



## **THOROUGHBRED DIRECTIVE NUMBER 1 – 2017 Revisions to the Human Alcohol and Drug Rules**

### **RULES OF THOROUGHBRED RACING 2016**

*On February 23, 2017 the Registrar approved revisions to Chapter 38 Alcohol and Drug Violations – Human and related Chapter 2 Definitions, as outlined below. The revisions will come into effect on April 1, 2017. A clean copy of the revisions is attached hereto at Appendix “A”. A copy of the previous version is attached hereto at Appendix “B”*

### **Chapter 2 DEFINITIONS**

**Alcohol** means the intoxicating agent in Beverage Alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl.

**BAC** means Blood Alcohol Content Concentration. It is the grams of alcohol in 100 milliliters of blood when referenced as .02 to .039 BAC and the equivalent of 20 to 39 milligrams of alcohol in 100 milliliters of blood.

**Beverage Alcohol** means beer, wine and distilled spirits.

~~**Drug** means any substance, including alcohol, illegal drugs or medications, the use of which has the potential to adversely affect the way a person thinks, feels or acts. Drugs of concern are those that inhibit a person’s ability to perform his or her job safely and productively, including the following:-~~

~~**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl.-~~

~~**Beverage Alcohol** refers to beer, wine and distilled spirits.-~~

~~**Illegal Drug** means any drug or substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law.-~~

~~**Medication** means a drug obtained legally, either over the counter or through a prescription.-~~

~~**Fit for Work** means being able to safely and effectively perform assigned duties without any limitations due to the use or after effects of alcohol, illegal drugs, medications or other substances that can impact performance.-~~

**Illegal Drug** means any drug or substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law.

**[NEW] Impairing Prescription Medication** means a substance, other than Marihuana, that may be legally prescribed by a health care professional in Canada and that has the potential to impair the physical or cognitive abilities of the person using the substance, regardless of whether the substance is or is not used as prescribed.

**[NEW] Marihuana** means all parts of the Cannabis plant, its derivatives and compounds that contain the psychoactive cannabinoid chemical “delta-9-tetrahydrocannabinol” (THC).

**[NEW] Prohibited Substance** means any substance which the Registrar has declared prohibited and includes Marihuana.

**Safety Sensitive Position** means a position, as determined by the Registrar, in which individuals have a key and direct role in the handling of a horse such that performance is impacted by alcohol or other drug use could result in a licensee has a direct role in racing such that Alcohol, Illegal Drug, Impairing Prescription Medication or Prohibited Substance use could result in:

- (a) An incident affecting the health or safety of employees, licensees, patrons, horses, or the public; or
- (b) An inadequate response or failure to respond to an emergency or operational situation.

When determining if a position is a Safety Sensitive Position, the factors which the Registrar will consider include, but are not limited, to the following:

- (a) The type and amount of contact the position has with horses
- (b) The extent to which the position requires the individual to be on the racetrack at the same time as horses and the circumstances of that presence on the racetrack.

This category includes any and all ~~individuals~~ licensees required to temporarily act in a Safety Sensitive Position.

The following positions are Safety Sensitive Positions:

Thoroughbred: apprentice jockey, exercise person, jockey, pony person, starting gate personnel, horse identifier, commission and official veterinarian, jockey valet, trainer, groom, hot walker and blacksmith, test inspector, and TCO2 technician.

Quarter Horse: apprentice jockey, exercise person, jockey, pony person, starting gate personnel, horse identifier, commission and official veterinarian, jockey valet, trainer, groom, hot walker and blacksmith, test inspector, and TCO2 technician.

## Chapter 38 ALCOHOL AND DRUG VIOLATIONS - HUMAN

~~38.01~~ All Designated Racing Officials and individuals who hold a safety sensitive position are subject to the following Alcohol & Drug Rules.

~~38.02~~ Designated Licensees are prohibited from the following:

- ~~(a) the use, possession, distribution, manufacture, offering or sale of illegal drugs or illegal drug paraphernalia;~~
- ~~b) reporting for work under the influence of illegal drugs;~~
- ~~c) the presence in the body of illicit drugs or unprescribed drugs for which a prescription is legally required in Canada, as determined through the testing program.~~

~~38.03~~ Designated Licensees are prohibited from the following:

- ~~(a) reporting for work under the influence of alcohol from any source;~~
- ~~(b) the use of alcohol within the first eight hours after an accident or until tested or advised by the Commission that a test is not required.~~

~~38.04~~ Designated Licensees are prohibited from the following:

- ~~(a) the intentional misuse of medications including using medication not as prescribed, using someone else's prescription medication, combining medication and alcohol use against direction; and~~
- ~~(b) the unauthorized possession of prescribed medications without a legally obtained prescription, and unauthorized distribution, offering or sale of prescription medications (trafficking).~~

~~The onus rests with Designated Licensees to investigate (through their doctor or pharmacist) whether a medication can affect safe operation and take appropriate action to minimize safety risk.~~

**38.01** A licensee in a Safety Sensitive Position is prohibited from the following:

- (a)** Using an Illegal Drug or a Prohibited Substance at a licenced facility;
- (b)** Performing activities of the Safety Sensitive Position at a licenced facility while an Illegal Drug or a Prohibited Substance is present in his or her body;
- (c)** Consuming Alcohol at a licenced facility while performing, or reasonably prior to performing activities, of a Safety Sensitive Position;
- (d)** Performing activities of the Safety Sensitive Position at a licenced facility while having a BAC of .02 or higher;
- (e)** Using, at a licenced facility, any Impairing Prescription Medication without a prescription for the licensee's use of that medication;
- (f)** Performing activities of the Safety Sensitive Position at a licenced facility while an Impairing Prescription Medication for which the licensee does not have a prescription for use is present in his or her body;
- (g)** Intentionally using, at a licenced facility, any Impairing Prescription Medication prescribed for the licensee's use in a manner not prescribed and which use

has the potential to impair the licensee's abilities to perform the activities of his or her position safely;

- (h) Performing activities of the Safety Sensitive Position at a licenced facility while,
  - a. An Impairing Prescription Medication intentionally used in a manner not prescribed to the licensee is present in his or her body, and
  - b. He or she displays signs that his or her physical or cognitive abilities are impaired to the extent that there is a potential that the licensee cannot safely perform the activities of the Safety Sensitive Position.
- (i) Within the first eight hours of an event described in 38.03(a) or until tested or advised by a Commission Representative under 38.03(a) that a test is not required, using an Illegal Drug or a Prohibited Substance or consuming Alcohol or using any Impairing Prescription Medication without a prescription for the licensee's use or intentionally using any Impairing Prescription Medication prescribed for the licensee's use in a manner not prescribed.

