

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Complaint Against:

**GERARDO AMEZCUA**  
**CHRB License #300390**

**Respondent**

CHRB Case #14LA0013

**DECISION**

The attached Proposed Decision by the Board of Stewards is adopted, with the exception that the proposed penalty is reduced to a thirty (30) day suspension and fine of fifteen hundred dollars (\$1500.00) by the California Horse Racing Board as its Decision in the above-entitled matter, as provided by Government Code Section 11517 (c) (2) (B).

This Decision is hereby remanded to the Board of Stewards to issue a ruling and order setting the dates of suspension and the payment of fine.

IT IS SO ORDERED ON April 28, 2014.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman



Rick Baedeker  
Executive Director

**BEFORE THE CALIFORNIA HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Complaint/Accusation  
against:

GERARDO AMEZCUA,  
Respondent

License Type: Trainer  
License No. 300390-06/2016

Case No. 14LA0013

**PROPOSED DECISION**

This matter was heard on March 15, 2014 by the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office.

The Respondent, Trainer Gerardo Amezcua, waived his right to an attorney and represented himself.

The California Horse Racing Board was represented by Investigator Kevin Kitashima.

Safety Steward Randy Winick was also present at the proceedings.

The proceedings were recorded by Court Reporter Michelle Derieg.

## **PROCEDURAL BACKGROUND**

Trainer Gerardo Amezcua was the trainer of record for the horse "Vibrant," who started in the sixth race at Los Alamitos Race Course on January 5, 2014. On January 17, 2014, Sacramento Headquarters faxed information to the Los Alamitos Investigators that "Vibrant" (urine sample #LA25087) tested positive for the class III prohibited drug zilpaterol after finishing first in the sixth race on January 5, 2014. Trainer Amezcua was notified of the positive on January 17, 2014, Trainer Amezcua completed the forms for the split sample testing. Pennsylvania Equine Toxicology & Research Lab was selected as the lab to conduct the testing of the split sample. On February 13, 2014, Investigator Kitashima received a Memorandum from Sacramento Split Sample Custodian that Pennsylvania Equine Toxicology & Research Laboratory did not receive any payment from Trainer Amezcua to test split sample #LA25087. The five working day payment verification period expired on February 7, 2014 pursuant to California Horse Racing Board Rule #1859.25 (Split Sample Testing). Investigators notified Trainer Amezcua that the split sample laboratory did not receive payment and, therefore, declined to test the split sample. Trainer Amezcua stated he would not resend the payment.

**LIST OF EXHIBITS**

Complainant / State	California Horse Racing Board Complaint #14LA0013
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Respondent / Defendant	No documents submitted
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## FINDINGS OF FACT

### I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "trainer."

### II.

Respondent was the trainer of record for the horse "Vibrant" when it raced in the sixth race on January 5, 2014 at Los Alamitos Race Course. "Vibrant" finished first in the aforementioned race.

### III.

A post-race urine sample (labeled sample #LA25087) was taken from "Vibrant" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

### IV.

At all times herein mentioned, the chain of custody of urine sample #LA25087 from "Vibrant" was uninterrupted.

### V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, zilpaterol, a class III substance.

### VI.

On January 17, 2014, Trainer Gerardo Amezcua was notified that "Vibrant" had tested positive for zilpaterol.

## APPLICABLE RULES

### **California Horse Racing Board Rule 1843 (Medication, Drugs and Other Substances) states:**

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.

(b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.

(c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled.

(d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of the limits established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse.

### **California Horse Racing Board Rule 1859.5 (Disqualification Upon Positive Test) states:**

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance as defined in this article, which is determined to be in class levels 1-3 under Rule 1843.2 of this division, unless a split sample tested by the owner or trainer under Rule 1859.25 of this division fails to confirm the presence of the prohibited drug substance determined to be in class levels 1-3, shall require disqualification of the horse from the race in which it participated and forfeiture of any purse, award, prize or record for the race, and the horse shall be deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse.

**California Horse Racing Board Rule 1887 (Trainer to Insure Condition of Horse) states:**

(a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off.

(b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

**California Horse Racing Board Rule 1902 (Conduct Detrimental to Horse Racing) states:**

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

(a) knowing association with any known bookmaker, known tout or known felon,

(b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged,

(c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

## DISCUSSION

The initial question is whether Trainer Gerardo Amezcua is in violation of California Horse Racing Board Rule #1843 (a,b,&d) (Medication, Drugs and Other Substances) due to the fact that the official urine sample taken from the Quarter Horse "Vibrant," who won the sixth race on January 5, 2014 at Los Alamitos Race Course, contained the drug zilpaterol, which is a class III prohibited drug substance usually found in the feed product named "Zilmax." This evidence presented by the California Horse Racing Board Official Laboratory at U.C. Davis shows that urine sample #LA25087 contained the presence of zilpaterol, which at any level is "prima facie" evidence that Mr. Amezcua is in violation of California Horse Racing Board Rule #1843 (a,b,&d).

The next matter is how Trainer Amezcua should be penalized pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) due to this positive test result. Amezcua only had this horse in his care for approximately twenty-four hours due to the fact that "Vibrant's" owners, Ernesto and Daniel Dukes, have stall space at a ranch in Lakeside, CA and do not want to have the expense of training bills at the track. The Dukes have approximately five stalls at this ranch, according to Mr. Amezcua. Gerardo Amezcua took these horses just off of a phone call from the father and nephew owners of "Vibrant," sight unseen. Mr. Amezcua is trying to build a stable, but he was told this is a risky proposition due to the fact he has very limited to no security or observation of these horses during the days and weeks leading up to a race. If this horse was at the track, there would be more security for sure, and he could monitor them.

