

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Appeal from the Board  
of Stewards Official Ruling #014,  
Del Mar Thoroughbred Club, dated  
November 12, 2017

Case No. SAC 17-0059

**DR. TODD BROKKEN**  
**CHRB License #297638**  
**Appellant**

**DECISION**

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on October 29, 2018.

IT IS SO ORDERED ON October 25, 2018.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman



Rick Baedeker  
Executive Director

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8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**  
9 **STATE OF CALIFORNIA**

10 <b>In the Matter of:</b>	)	Case No.: SAC 17-0059	
11 <b>Appeal of the Board of Stewards Official</b>	)	<b>PROPOSED DECISION RE: APPEAL</b>	
12 <b>Ruling No. 014, Del Mar Thoroughbred</b>	)		<b>OF THE BOARD OF STEWARDS'</b>
13 <b>Club, Dated November 12, 2017</b>	)		<b>OFFICIAL RULING NO. 014, DEL</b>
14 <b>DR. TODD BROKKEN</b>	)	<b>MAR THOROUGHBRED CLUB,</b>	
15 <b>VETERINARIAN</b>	)	<b>DATED NOVEMBER 12, 2017</b>	
16 <b>CHRB LICENSE NO. 297638</b>	)	Hearing Date: August 31, 2018	
17 <b>APPELLANT</b>	)	Time: 10:00 a.m.	

18 **I. INTRODUCTION**

19 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 014, Del  
20 Mar Thoroughbred Club, dated November 12, 2017 (the "Appeal").

21 Appellant, Todd Brokken ("Appellant") personally appeared in *pro se*. The California  
22 Horse Racing Board ("Respondent" or the "CHRB") was present and represented by Robert  
23 Brodник, Esq.

24 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane  
25 ("Officer") presided over this Appeal.

26 This Appeal came for hearing on August 31, 2018 at 10:00 a.m. at the Del Mar  
27 Thoroughbred Club in Del Mar, California 92014 (the "Hearing"). Michelle Derieg recorded all  
28 testimony presented during the Hearing.

This matter's evidentiary record closed at the conclusion of the proceedings on August  
31, 2018 at approximately 10:30 a.m.

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**II. EXHIBITS ADMITTED INTO EVIDENCE**

**A. Exhibits Entered into Evidence by the CHRB.**

The CHRB entered the following exhibits into evidence:

Exhibit “1” ADMINISTRATIVE RECORD FOR DR. TODD BROKKEN.

**B. Exhibits Entered into Evidence by Appellant.**

Appellant did not enter any exhibits into evidence.

**III. LIST OF TESTIFYING WITNESSES**

**A. Witnesses Testifying on Behalf of Appellant.**

Appellant called the following the witnesses:

- Dr. Todd Brokken.

**B. Witnesses Testifying on Behalf of the CHRB.**

The CHRB called the following the witnesses:

- The Hon. Kim Sawyer.

**IV. FACTUAL FINDINGS**

After admitting all exhibits and testimony into evidence, this Officer makes the following findings of fact:

**A. Background.**

**I.**

Trainer Dan Hendricks (“Hendricks”) entered the horse, Just a Little Hope (“Just a Little Hope” or the “Horse”), in the seventh race (7) at Santa Anita on May 29, 2017. (See, Ex. 1 at Ex. 7.)

**II.**

On May 28, 2017, Appellant administered the Horse with Phenylbutazone (“Bute”) at approximately 9:45 a.m. (the “First Treatment”). (See, Ex. 1 at Ex. 7.) Appellant claims he notified Dr. Jennifer Finley (“Finley”) of the First Treatment via text message. (Id.) Dr. Finley did not acknowledge receipt of Appellant’s text message. (Id.) There is no evidence of Appellant sending any text message to Finley. (Id.)

