

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

**In the Matter of the Accusation
Against:**

**JOSE DE LA TORRE
CHRB License No. 279541
Respondent**

Case No. SAC 14-0064

Case Nos. 13LA 0231,
13 LA 0254, 13 LA 0269 ,
13 LA 0270

**DECISION AFTER
NON-ADOPTION OF PROPOSED DECISION**

This Matter was originally heard by Hearing Officer Daniel Q. Schiffer, Esq., on May 27 and 28, 2014, at the Executive Conference Room, Los Alamitos Race Course, Los Alamitos, California. On July 23, 2014, Hearing Officer Schiffer issued a Proposed Decision which referred the Matter to the California Horse Racing Board for a determination as to whether or not Respondent De La Torre should have his occupational license revoked. Further, the Proposed Decision provided, subject to and in addition to that further determination, Respondent De La Torre should be fined the sum of \$100,000 (\$10,000 for the first offense, \$30,000 each for the second, third and fourth offenses) and his CHRB license suspended for a period of two (2) years (60 days for the first offense and the balance divided equally for the second, third and fourth offenses).

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated August 22, 2014, the California Horse Racing Board rejected the Proposed Decision and elected itself to decide the Matter on a review of the record, including the transcript, under the provisions of Government Code section 11517, subdivision (c)(2)(E). Respondent De La Torre was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on August 22, 2014. Thereafter, on September 16, 2014, Counsel for Complainant and Respondent were provided the administrative record, including the transcript of the hearing. Subsequently, on September 29, 2014, the administrative record was augmented to include Pre-Hearing Requests and Motions filed in the Matter.

Counsel for both Complainant and Respondent submitted legal briefs to the California Horse Racing Board for consideration prior to the Board rendering the

Decision After Non-Adoption of Proposed Decision herein.

The California Horse Racing Board having reviewed administrative record on the Matter and the legal briefs submitted prior to the rendering the Decision After Non-Adoption of Proposed Decision herein, issues its Decision in the Matter as follows:

The Proposed Decision is hereby adopted as to all factual findings as set forth in the July 23, 2014 Proposed Decision, subject to the following amendments:

1. Paragraph B (Mitigating and Aggravating Factors), Paragraph C (Respondent's Prior Violations) and Paragraph D (The Futurity Qualifying Races Should Have Been Considered) of the Supplemental Closing Trial Brief, submitted by Counsel for Complainant, are hereby incorporated in full by reference.

2. Subpart "c" Conclusion, at page 11 of 12 of the Proposed Decision is amended to read:

Respondent De La Torre is found to have violated California Horse Racing Board Rules 1843, 1844 and 1887 on four (4) separate occasions; all which occurred within a two month period of time. Respondent was made aware of the first violation before his second horse ran in a licensed race. Respondent could have prevented the succeeding violations, but instead, chose to run three (3) horses in three separate races which he knew or should have known had Clenbuterol in their systems. This pattern of conduct is contrary to the interests over whom the California Horse Racing Board is charged to protect, including, those of the wagering public, the other participants in the races, the horse owners and the horses themselves. Previously, Respondent was found to have committed a Clenbuterol violation on September 10, 2009, with a Ruling issued in the Matter on August 1, 2010.

Therefore, based upon the penalty guidelines and the additional factors discussed in the incorporated Paragraphs of the Supplemental Closing Trial Brief, submitted by Counsel for Complainant, the penalty to be imposed on Respondent De La Torre shall be as follows:

1. Case No. 13LA0231 (Zoomdasher), to be counted as a first violation (Respondent's tenth violation in five and a half years), a 60 day suspension and a \$10,000 fine.

2. Case No. 13LA0254 (Carlota) to be counted as a third violation (Respondent's second violation having occurred on September 9, 2009, which date is within five years of Case No. 13LA0231. Case No. 13LA0254 is Respondent's eleventh violation in five and a half years), a one year suspension, to be imposed after the completion of the 60 day suspension and a \$50,000 fine.

3. Case No. 13LA0269 (Walked Away) to be counted as a third violation (Respondent's twelfth violation in five and a half years), a one year suspension to

be imposed after completion of the 60 day suspension and the first one year suspension and a \$50,000 fine.

4. Case No. 13LA0270 (Harrisburg) to be counted as a third violation (Respondent's thirteenth in five and a half years) a year suspension to be imposed after completion of the 60 day suspension, the first one year suspension and the second one year suspension and a \$50,000 fine.