**38.02** A licensee in a Safety Sensitive Position called in unexpectedly activities of a Safety Sensitive Position in a manner that would violate 38.01(b), (d), (f) or (h) shall decline the request.

**38.03** A licensee or Designated Racing Official shall not be present at a licenced facility in the following circumstances:

- (a) Alcohol, an Illegal Drug, a Prohibited Substance or an Impairing Prescription Medication is present in his or her body, and
- (b) He or she displays signs that his or her physical or cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform his or her activities or duties related to the business of racing, he or she poses a safety risk to himself or herself, to other persons or to horses or, in a situation where the licensee or Designated Racing Official has been involved in an incident, accident or near miss, the licensee or Designated Racing Official displays signs of physical or cognitive impairment.

**38.04** A licensee in a Safety Sensitive Position is subject to testing in the following situations:

- (a) **Post Incident/Accident**  
A Commission Representative investigating a significant accident, incident or near miss that occurs at a licensed facility may require a licensee in a Safety Sensitive Position to undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body, if the Representative has a reasonable belief that the licensee's activities are or were relevant to the accident, incident or near miss being investigated.
- (b) **Required Alcohol Testing**

At times or in circumstances set by the Commission or a Commission Representative or upon direction of a Commission Representative, a licensee in a Safety Sensitive position shall undergo testing for Alcohol in his or her body when they are performing, scheduled to perform or have completed performing the activities of the position.

**(c) Unannounced Drug Testing**

A licensee in a Safety Sensitive Position shall undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body without notice to the licensee at any time during the racing season. The selection of the licensee for testing will be by an objective selection system managed by the Commission's Program Co-ordinator.

**(d) Return to Duty – Post Violation**

Where a licensee seeks to return to a Safety Sensitive Position after a suspension for a violation of a prohibition in 38.01, he or she will be required to undergo testing for the presence of Alcohol, Illegal Drugs, Prohibited Substances, Impairing Prescription Medication, or a combination of these substances in his or her body and the test or tests must show no presence of such substances in his or her body before the licensee may return to such a position. In addition, it shall be a condition of the licensee's licence as set out in a Post-Violation Agreement described in 38.13 that the licensee will be required to undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body without notice to the licensee at any time.

**(e) Return to Duty – Post Treatment**

Where a licensee is returning to a Safety Sensitive Position after receiving treatment for abuse of or addiction to Alcohol, Illegal Drugs, Impairing Prescription Medication or a combination of these substances, the licensee may be subject to testing for such substances in his or her body as a monitoring tool on a case by case basis to support the licensee's recovery.

**(f) Additional Testing**

Where a laboratory conducting a test for the presence of an Illegal Drug, a Prohibited Substance or an Impairing Prescription Medication reports that the testing of the sample cannot provide an accurate determination of the presence or the amount of the substance in the licensee's body for whatever reason, including that the sample is a dilute sample, the licensee shall submit to an additional test, if directed by a Commission Representative.

~~**38.05** Designated Licensees called in unexpectedly and requested to perform unscheduled duties associated with the business of racing while under the influence of alcohol, drugs or medications that could impact safety and/or breach the Alcohol and Drug Rules shall decline the request.~~

**38.05 Reasonable Cause Testing**

Any licensee and any Designated Racing Official engaged in the business of racing at a licenced facility, whether or not he or she is in a Safety Sensitive Position, shall submit to the testing for the presence in his or her body of

- Alcohol, Illegal Drugs, Prohibited Substances or Impairing Prescription Medications on the request of a Commission Representative where,
- (a) That Representative has reasonable grounds to believe that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform their activities or duties related to the business of racing, poses a safety risk to other persons or horses, or
  - (b) The licensee or Designated Racing Official has been involved in an incident, accident or near miss and a Commission Representative has reasonable grounds to believe that that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired or were impaired at the time of the incident, accident or near miss.

~~38.06 Subject to the *Horse Racing Licence Act, 2015*, the Commission Representatives may conduct unannounced searches where there are reasonable grounds to believe a prohibited substance is present on Commission licensed premises in violation of the Rules of Racing or specific track rules. Prohibited substances include illegal drugs and prescribed medications possessed without a legally obtained prescription as set out in Rule 38.02.~~

### **38.06 Testing Protocol – Alcohol**

A person required to undergo testing for the presence of Alcohol in his or her body shall provide a breath sample to a Commission Representative for analysis at a time and place and in a manner directed by the representative.

~~38.07 Designated Licensees are subject to testing in the following situations:-~~

~~(a) Reasonable Cause~~

~~Designated Licensees are required to submit to testing on request whenever the Commission Representative has reasonable grounds to believe that the actions, appearance or conduct of a Designated Licensee are consistent with, or indicative of the use of drugs or alcohol, or where the Designated Licensees have been involved in an incident or accident and the Commission has reasonable grounds to believe that alcohol or drug use may have been a contributing factor. The decision to test shall be made by a Commission Representative.~~

~~(b) Post Incident/Accident~~

~~Designated Licensees may be subject to alcohol and drug testing after a significant accident, incident or near miss that occurs at a Commission licensed facility as part of a full investigation into the circumstances. The decision to refer an individual or a group of individuals for a test will be made by the Commission Representative investigating the incident.~~

~~(c) Unannounced Drug Testing~~

~~Designated Licensees are subject to drug testing which will take place on an unannounced basis throughout the racing season. Selection for testing will be handled through an independent selection system managed by the Commission's Program Administrator.~~