Mr. Amezcua decided not to have any representation at this hearing and reminded the Stewards that he has no previous medication violations since he became a trainer in 2010. Amezcua requested a split sample, however, due to incorrectly making out the check to the wrong person or entity, no split was ever done. The five-day grace period had expired.

Mr. Amezcua accompanied the California Horse Racing Board investigators for an inspection of his barn, which found no zilpaterol or products containing zilpaterol. Investigator Kitashima vouched that Mr. Amezcua had a neat and orderly barn, takes good care of his horses, and was very cooperative. Gerardo told the Stewards that he had never been to the ranch where the Dukes keep their horses, so Mr. Amezcua was basically a program trainer for this horse, which has proven to be a detriment to many trainers at Los Alamitos. Mr. Amezcua only had his veterinarian, Dr. Jocelyn Lorbieki, give "Vibrant" bute and lasix for this race and does not know how this horse got zilpaterol.

Gerardo does mostly all his own work, aside from one groom, for his approximate twelve horses, which he also personally gallops himself. He is a hard-working young trainer trying to establish himself. His feed program includes omolene, respond, orchard grass, and alfalfa, but he has never given Zilmax to a horse.

The feed sample brought in by the owner, which tested negative at U.C. Davis, was not collected by the investigators, and it is just their word that this is the same as what was fed to this horse. They stated in an interview with California Horse Racing Board investigators they did not know how it got there. Mr. Amezcua never knew these people before they called him to take their horse. Mr. Amezcua said these owners admitted they “match race” this horse in Hesperia as well as other places. It is well known in the Quarter Horse community that they can and will give anything to these horses to win a match race. Gerardo said he just trusted these people and did not think they would give him a horse treated illegally.

Before arriving at a penalty, any mitigating and/or aggravating factors must be considered and discussed by this Board of Stewards. As said previously in Mr. Amezcua’s defense, he has an excellent record concerning medication violations (none). There is no direct evidence that he gave zilpaterol or any feed supplement containing zilpaterol to this horse in the twenty-four hours he was in his custody and took appropriate steps to protect the horse once he had him. It should also be noted that if Mr. Amezcua was negligent in any area, it was that he did not insure that the horse was under his care and custody for a longer period of time. Rule #1887 (Trainer to Insure Condition of Horse) is very specific that the trainer is the absolute insurer for the condition of a horse in a race regardless of the acts of third parties. Although Mr. Amezcua testified he did not give this horse zilpaterol, he was unable to supervise the horse and prevent anyone else giving illegal medications or substances to him.

Now we must take into account the eleven questions outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations) of mitigating and aggravating factors to arrive at a penalty conclusion if appropriate:

- (1) *Past Medication Record of the Licensee:* Mr. Amezcua has been a licensed trainer since 2010 with no previous medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse’s Performance:* Zilpaterol has been shown in studies to have an anabolic (muscle growth) effect. It also may increase heart rate, muscle tremors, sweat profusion, tachycardia, and anxiety. **Aggravating.**
- (3) *The Legal Availability of the Drug:* This drug is available in feed as an additive in a product called Zilmax over-the-counter. It is not a controlled substance. **Mitigating.**

- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Through the investigation and testimony, it is believed Trainer Gerardo Amezcua was unaware this horse was fed or given zilpaterol as he did not know these owners until they called him to take this horse and that he only had him twenty-four hours pre-race. Zilmax or zilpaterol usually takes a period of time (20-40 days) to be of maximum use. **Mitigating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* The horse was only in his care for twenty-four hours. His barn appears safe and secure. **Mitigating.**
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* The owners have this horse stabled off the grounds and only ship in to run. They have run with several trainers in the past. **Neutral.**
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* None evident. **Neutral.**
- (8) *Purse of the Race:* This race had a small purse value of \$6,200. **Mitigating to Neutral.**
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* No; he was not prescribed this drug, but it is legally available over-the-counter. **Aggravating.**
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* None detected. **Mitigating.**
- (11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian:* No; Mr. Amezcua was not acting on a veterinarian's advice to feed this supplement. **Neutral to Aggravating.**

A review of the factors reveals that there are more mitigating factors than aggravating ones.

## CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug, zilpaterol, was found in urine sample #LA25087 taken from the horse "Vibrant," the first place finisher in the sixth race at Los Alamitos Race Course on January 5, 2014. This finding requires the disqualification of "Vibrant" in accordance with California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding).

The issue of culpability with regard to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) placed the responsibility on Trainer Gerardo Amezcua. To avoid such responsibility, Trainer Amezcua had the burden to present convincing evidence and/or testimony in accordance with California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), and having failed to do so, he must be held accountable.

This Board of Stewards took judicial notice of the penalty guidelines as defined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations). Zilpaterol is a class III drug that falls in the class "A" penalty.

**PROPOSED DECISION**

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California  
CALIFORNIA HORSE RACING BOARD

\* \* \*

Trainer Gerardo Amezcua, who started the horse “Vibrant” in the sixth race on January 5, 2014 at Los Alamitos Race Course, is suspended for sixty (60) days and fined the sum of three thousand dollars (\$3,000.00)\* pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) and Rule #1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rules #1843 (a)(b) & (d) (Medication, Drugs and Other Substances – Prohibited Substance – Zilpaterol [Class III]) and #1902 (Conduct Detrimental to Horse Racing).

During the term of suspension, all licenses and license privileges of Gerardo Amezcua are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards), subject is denied access to premises in this jurisdiction.

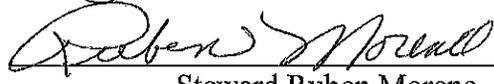
\*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 300390-06/2016

Case# 14LA0013

Dated April 12, 2014 by this Board of Stewards:

  
Steward James Dfeyer

  
Steward Ruben Moreno

  
Steward George Slender

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