**III.**

1 Also on May 28, 2017 at approximately 11:15 a.m., unaware of the First Treatment, Dr.  
2 Finley provided the Horse with a second Bute treatment (the "Second Treatment"). (See, Ex. 1  
3 at Ex. 7.) Dr. Finley claims she advised Appellant of the Second Treatment via text message,  
4 which Appellant failed to acknowledge. (Id.) There is no evidence of Finley sending a text  
5 message to Appellant advising him of the Second Treatment. (Id.)

#### 6 IV.

7 On May 29, 2017, Just a Little Hope ran and won the seventh race at Santa Anita Park  
8 ("Subject Race"). (See, Ex. 1 at Ex. 7.) Subsequent to the running the Subject Race, the CHRB  
9 obtained blood and urine samples from the Horse and sent the samples to the University of  
10 California Davis, Maddy Analytical Laboratory (the "Maddy Lab"). (See, Ex. 1 at Ex. 7.) The  
11 Maddy Lab reported that Just a Little Hope tested positive for Bute in a concentration of 3.85  
12 ug/ml (the "Bute Overage"). (Id.)

#### 13 V.

14 On October 8, 2017, the CHRB filed a complaint against Appellant for violations of Cal.  
15 Code Regs. Tit. 4 §§ 1843(a)(d), 1843.1(b), and 1844(c)(1) (the "Complaint") and ordered  
16 Appellant to appear before the Board of Stewards ("Stewards") on November 5, 2017. (See Ex.  
17 1 at Ex. 9.) Specifically, the Complaint made the following allegations:

18 On May 29, 2017, the horse "Just a Little Hope" trained by Dan Hendricks finished  
19 first in the seventh race at Santa Anita Race Track. Post-race sample no. 25899  
20 was analyzed...and was found to contain the Class Four Drug Phenylbutazone (3.85  
21 ug/ml). DVM Brokken administered a Phenylbutazone injection to Just a Little  
Hope on May 28, 2017 at 0935 hrs. DVM Finley administered a Phenylbutazone  
injection to the horse Just a Little Hope on May 28, 2017 at 1115 hrs. (Id.)

#### 22 VI.

23 On November 5, 2017, the Stewards held a formal hearing concerning the Complaint's  
24 allegations (the "Hearing"). (See Ex. 1 at Ex. 5.) Appellant appeared at the formal hearing via  
25 phone. (Id.) Testimony revealed the medication overage resulted from Appellant and Finley  
26 separately treating the Horse with Bute on May 28, 2017. (Id.) After all exhibits and testimony  
27 were entered into evidence, the Hearing concluded on November 5, 2017 at 11:40 a.m. (See Ex.  
28 1 at Ex. 8.)

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**VII.**

On November 12, 2017, the Stewards unanimously issued Official Ruling DFTD No. 14 (the "Ruling"), which stated the following:

Veterinarian TODD BROKKEN, who treated the horse JUST A LITTLE HOPE in the seventh race at Santa Anita Park on May 29, 2017 is fined FIVE HUNDRED DOLLARS (\$500.00) for violation of California Racing Board rules #1843.1(b) (Prohibited Drug Substance), #1843 (a)(d) (Medications, Drugs and Other Substances) and #1844(c)(1) (Authorized Medication – phenylbutazone (3.85 ug/ml)). (Ex. 1 at Ex. 4.)

In support of the Ruling, the Stewards issued a Statement of Decision that made the following findings:

Over medication by practicing veterinarians, not only affects the license record of the trainer involved, but it also gives the over medicated horse an advantage over the other participants in the race and obviously, affects the wagering public. It is also the opinion of this Board of Stewards, Dr. Finley's and Dr. Brokken's policy of texting to prevent a misadministration is a weak procedure to prevent a mishap. (Ex. 1 at Ex. 7.)

Specifically, the Stewards determined that Appellant's and Finley's system of texting each other to confirm treatment of a respective horse ("texting system") was a "weak procedure" and requested Appellant and Finley improve the texting system. (Ex. 1 at Ex. 7.) In response, Appellant stated that creating a new system would be "tedious" and that he did not plan to improve the texting system so as to prevent similar situations in the future. (Id.) The Stewards further noted that Appellant was penalized for the same violation in 2010. (Id.)