- ~~(d) Required Alcohol Testing~~  
All Designated Licensees are subject to alcohol testing at any time that they are engaged in the business of racing at a licensed facility.
- ~~(e) Return to Duty – Post Violation~~  
Following a violation resulting in a suspension, Designated Licensees will be required to pass a return to duty alcohol and drug test and will be subject to unannounced testing as a condition of continued licensing as set out in an agreement with the Commission and the provisions of 38.08 (f).
- ~~(f) Return to Duty – Post Treatment~~  
Following a violation resulting in a Designated Licensee completing primary treatment for an alcohol or drug problem, Designated Licensees may be subject to testing as a monitoring tool as determined on a case by case basis to support the Designated Licensee’s recovery.
- ~~(g) Failure to Test~~  
Any Designated Licensee who fails to report directly for a test, re-fuses to submit to a test, re-fuses to agree to disclosure of a test result to the Program Administrator, or whose test results in a report from the Medical Review Officer stating that the sample has been adulterated or tampered with, violates of the Alcohol and Drug Rules with consequences set out in 38.08 (d).
- ~~(h) Dilute Samples~~  
If the laboratory identifies a dilute sample, the designated licensee will be required to complete another test.

**38.07 Testing Protocol – Illegal Drugs, Prohibited Substances and Impairing Prescription Medications**

A person required to undergo testing for the presence in his or her body of Illegal Drugs, Prohibited Substances or Impairing Prescription Medications, or a combination of these substances, shall provide a sample of bodily fluid to a Commission Representative at a time and place and in a manner directed by the Representative.

~~38.08 The penalties for Designated Licensees are as follows:-~~

~~**(a) Alcohol: Test Result of .02 to .039 BAC**~~

- ~~(i) for a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$100 monetary penalty and reminder of the policy requirements and suggested referral for assistance;~~
- ~~(ii) for a second violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$300 monetary penalty and suspension of 5 days if committed within 12 months of the first monetary penalty, and the licensee will be referred to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program and must provide a negative return to duty drug and alcohol test;~~
- ~~(iii) any subsequent violation within 12 months of the second violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Commission.~~

~~**(b) Alcohol: Test result of .04 to .079 BAC**~~

- ~~(i) — a for a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$300 monetary penalty, a suspension for five (5) days, a reminder of the policy requirements and a suggested referral for assistance and must provide a negative return to duty alcohol test;~~
- ~~(ii) — for a second violation, suspension from performing the duty or duties for which he/she is licensed for that day, a fine monetary penalty of \$500 and a suspension of fifteen (15) days if committed within 12 months of the first violation, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to duties with the Commission, compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test;~~
- ~~(iii) — any subsequent violation within 12 months of the second violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.~~

**~~(c) Illegal Drugs or Alcohol test result of .08 BAC or higher~~**

- ~~(i) — for a first violation suspension from performing the duty or duties for which he/she is licensed for that day, a \$500 monetary penalty, a suspension of fifteen (15) days, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to their duties with the as a licensee, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test;~~
- ~~(ii) — any subsequent violation within 12 months of the first offence violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.~~

**~~(d) Refusal to Test Situation (including adulterating/tampering with the sample)~~**

~~A first offence violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.~~

**~~(e) Subsequent Offence Violation Situation~~**

~~The penalty for a second violation will be administered in accordance with the specific penalties for that second violation category.~~

**~~(f) Post Violation Agreements~~**

~~Specific conditions will be set out by agreement with the Designated Licensee which will include, at a minimum the following:~~

- ~~(i) — full cooperation with the Substance Abuse Professional (SAP) assessment process;~~
- ~~(ii) — adherence to any recommended treatment, monitoring, and after care program;~~
- ~~(iii) — maintenance of sobriety on return to duty;~~
- ~~(iv) — successful completion of a return to duty alcohol and drug test;~~
- ~~(v) — ongoing unannounced testing for a period set out in the agreement; and~~
- ~~(vi) — no further violations of the policy.~~

~~Although the Registrar will refer individuals who test positive to qualified services, the cost of these services is not covered by the Commission. All costs associated with assessment, treatment and after care, will be at the expense of the individual.~~

**~~(g) Referral to the Registrar~~**



~~Designated Licensees who have been suspended from performing the duties for which they are licensed and who are referred to the Registrar:~~

- ~~(i) — must provide proof that they have a negative result before applying for a hearing to be reinstated;~~
- ~~(ii) — will be referred to the Registrar within twenty (20) days of the request for reinstatement;~~
- ~~(iii) — will have a continued suspension from all licensed activities, duties and responsibilities and barred from attendance at all Commission licensed Raceways pending final disposition by the Registrar.~~

~~The referral to the Registrar is for the sole purpose of determining the future status of the licensee, which may include a lifetime ban from the sport, and industry of racing, or other specific conditions.~~

### **38.08 Immediate Suspension – Illegal Drugs, Prohibited Substances in a Licensee in a Safety Sensitive Position**

Should an Illegal Drug or a Prohibited Substance be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

~~38.09 The Registrar has the authority and discretion to indefinitely suspend any Designated Licensee who:~~

- ~~(a) tests .02 BAC or greater;~~
- ~~(b) has been tested in a reasonable cause or post incident situation pending the results of the test;~~
- ~~(c) has refused to complete the testing process as directed by the Registrar.~~

### **38.09 Immediate Suspension – Impairing Prescription Medication without a Valid Prescription in a Safety Sensitive Position**

Should an Impairing Prescription Medication be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing and the licensee cannot show that he or she has a valid prescription for the medication, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

~~38.10 Definitions moved to Chapter 2.~~

### **38.10 Immediate Suspension – Impairing Prescription Medication with a Valid Prescription in a Safety Sensitive Position**

Should an Impairing Prescription Medication be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing and,

notwithstanding that the medication has been validly prescribed to the licensee, a Commission Representative has reasonable grounds to believe that the licensee displays signs that the licensee's physical or cognitive abilities are impaired extent that there is a potential that the licensee cannot safely perform the activities of the Safety Sensitive Position, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

~~38.11 Whether breath analysis testing equipment is or is not available, and if due to alcohol or drug impairment, a person is unfit to drive, or carry out his or her duties, or whose conduct may reflect adversely on the sport, he/she shall forthwith be suspended for the remainder of that day and may be subject to a further suspension and monetary penalty as the Stewards or other officials see fit.~~

