

## **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 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 activities involving drugs and drug paraphernalia that 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 other controlled substances; possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.
- (3) "Drug paraphernalia" is defined by KRS 218A.500(1).
- (4) "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 a 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 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 a 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 a 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) 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 have 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 that have a detrimental effect on racing;
- (b) Involvement in an accident that causes injury to a person or animal at the track or a 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 with 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(2)(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.
- (45 Ky.R. 1870; 3071; eff. 5-31-2019.)