**B. Procedural Background.**

**VIII.**

On November 14, 2017, Appellant timely filed a "Notice of Appeal" with the CHRB and simultaneously sought a stay of the Ruling's \$500.00 fine. (Ex. 1 at Ex. 3.) Appellant identified the following issues as to why the CHRB should grant both the Appeal and request for a stay: (1) Appellant did nothing wrong in treating the horse and was the first one to have the horse treated and reported to [Finley] that [Appellant] had treated the horse...; (2) the Ruling's \$500.00 fine is excessive...; and (3) that a warning should be issued as opposed to a \$500.00 fine. (Id.)

**IX.**

1 On November 20, 2017, the CHRБ denied Appellant's request for a stay. (Ex. 1 at Ex.  
2 2.)

3 X.

4 On August 8, 2018, the CHRБ set this Appeal for hearing on August 31, 2018 at the Del  
5 Mar Thoroughbred Club. (Ex. 1 at Ex. 1.)

6 V. ISSUES ON APPEAL AND CONTROLLING LAW

7 The issue before this Officer is whether Appellant met the required burden of proof to  
8 overrule the Stewards' unanimous decision, that Appellant violated Cal. Code Regs. Tit. 4 §§  
9 1843(a)(d), 1843.1(b), and 1844(c)(1).

10 Cal. Code Regs. Tit. 4 § 1843(a)(d) ("Section 1843") states, in pertinent part:

11 It shall be the intent of these rules to protect the integrity of horse racing, to guard  
12 the health of the horse, and to safeguard the interests of the public and the racing  
13 participants through the prohibition or control of all drugs, medications and drug  
14 substances foreign to the horse. In this context: (a) [n]o horse participating in a race  
15 shall carry in its body any drug substance or its metabolites or analogues, foreign  
16 to the horse except as hereinafter expressly provided; (d) [a] finding by an official  
17 chemist that a test sample taken from a horse contains a drug substance or its  
18 metabolites or analogues which has not been approved by the Board, or a finding  
19 of more than one approved non-steroidal, anti-inflammatory drug substance or a  
20 finding of a drug substance in excess of the limits established by the Board for its  
21 use shall be prima facie evidence that the trainer and his/her agents responsible for  
22 the care of the horse has/have been negligent in the care of the horse and is prima  
23 facie evidence that the drug substance has been administered to the horse.

18 Cal. Code Regs. Tit. 4 § 1843.1(b) ("Section 1843.1") states, in pertinent part:

19 For purposes of this division, prohibited drug substance means...(b) any drug,  
20 substance, medication or chemical authorized by this article in excess of the  
21 authorized level or other restrictions as set forth in this article.

21 And, Cal. Code Regs. Tit. 4 § 1844(c)(1) ("Section 1844") states, in pertinent part:

22 Consistent with the intent of these rules, drug substances and medications  
23 authorized by the Board for use may be administered to safeguard the health of the  
24 horse entered to race provided that: Not more than one approved non-steroidal anti-  
25 inflammatory drug substance (NSAID) may be administered to a horse that is  
26 entered to race and shall be only one of the following authorized drug substances:  
27 (1) Phenylbutazone in a dosage amount that the test sample shall contain not more  
28 than 2 micrograms of the drug substance per milliliter of blood plasma or serum.

26 Moreover, Business and Professions Code Section 19517(a) ("Section 19517") states, in  
27 relevant part, that:

1 The Board, upon due consideration, may overrule any steward's decision...if a  
2 preponderance of the evidence indicates any of the following: (1) the stewards  
3 mistakenly interpreted the law; (2) new evidence of a convincing nature is  
4 produced: (3) the best interests of racing and the state may be better served.

4 Appellant must prove facts necessary to sustain the appeal by a preponderance of the  
5 evidence. (See, Cal. Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the  
6 facts necessary to sustain the appeal."].)