**38.11 Immediate Suspension – Reasonable Cause Testing for Illegal Drugs, Prohibited Substances or Impairing Prescription Medication**

A licensee or Designated Racing Official is suspended from his or her duties until a Medical Review Officer notifies the licensee or Designated Racing Official that he or she may return to his or her duties, if, after a test under 38.05, Alcohol, an Illegal Drug, Prohibited Substance or Impairing Prescription Medication is present in the body of a licensee or Designated Racing Official at the time of testing and,

- (a) A Commission Representative has reasonable grounds to believe licensee's or Designated Racing Official's physical and cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform their activities or duties related to the business of racing or poses a safety risk to other persons or horses, or
- (b) An a situation where the licensee or Designated Racing Official has been involved in an incident, accident or near miss, the Commission Representative has reasonable grounds to believe that that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired or were impaired at the time of the incident, accident or near miss.

~~38.12 Any official who fails to report a participant, whom he/she might reasonably determine to have been consuming alcoholic beverages or drugs, to the Stewards violates these rules and shall be subject to a monetary penalty or suspended, or both.~~

**38.12 Penalties for Violations of 38.01 – Safety Sensitive Positions**

- (a) The penalties for a violation of 38.01(d) are the following:

- a. Where the breath sample provided results in a test result of .02 to .039 BAC,
  - i. For a first violation, a suspension from performing the duty or duties for which he or she is licenced for that day, a \$100 monetary penalty, a reminder of the policy requirements and a suggested referral for assistance;
  - ii. For a second violation, a suspension from performing the duty or duties for which he or she is licenced for that day, a \$300 monetary penalty, a suspension for a further 5 days if the second violation occurs within 12 months of the first violation, and a referral, at the discretion of a Commission Representative, to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program, and
  - iii. Any subsequent violation within 12 months of the second or subsequent violation shall result in the suspension from the duty or duties for which they are licences and the licensee shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.
  
- b. Where the breath sample provided results in a test result of .04 to .079 BAC,
  - i. For a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$300 monetary penalty, a suspension of five (5) days, a reminder of the policy requirements and a suggested referral for assistance,
  - ii. For a second violation, suspension from performing the duty or duties for which he/she is licensed for that day, a monetary penalty of \$500 and a suspension of fifteen (15) days if committed within 12 months of the first violation, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to duties with the Commission, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test,
  - iii. Any subsequent violation within 12 months of the second or subsequent violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.
  
- c. Where the breath sample provided results in a test result of .08 BAC or higher.

- i. For a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$500 monetary penalty, a suspension of fifteen (15) days, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to their duties as a licensee, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test,
- ii. Any subsequent violation within 12 months of the first violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.

(b) Violations of 38.01, other than 38.01(d), and 38.02 and 38.03 shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.

### **~~38.13 Additional Penalties~~**

~~No Raceway, Association, or licensed body shall impose a penalty upon a licensee who has violated this rule, unless that licensee is directly employed by that Raceway, association or licensed body.~~

### **38.13 Post Violation Agreements**

A licensee or Designated Racing Official who has violated any of 38.01, 38.02, or 38.03 may be directed by the Registrar to enter into a Post Violation Agreement which will, at a minimum, include the following:

- (a) Full cooperation with the Substance Abuse Professional (SAP) assessment process,
- (b) Adherence to any recommended treatment, monitoring, and aftercare program,
- (c) Maintenance of sobriety on return to duty,
- (d) Successful completion of a return to duty alcohol and drug test,
- (e) Ongoing unannounced testing for a period set out in the agreement, and
- (f) No further violations of the policy.

Although the Registrar will refer licensees and Designated Racing Officials who test positive to qualified services, the cost of these services to persons not employed by the Commission is not covered by the Commission. All costs associated with assessment, treatment and aftercare, will be at his or her own expense.

### **38.14 Immediate Suspension and Referral – Refusal to Test, Adulterating or**

### **Tampering with Sample**

Where a licensee refuses to undergo testing as required by this Rule 38 or adulterates or tampers with, or attempts to adulterate or tamper with, a sample provided under this Rule 38, he or she shall be suspended from performing the duties for which they are licenced and the matter shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.

**38.15** Nothing in this Rule 38 restricts a Steward's authority to impose a penalty under 16.13, or the Registrar's authority under 16.14, for conduct prejudicial to the best interests of racing including, but not limited to, penalties for the following:

- (a) Possession, distribution, manufacture, offering for sale of Illegal Drugs, Illegal Drug paraphernalia, Prohibited Substances or Prohibited Substances paraphernalia;
- (b) Manufacture, distribution or offering for sale of drugs for which a prescription is required in Canada; or
- (c) Possession of Impairing Prescription Medications that are not legally prescribed to the person possessing them.

**38.16** Nothing in this Rule 38 restricts a Steward's authority under 16.13 or the Registrar's authority under 16.14 to impose a penalty under that rule in circumstances where the Steward has reasonable grounds to believe that a licensee or Designated Racing Official is not capable of performing his or her activities or duties relating to the business of horse racing, whether due to impairment or any other reason.

**38.17** Any ~~official~~ licensee or Designated Racing Official who fails to report a participant whom he or she might reasonably determine to have been consuming Alcohol, Illegal Drugs or Prohibited Substances, to the Stewards violates these rules and shall be subject to a monetary penalty or suspension, or both.

### **38.18 Additional Penalties**

No Raceway, Association, or licensed body shall impose a penalty upon a licensee who has violated this rule, unless that licensee is directly employed by that Raceway, Association or licensed body.

## **BY ORDER OF THE REGISTRAR**

Jean Major  
Chief Executive Officer and

**Appendix “A”**  
Rules of Thoroughbred Racing 2016 – revised

**Chapter 2**  
**DEFINITIONS**

**Alcohol** means the intoxicating agent in Beverage Alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl.

**BAC** means Blood Alcohol Concentration. It is the grams of alcohol in 100 millilitres of blood when referenced as .02 to .039 BAC and the equivalent of 20 to 39 milligrams of alcohol in 100 millilitres of blood.

