluation conducted under this administrative regulation;

(4) Tamper with a drug or alcohol test; or

(5) Refuse to submit to drug or alcohol testing upon request of the commission, a steward, a judge, or any other authorized employee of the commission.

Section 3. Evidence of Violation. The following shall be presumptive evidence of a violation of this administrative regulation:

(1) While engaged in the activities for which the license is held, or while on association grounds:

(a) A breath, urine, or blood test result revealing an alcohol concentration of 0.05 percent or more;

(b) A positive result from a drug test for marijuana, cocaine, or other controlled substance for which the licensee does not have a current and valid prescription;

(c) A positive result for a prescribed medication for which the individual has a valid prescription, but the prescription for which indicates that taking the medication may impair vision, impair the ability to perform normal daily functions, or cause drowsiness, or the prescription for which advises using care when operating a car or machinery;

(d) A positive result indicating more than one (1) prescribed medication for which the individual has valid prescriptions, but the prescription directions for which advise against taking more than one (1) prescribed medication at a time; or

(e) A positive result that exceeds the allowable limit prescribed on the medication label; or

(2) While participating in a race as a racing official, or while mounted on a horse or stable pony or mounted in a sulky on association grounds, a breath, urine, or blood test result revealing an alcohol concentration greater than 0.00; or

(3) A conviction in any court of law for a drug-related offense.

Section 4. Discipline.

(1) First offense.

(a) For a first time violation of this administrative regulation, the offender's license may be suspended for up to thirty (30) days.

(b) The offender may be required to undergo an evaluation by a professional in the field of addictive or substance abuse disorders approved by the commission.

(c) If the evaluator determines the existence of a substance abuse problem, the offender shall be required to comply with the recommended course of treatment.

(d) For a first time violation of this administrative regulation for an alcohol infraction or crime involving drugs and drug paraphernalia, the stewards or judges shall have the discretion to impose a lesser penalty and may excuse the offense for counting purposes under this administrative regulation.

(2) Second offense.

(a) For a second violation of this administrative regulation within a three (3) year period, the offender's license may be suspended for up to sixty (60) days.

(b) The offender shall be required to enroll in and complete a substance abuse program approved by the commission.

(3) Third offense. A third violation of this administrative regulation within a three (3) year period may result in the revocation of the offender's license.

(4) Zero tolerance offense. Conviction in any court of law of a drug trafficking offense shall result in revocation of the offender's license even if it is a first offense under this administrative regulation.

(5) In determining the three (3) year period under this administrative regulation, the period shall be measured from the date on which the violation occurred. If the violation is a failure to complete recommended treatment, the violation date shall be calculated from the date of the

first missed meeting, or session. For the purposes of subsections (2) and (3) of this section, violations occurring after the three (3) year period shall not be considered.

Section 5. Basis for Testing.

(1) In deciding whether drug tests should be administered, stewards or judges may require:

- (a) All licensees to be tested on a particular day;
- (b) Licensees on a particular day to be tested totally at random; or
- (c) Those licensees that the stewards or judges has a reasonable suspicion may be under the influence of intoxicants to submit to drug and alcohol testing.

(2) In determining whether there is reasonable suspicion to require testing, the stewards or judges may consider any of the following factors:

(a) Unexplained or continued violations of KRS Chapter 230 or KAR Title 810 which have a detrimental effect on racing;

(b) Involvement in any accident that causes injury to a person or animal at the track or any near accident that creates a clear danger of accident or injury to a person or animal at the track;

(c) Willful conduct detrimental to horse racing as evidenced by continued violations of KRS Chapter 230 or KAR Title 810, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track;

(d) Observable physical or emotional impairment at the track;

(e) Involvement in a race of questionable outcome or circumstance as determined by the stewards or judges;

(f) Willful abuse of an animal or person who is engaged in a race, work, or exercise at the track;

(g) Prior positive drug or alcohol test or tests in this or other jurisdictions, excluding those for which a valid legal prescription is provided;

(h) Performance of prescribed duties in a manner that indicates a best effort to win is not present at the track;

(i) Information supplied by:

- 1. A law enforcement agency;
- 2. The United States Trotting Association;
- 3. The Kentucky Horsemen's Association;
- 4. The Association of Racing Commissioners International; or
- 5. The racing commission of any state or country;

(j) Any other conduct at the track that can be documented and provides reasonable grounds to suspect:

- 1. Dependence on, possession of, or usage of a controlled substance; or
- 2. An alcohol violation;

(k) Refusal to provide a urine or blood sample if requested to do so in accordance KAR Title 810; or

(l) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

Section 6. Payment of Expenses Related to this Administrative Regulation. A licensee shall be responsible for all or part of the expenses associated with violating this administrative regulation, including the cost of treatment and reinstatement of the license. The responsibility for payment of expenses shall be as follows:

(1) For a drug or alcohol test initiated by the commission to determine if a violation has occurred, the commission shall bear the cost unless the test reveals a violation. If the test reveals a violation:

(a) For a first offense, the offender's responsibility for costs shall be based upon consideration of the factors set forth in Section 5(4)(a) through (l) of this administrative regulation, and determined by the stewards, judges, or other authorized commission employee; and

(b) For a second or later offense, the offender shall bear all costs.

(2) Failure to pay any costs imposed shall be grounds for denial of reinstatement.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prohibits licensees of the Commission from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent alcohol and drug abuse at locations under the jurisdiction of the Commission, to provide for the safety racing participants and spectators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes prohibitions concerning alcohol and drug abuse at locations under the jurisdiction of the Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in ensuring that racing activities are conducted in a safe manner free of the hazards of drug and alcohol abuse.

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed participants in horse racing will be required to refrain from alcohol and drug abuse and be subject to testing at locations under the jurisdiction of the Commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed upon licensees, except to the extent that a licensee may be required to enroll in and complete a substance abuse program or pay for all or a portion of testing expense upon a positive test.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Licensed participants in horse racing will benefit from racing activities that are conducted in a safe manner free of the hazards of drug and alcohol abuse.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will apply to all licensees in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): Slight increases in expenditures may result in those instances in which the commission assumes the cost of drug or alcohol tests which are negative.

Other Explanation: The Commission does not derive revenue from this regulation; the penalties are suspensions and not fines.