7 Because Appellant contends that the Ruling violates Section 19517, this Officer applies  
8 the preponderance of the evidence standard of review. "Preponderance of the evidence means  
9 evidence that has more convincing force than that opposed to it." (*Glage v. Hawes Firearms Co.*  
10 (1990) 226 Cal. App. 3d 314, 324.) "Preponderance of the evidence means what it says, viz., that  
11 the evidence on one side outweighs, preponderates over, is more than, the evidence on the other  
12 side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is  
13 addressed." (Id. at 325 [citations omitted].)

## 14 VI. DISCUSSION

15 Based upon the evidence presented, a preponderance of the evidence supports the  
16 Stewards' unanimous Ruling that Appellant violated Cal. Code Regs. Tit. 4 §§ 1843(a)(d),  
17 1843.1(b), and 1844(c)(1).

18 On appeal, Appellant advances two arguments. First, Appellant argues the Stewards  
19 "penalized" him for failing to personally appear at the Hearing. (Hearing Transcript ("H.T.") at  
20 p. 16.) However, Appellant produced no evidence supporting this argument meaning it fails as  
21 a matter of law. In fact, Steward Kim Sawyer ("Steward Sawyer") testified that: (1) Appellant's  
22 decision to attend the Hearing via telephone did not factor into the Steward's Ruling; and (2) the  
23 Stewards did not penalize Appellant for failing to personally appear. (H.T. at p. 16-17.)

24 Next, Appellant argues the Ruling should be overturned because: (1) the First Treatment  
25 did not violate horse racing law; and (2) Appellant advised Finley of the First Treatment in  
26 accordance with their texting system. (H.T. at p. 18-20.) Appellant's argument fails for several  
27 reasons. First, Appellant failed to provide any evidence demonstrating he sent Finley a text  
28 message advising her of the First Treatment. Appellant's argument misses the mark for this

1 reason alone.

2 Appellant's argument further lacks merit because he created the texting system and then  
3 failed to follow his own system. Appellant freely admitted he failed to confirm the First  
4 Treatment with Finley. Indeed, Appellant did not realize the Horse had been administered Bute  
5 twice until he received the Complaint. (H.T. at p. 20, Ex. 1 at Ex. 7.) Even more egregious is the  
6 fact that Appellant freely admits to not improving the texting system for over seven months  
7 because doing so would be "tedious." (H.T. at p. 11, Ex. 1 at Ex. 7.) In fact, immediately after  
8 learning of Just a Little Hope's Bute overage, the Horse's trainer, Hendricks, changed the  
9 medication administration procedure in his barn to prevent similar over medication situations in  
10 the future. (Ex. 1 at Ex. 7.) However, Appellant decided against improving the texting system  
11 for almost a full year. Plaintiff's argument is unpersuasive for this reason as well.

12 Finally, the fact Appellant administered the First Treatment to Just a Little Hope is  
13 irrelevant. Assuming Finley texted Appellant advising him of the Second Treatment, which there  
14 is no evidence of, Appellant should have: (1) noticed the Horse received two Bute treatments on  
15 May 28, 2017; and (2) advised Hendricks of the over medication so the Horse could be  
16 "scratched" from the May 29, 2017 race. However, the evidence is clear that Appellant did not  
17 do so. As such, Appellant's arguments otherwise cannot support his request to overturn the  
18 Ruling.

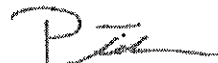
19 Accordingly, the evidence supports the Stewards' unanimous Ruling that Appellant  
20 violated Cal. Code Regs. Tit. 4 §§ 1843(a)(d), 1843.1(b), and 1844(c)(1).

## 21 **VII. CONCLUSION**

22 Because the evidence presented supports the Stewards' Ruling, and because Appellant did  
23 not meet the requirements of Section 19517, Appellant failed to meet the burden of proof  
24 necessary to sustain his Appeal.

25 WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 17-0059 be  
26 overruled, and that the Ruling be upheld and reinstated.

27 Dated: October 15, 2018



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