**Beverage Alcohol** means beer, wine and distilled spirits.

**Illegal Drug** means any drug or substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law.

**Impairing Prescription Medication** means a substance, other than Marihuana, that may be legally prescribed by a health care professional in Canada and that has the potential to impair the physical or cognitive abilities of the person using the substance, regardless of whether the substance is or is not used as prescribed.

**Marihuana** means all parts of the Cannabis plant, its derivatives and compounds that contain the psychoactive cannabinoid chemical “delta-9-tetrahydro-cannabinol” (THC).

**Prohibited Substance** means any substance which the Registrar has declared prohibited and includes Marihuana.

**Safety Sensitive Position** means a position, as determined by the Registrar, in which a licensee has a direct role in racing such that Alcohol, Illegal Drug, Impairing Prescription Medication or Prohibited Substance use could result in:

- (c) An incident affecting the health or safety of employees, licensees, patrons, horses, or the public; or
- (d) An inadequate response or failure to respond to an emergency or operational situation.

When determining if a position is a Safety Sensitive Position, the factors which the Registrar will consider include, but are not limited, to the following:

- (c) The type and amount of contact the position has with horses
- (d) The extent to which the position requires the individual to be on the racetrack at the same time as horses and the circumstances of that presence on the racetrack.

This category includes any and all licensees required to temporarily act in a Safety Sensitive Position.

The following positions are Safety Sensitive Positions:

Thoroughbred: apprentice jockey, exercise person, jockey, pony person, starting gate personnel, horse identifier, commission and official veterinarian, jockey valet, trainer, groom, hot walker and blacksmith, test inspector, and TCO2 technician.

Quarter Horse: apprentice jockey, exercise person, jockey, pony person, starting gate personnel, horse identifier, commission and official veterinarian, jockey valet, trainer, groom, hot walker and blacksmith, test inspector, and TCO2 technician.

### **Chapter 38 ALCOHOL AND DRUG VIOLATIONS - HUMAN**

- 38.01** A licensee in a Safety Sensitive Position is prohibited from the following:
- (a)** Using an Illegal Drug or a Prohibited Substance at a licenced facility;
  - (b)** Performing activities of the Safety Sensitive Position at a licenced facility while an Illegal Drug or a Prohibited Substance is present in his or her body;
  - (c)** Consuming Alcohol at a licenced facility while performing, or reasonably prior to performing activities, of a Safety Sensitive Position;
  - (d)** Performing activities of the Safety Sensitive Position at a licenced facility while having a BAC of .02 or higher;
  - (e)** Using, at a licenced facility, any Impairing Prescription Medication without a prescription for the licensee's use of that medication;
  - (f)** Performing activities of the Safety Sensitive Position at a licenced facility while an Impairing Prescription Medication for which the licensee does not have a prescription for use is present in his or her body;
  - (g)** Intentionally using, at a licenced facility, any Impairing Prescription Medication prescribed for the licensee's use in a manner not prescribed and which use has the potential to impair the licensee's abilities to perform the activities of his or her position safely;
  - (h)** Performing activities of the Safety Sensitive Position at a licenced facility while,
    - a. An Impairing Prescription Medication intentionally used in a manner not prescribed to the licensee is present in his or her body, and
    - b. He or she displays signs that his or her physical or cognitive abilities are impaired to the extent that there is a potential that the licensee cannot safely perform the activities of the Safety Sensitive Position.
  - (i)** Within the first eight hours of an event described in 38.03(a) or until tested or advised by a Commission Representative under 38.03(a) that a test is not required, using an Illegal Drug or a Prohibited Substance or consuming Alcohol or using any Impairing Prescription Medication without a prescription for the licensee's use or intentionally using any Impairing Prescription

Medication prescribed for the licensee's use in a manner not prescribed.

**38.02** A licensee in a Safety Sensitive Position called in unexpectedly activities of a Safety Sensitive Position in a manner that would violate 38.01(b), (d), (f) or (h) shall decline the request.

**38.03** A licensee or Designated Racing Official shall not be present at a licenced facility in the following circumstances:

- (c) Alcohol, an Illegal Drug, a Prohibited Substance or an Impairing Prescription Medication is present in his or her body, and
- (d) He or she displays signs that his or her physical or cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform his or her activities or duties related to the business of racing, he or she poses a safety risk to himself or herself, to other persons or to horses or, in a situation where the licensee or Designated Racing Official has been involved in an incident, accident or near miss, the licensee or Designated Racing Official displays signs of physical or cognitive impairment.

**38.04** A licensee in a Safety Sensitive Position is subject to testing in the following situations:

**(a) Post Incident/Accident**

A Commission Representative investigating a significant accident, incident or near miss that occurs at a licensed facility may require a licensee in a Safety Sensitive Position to undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body, if the Representative has a reasonable belief that the licensee's activities are or were relevant to the accident, incident or near miss being investigated.

**(b) Required Alcohol Testing**

At times or in circumstances set by the Commission or a Commission Representative or upon direction of a Commission Representative, a licensee in a Safety Sensitive position shall undergo testing for Alcohol in his or her body when they are performing, scheduled to perform or have completed performing the activities of the position.

**(c) Unannounced Drug Testing**

A licensee in a Safety Sensitive Position shall undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body without notice to the licensee at any time during the racing season. The selection of the licensee for testing will be by an objective selection system managed by the Commission's Program Co-ordinator.

**(d) Return to Duty – Post Violation**

Where a licensee seeks to return to a Safety Sensitive Position after a suspension for a violation of a prohibition in 38.01, he or she will be required



to undergo testing for the presence of Alcohol, Illegal Drugs, Prohibited Substances, Impairing Prescription Medication, or a combination of these substances in his or her body and the test or tests must show no presence of such substances in his or her body before the licensee may return to such a position. In addition, it shall be a condition of the licensee's licence as set out in a Post-Violation Agreement described in 38.13 that the licensee will be required to undergo testing for the presence of Illegal Drugs, Prohibited Substances, Impairing Prescription Medication or a combination of these substances in his or her body without notice to the licensee at any time.

**(e) Return to Duty – Post Treatment**

Where a licensee is returning to a Safety Sensitive Position after receiving treatment for abuse of or addiction to Alcohol, Illegal Drugs, Impairing Prescription Medication or a combination of these substances, the licensee may be subject to testing for such substances in his or her body as a monitoring tool on a case by case basis to support the licensee's recovery.

**(f) Additional Testing**

Where a laboratory conducting a test for the presence of an Illegal Drug, a Prohibited Substance or an Impairing Prescription Medication reports that the testing of the sample cannot provide an accurate determination of the presence or the amount of the substance in the licensee's body for whatever reason, including that the sample is a dilute sample, the licensee shall submit to an additional test, if directed by a Commission Representative.

**38.05 Reasonable Cause Testing**

Any licensee and any Designated Racing Official engaged in the business of racing at a licenced facility, whether or not he or she is in a Safety Sensitive Position, shall submit to the testing for the presence in his or her body of Alcohol, Illegal Drugs, Prohibited Substances or Impairing Prescription Medications on the request of a Commission Representative where,

- (c) That Representative has reasonable grounds to believe that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform their activities or duties related to the business of racing, poses a safety risk to other persons or horses, or
- (d) The licensee or Designated Racing Official has been involved in an incident, accident or near miss and a Commission Representative has reasonable grounds to believe that that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired or were impaired at the time of the incident, accident or near miss.

**38.06 Testing Protocol – Alcohol**

A person required to undergo testing for the presence of Alcohol in his or her body shall provide a breath sample to a Commission Representative for analysis at a time and place and in a manner directed by the representative.

**38.07 Testing Protocol – Illegal Drugs, Prohibited Substances and Impairing**

### **Prescription Medications**

A person required to undergo testing for the presence in his or her body of Illegal Drugs, Prohibited Substances or Impairing Prescription Medications, or a combination of these substances, shall provide a sample of bodily fluid to a Commission Representative at a time and place and in a manner directed by the Representative.

#### **38.08 Immediate Suspension – Illegal Drugs, Prohibited Substances in a Licensee in a Safety Sensitive Position**

Should an Illegal Drug or a Prohibited Substance be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

#### **38.09 Immediate Suspension – Impairing Prescription Medication without a Valid Prescription in a Safety Sensitive Position**

Should an Impairing Prescription Medication be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing and the licensee cannot show that he or she has a valid prescription for the medication, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

#### **38.10 Immediate Suspension – Impairing Prescription Medication with a Valid Prescription in a Safety Sensitive Position**

Should an Impairing Prescription Medication be found to be present in the body of a licensee in a Safety Sensitive Position at the time of testing and, notwithstanding that the medication has been validly prescribed to the licensee, a Commission Representative has reasonable grounds to believe that the licensee displays signs that the licensee's physical or cognitive abilities are impaired extent that there is a potential that the licensee cannot safely perform the activities of the Safety Sensitive Position, the licensee is suspended from his or her duties until a Medical Review Officer has reviewed the result and provided a report to the Commission or a Commission Representative. Upon reviewing the report the Commission Representative will make a recommendation to the Registrar concerning the future status of the licensee.

#### **38.11 Immediate Suspension – Reasonable Cause Testing for Illegal Drugs, Prohibited Substances or Impairing Prescription Medication**

A licensee or Designated Racing Official is suspended from his or her duties until a Medical Review Officer notifies the licensee or Designated Racing

Official that he or she may return to his or her duties, if, after a test under 38.05, Alcohol, an Illegal Drug, Prohibited Substance or Impairing Prescription Medication is present in the body of a licensee or Designated Racing Official at the time of testing and,

- (c) A Commission Representative has reasonable grounds to believe licensee's or Designated Racing Official's physical and cognitive abilities are impaired to the extent that there is a potential that the licensee or Designated Racing Official cannot safely perform their activities or duties related to the business of racing or poses a safety risk to other persons or horses, or
- (d) An a situation where the licensee or Designated Racing Official has been involved in an incident, accident or near miss, the Commission Representative has reasonable grounds to believe that that the licensee's or Designated Racing Official's physical and cognitive abilities are impaired or were impaired at the time of the incident, accident or near miss.

### **38.12 Penalties for Violations of 38.01 – Safety Sensitive Positions**

- (c) The penalties for a violation of 38.01(d) are the following:
  - a. Where the breath sample provided results in a test result of .02 to .039 BAC,
    - i. For a first violation, a suspension from performing the duty or duties for which he or she is licenced for that day, a \$100 monetary penalty, a reminder of the policy requirements and a suggested referral for assistance;
    - ii. For a second violation, a suspension from performing the duty or duties for which he or she is licenced for that day, a \$300 monetary penalty, a suspension for a further 5 days if the second violation occurs within 12 months of the first violation, and a referral, at the discretion of a Commission Representative, to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program, and
    - iii. Any subsequent violation within 12 months of the second or subsequent violation shall result in the suspension from the duty or duties for which they are licences and the licensee shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.
  - b. Where the breath sample provided results in a test result of .04 to .079 BAC,
    - i. For a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$300 monetary

- penalty, a suspension of five (5) days, a reminder of the policy requirements and a suggested referral for assistance,
  - ii. For a second violation, suspension from performing the duty or duties for which he/she is licensed for that day, a monetary penalty of \$500 and a suspension of fifteen (15) days if committed within 12 months of the first violation, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to duties with the Commission, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test,
  - iii. Any subsequent violation within 12 months of the second or subsequent violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.
- c. Where the breath sample provided results in a test result of .08 BAC or higher.
- i. For a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$500 monetary penalty, a suspension of fifteen (15) days, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to their duties as a licensee, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test,
  - ii. Any subsequent violation within 12 months of the first violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.
- (d) Violations of 38.01, other than 38.01(d), and 38.02 and 38.03 shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.

### **38.13 Post Violation Agreements**

A licensee or Designated Racing Official who has violated any of 38.01, 38.02, or 38.03 may be directed by the Registrar to enter into a Post Violation Agreement which will, at a minimum, include the following:

- (g) Full cooperation with the Substance Abuse Professional (SAP) assessment process,
- (h) Adherence to any recommended treatment, monitoring, and aftercare program,
- (i) Maintenance of sobriety on return to duty,
- (j) Successful completion of a return to duty alcohol and drug test,
- (k) Ongoing unannounced testing for a period set out in the agreement, and
- (l) No further violations of the policy.

Although the Registrar will refer licensees and Designated Racing Officials who test positive to qualified services, the cost of these services to persons not employed by the Commission is not covered by the Commission. All costs associated with assessment, treatment and aftercare, will be at his or her own expense.

**38.14 Immediate Suspension and Referral – Refusal to Test, Adulterating or Tampering with Sample**

Where a licensee refuses to undergo testing as required by this Rule 38 or adulterates or tampers with, or attempts to adulterate or tamper with, a sample provided under this Rule 38, he or she shall be suspended from performing the duties for which they are licenced and the matter shall be referred to the Registrar who may impose a monetary penalty, a suspension, make directions, impose conditions, or a combination of all of these.

**38.15** Nothing in this Rule 38 restricts a Steward’s authority to impose a penalty under 16.13, or the Registrar’s authority under 16.14, for conduct prejudicial to the best interests of racing including, but not limited to, penalties for the following:

- (d) Possession, distribution, manufacture, offering for sale of Illegal Drugs, Illegal Drug paraphernalia, Prohibited Substances or Prohibited Substances paraphernalia;
- (e) Manufacture, distribution or offering for sale of drugs for which a prescription is required in Canada; or
- (f) Possession of Impairing Prescription Medications that are not legally prescribed to the person possessing them.

**38.16** Nothing in this Rule 38 restricts a Steward’s authority under 16.13 or the Registrar’s authority under 16.14 to impose a penalty under that rule in circumstances where the Steward has reasonable grounds to believe that a licensee or Designated Racing Official is not capable of performing his or her activities or duties relating to the business of horse racing, whether due to impairment or any other reason.

**38.17** Any licensee or Designated Racing Official who fails to report a participant whom he or she might reasonably determine to have been consuming Alcohol,

Illegal Drugs or Prohibited Substances, to the Stewards violates these rules and shall be subject to a monetary penalty or suspension, or both.

**38.18 Additional Penalties**

No Raceway, Association, or licensed body shall impose a penalty upon a licensee who has violated this rule, unless that licensee is directly employed by that Raceway, Association or licensed body.

**Appendix “B”**  
Rules of Thoroughbred Racing 2016 – previous version

**Chapter 2**  
**DEFINITIONS**

**BAC** means Blood Alcohol Content. It is the grams of alcohol in 100 milliliters of blood when referenced as .02 to .039 BAC and the equivalent of 20 to 39 milligrams of alcohol in 100 milliliters of blood.

**Drug** means any substance, including alcohol, illegal drugs or medications, the use of which has the potential to adversely affect the way a person thinks, feels or acts. Drugs of concern are those that inhibit a person’s ability to perform his or her job safely and productively, including the following:

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl.

**Beverage Alcohol** refers to beer, wine and distilled spirits.

**Illegal Drug** means any drug or substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law.

**Medication** means a drug obtained legally, either over-the-counter or through a prescription.

**Fit for Work** means being able to safely and effectively perform assigned duties without any limitations due to the use or after-effects of alcohol, illegal drugs, medications or other substances that can impact performance.

**Illegal Drug** means any drug or substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law;

**Safety Sensitive Position** means a position in which individuals have a key and direct role in the handling of a horse such that performance is impacted by alcohol or other drug use could result in:

- (e) An incident affecting the health or safety of employees, licensees, patrons, horses, or the public; or
- (f) An inadequate response or failure to respond to an emergency or operational situation.

This category includes any and all individuals required to temporarily act in a Safety Sensitive Position.

**Chapter 38**  
**ALCOHOL AND DRUG VIOLATIONS - HUMAN**

**38.01** All Designated Racing Officials and individuals who hold a safety sensitive

position are subject to the following Alcohol & Drug Rules.

**38.02** Designated Licensees are prohibited from the following:

- (a) the use, possession, distribution, manufacture, offering or sale of illegal drugs or illegal drug paraphernalia;
- b) reporting for work under the influence of illegal drugs;
- c) the presence in the body of illicit drugs or unprescribed drugs for which a prescription is legally required in Canada, as determined through the testing program.

**38.03** Designated Licensees are prohibited from the following:

- (a) reporting for work under the influence of alcohol from any source;
- (b) the use of alcohol within the first eight hours after an accident or until tested or advised by the Commission that a test is not required.

**38.04** Designated Licensees are prohibited from the following:

- (a) the intentional misuse of medications including using medication not as prescribed, using someone else's prescription medication, combining medication and alcohol use against direction; and
- (b) the unauthorized possession of prescribed medications without a legally obtained prescription, and unauthorized distribution, offering or sale of prescription medications (trafficking).

The onus rests with Designated Licensees to investigate (through their doctor or pharmacist) whether a medication can affect safe operation and take appropriate action to minimize safety risk.

**38.05** Designated Licensees called in unexpectedly and requested to perform unscheduled duties associated with the business of racing while under the influence of alcohol, drugs or medications that could impact safety and/or breach the Alcohol and Drug Rules shall decline the request.

**38.06** Subject to the *Horse Racing Licence Act, 2015*, Commission Representatives may conduct unannounced searches where there are reasonable grounds to believe a prohibited substance is present on Commission licensed premises in violation of the Rules of Racing or specific track rules. Prohibited substances include illegal drugs and prescribed medications possessed without a legally obtained prescription as set out in Rule 38.02.

**38.07** Designated Licensees are subject to testing in the following situations:

**(a) Reasonable Cause**

Designated Licensees are required to submit to testing on request whenever the Commission Representative has reasonable grounds to believe that the actions, appearance or conduct of a Designated Licensee are consistent with, or indicative of the use of drugs or alcohol, or where the Designated Licensees have been involved in an incident or accident and the Commission has reasonable grounds to believe that alcohol or drug use may have been a



contributing factor. The decision to test shall be made by a Commission Representative.

- (b) Post Incident/Accident**  
Designated Licensees may be subject to alcohol and drug testing after a significant accident, incident or near miss that occurs at a Commission licensed facility as part of a full investigation into the circumstances. The decision to refer an individual or a group of individuals for a test will be made by the Commission Representative investigating the incident.
- (c) Unannounced Drug Testing**  
Designated Licensees are subject to drug testing which will take place on an unannounced basis throughout the racing season. Selection for testing will be handled through an independent selection system managed by the Commission's Program Administrator.
- (d) Required Alcohol Testing**  
All Designated Licensees are subject to alcohol testing at any time that they are engaged in the business of racing at a licensed facility.
- (e) Return to Duty - Post Violation**  
Following a violation resulting in a suspension, Designated Licensees will be required to pass a return to duty alcohol and drug test and will be subject to unannounced testing as a condition of continued licensing as set out in an agreement with the Commission and the provisions of 38.08 (f).
- (f) Return to Duty - Post Treatment**  
Following a violation resulting in a Designated Licensee completing primary treatment for an alcohol or drug problem, Designated Licensees may be subject to testing as a monitoring tool as determined on a case by case basis to support the Designated Licensee's recovery.
- (g) Failure to Test**  
Any Designated Licensee who fails to report directly for a test, re fuses to submit to a test, re fuses to agree to dis closure of a test result to the Program Administrator, or whose test results in a report from the Medical Review Officer stating that the sample has been adulterated or tampered with, violates of the Alcohol and Drug Rules with consequences set out in 38.08 (d).
- (h) Dilute Samples**  
If the laboratory identifies a dilute sample, the designated licensee will be required to complete another test.

**38.08** The penalties for Designated Licensees are as follows:

- (a) Alcohol: Test Result of .02 to .039 BAC**

  - (i) for a first violation, suspension from per forming the duty or duties for which he/she is licensed for that day, a \$100 monetary penalty and reminder of the policy requirements and suggested referral for assistance;
  - (ii) for a second violation, suspension from per forming the duty or duties for which he/she is li censed for that day, a \$300 monetary penalty and suspension of 5 days if committed within 12 months of the first monetary penalty, and the licensee will be referred to a Substance Abuse Professional (SAP) for evaluation to deter mine the need for a structured assistance program and must provide a negative return to duty drug and alcohol test;

- (iii) any subsequent violation within 12 months of the second violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Commission.
- (b) Alcohol: Test result of .04 to .079 BAC**
  - (i) for a first violation, suspension from performing the duty or duties for which he/she is licensed for that day, a \$300 monetary penalty, a suspension for five (5) days, a reminder of the policy requirements and a suggested referral for assistance and must provide a negative return to duty alcohol test;
  - (ii) for a second violation, suspension from performing the duty or duties for which he/she is licensed for that day, a fine monetary penalty of \$500 and a suspension of fifteen (15) days if committed within 12 months of the first violation, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to duties with the Commission, compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test;
  - (iii) any subsequent violation within 12 months of the second violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.
- (c) Illegal Drugs or Alcohol test result of .08 BAC or higher**
  - (i) for a first violation suspension from performing the duty or duties for which he/she is licensed for that day, a \$500 monetary penalty, a suspension of fifteen (15) days, referral to a Substance Abuse Professional (SAP) for evaluation to determine the need for a structured assistance program if they choose to return to their duties with the as a licensee, and compliance with return to work conditions set out in an agreement with the individual, and must provide a negative return to duty drug and alcohol test;
  - (ii) any subsequent violation within 12 months of the first offence violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.
- (d) Refusal to Test Situation (including adulterating/tampering with the sample)**  
A first offence violation shall result in suspension from performing the duty or duties for which they are licensed and they shall be referred to the Registrar.
- (e) Subsequent Offence Violation Situation**  
The penalty for a second violation will be administered in accordance with the specific penalties for that second violation category.
- (f) Post Violation Agreements**  
Specific conditions will be set out by agreement with the Designated Licensee which will include, at a minimum the following:
  - (i) full cooperation with the Substance Abuse Professional (SAP) assessment process;
  - (ii) adherence to any recommended treatment, monitoring, and after care program;
  - (iii) maintenance of sobriety on return to duty;
  - (iv) successful completion of a return to duty alcohol and drug test;
  - (v) ongoing unannounced testing for a period set out in the agreement; and
  - (vi) no further violations of the policy.
 Although the Registrar will refer individuals who test positive to qualified

services, the cost of these services is not covered by the Commission. All costs associated with assessment, treatment and after care, will be at the expense of the individual.

**(g) Referral to the Registrar**

Designated Licensees who have been suspended from performing the duties for which they are licensed and who are referred to the Registrar:

- (i) must provide proof that they have a negative result before applying for a hearing to be reinstated;
- (ii) will be referred to the Registrar within twenty (20) days of the request for reinstatement;
- (iii) will have a continued suspension from all licensed activities, duties and responsibilities and barred from attendance at all Commission licensed Raceways pending final disposition by the Registrar.

The referral to the Registrar is for the sole purpose of determining the future status of the licensee, which may include a lifetime ban from the sport, and industry of racing, or other specific conditions.

**38.09** The Registrar has the authority and discretion to indefinitely suspend any Designated Licensee who:

- (a) tests .02 BAC or greater;
- (b) has been tested in a reasonable cause or post incident situation pending the results of the test;
- (c) has refused to complete the testing process as directed by the Registrar.

**38.10** Definitions moved to Chapter 2.

**38.11** Whether breath analysis testing equipment is or is not available, and if due to alcohol or drug impairment, a person is unfit to drive, or carry out his or her duties, or whose conduct may reflect adversely on the sport, he/she shall forthwith be suspended for the remainder of that day and may be subject to a further suspension and monetary penalty as the Stewards or other officials see fit.

**38.12** Any official who fails to report a participant, whom he/she might reasonably determine to have been consuming alcoholic beverages or drugs, to the Stewards violates these rules and shall be subject to a monetary penalty or suspended, or both.

**38.13** Additional Penalties

No Raceway, Association, or licensed body shall impose a penalty upon a licensee who has violated this rule, unless that licensee is directly employed by that Raceway, association or licensed body.