The attached Proposed Decision of Hearing Officer Schiffer is hereby modified to reflect that the California Horse Racing Board Trainer license issued to Respondent Jose De La Torre is suspended for a consecutive period of three (3) years and sixty (60) days and fined a total sum of one hundred and sixty thousand (\$160,000.00) dollars.

The periods of suspension and payment of the fine are to be set by the Board of Stewards, Los Alamitos Race Course.

IT IS SO ORDERED ON November 25, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

By: 
Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION |
BY THE CALIFORNIA HORSE RACING |
BOARD AGAINST: |

Case Nos. 13LA 0231, LA 0254,
13LA 0269, 13LA 0270

JOSE DE LA TORRE, Trainer, |
Respondent |

(PROPOSED) FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION

COMES NOW Hearing Officer, DANIEL Q. SCHIFFER, and submits his (Proposed) Findings of Fact, Conclusions of Law and Decision as follows:

A. PROCEDURAL HISTORY

1. The Complaints

On or about November 3, 2013, the California Horse Racing Board (CHRB) filed the following complaint:

Official urine sample # LA24326 taken on 9/29/2013 at Los Alamitos from the horse "Zoomdasher" contained Clenbuterol, a Class 3 prohibited drug, substance, Penalty Class B. "Zoomdasher" ran in the 9th race finishing 2nd • Jose P. De La Torre is the trainer of record.

Thereafter on or about December 7, 2013, the CHRB filed the following complaint:

Official urine sample # LA24509 taken on 10/25/2013 at Los Alamitos from the horse "Carlota" contained Clenbuterol, a Class 3 prohibited drug, substance, Penalty Class B. "Carlota" ran in the 8th race finishing 1st • Jose P. De La Torre is the trainer of record.

Thereafter on or about January 7, 2014, the CHRB filed the following complaint:

Official urine sample # LA24779 taken on 11/24/2013 at Los Alamitos from the horse

"Walked Away" contained Clenbuterol, a Class 3 prohibited drug, substance, Penalty Class B . "Walked Away" ran in the 9th race finishing 1st • Jose P. De La Torre is the trainer of record.

On or about January 7, 2014, the CHRB also filed the following complaint:

Official urine sample # LA24783 taken on 11/24/2013 at Los Alamitos from the horse "Harrisburg" contained Clenbuterol, a Class 3 prohibited drug, substance, Penalty Class B . "Harrisburg" ran in the 13th race finishing 1st • Jose P. De La Torre is the trainer of record.

2. The Accusation

On or about January 24, 2014, the CHRB issued the Accusation seeking, among other things, revocation of the license of Jose De La Torre (Respondent). The Accusation is a matter of record in the above listed (consolidated) cases and a hearing date was noticed for April 17 & 18, 2014, at Los Alamitos Racetrack.

3. PreHearing Requests and Motions

The following is a summary of all Pre-Hearing Requests and Motions made, opposed and ruled upon pursuant to written documents that are part of the original file and are incorporated herein.

a. Request to Continue Hearing

The hearing was continued pursuant to the request of counsel for Respondent to May 27 & 28, 2014, at Los Alamitos Race Track before the undersigned, who had been designated as the Hearing Officer pursuant to Business & Professions Code, section 19517.5(a).

b. Peremptory Challenge

Counsel for Respondent filed a Peremptory Challenge which was opposed by the CHRB and denied by the Hearing Officer.

c. Motion to Disqualify

Counsel for Respondent filed a Motion to Disqualify the Hearing Officer and said Motion was opposed by the CHRB. The Motion was denied by the Hearing Officer.

d. Request for Pre-Hearing Conference

Counsel for Respondent requested a Pre-Hearing Conference that was held on May 6, 2014, with counsel present before the Hearing Officer.

4. Stipulations

On or about May 12, 2014, a written Statement of Stipulated Facts was served on the Hearing Officer. A true and correct copy of the Statement of Stipulated Facts is attached hereto as Exhibit "A" and is incorporated herein by this reference.

B. THE HEARING

On May 27-28 a hearing (the "Hearing") was held before Daniel Q. Schiffer, Hearing Officer, at the Executive Conference Room, Los Alamitos Race Track, Los Alamitos CA. The CHRB was represented by the CA Attorney General Kamala D. Harris, Patricia Nevonon, Esq., appearing and Respondent was represented by Darrell Vienna, Esq., Law Office of Darrell Vienna. The hearing was transcribed by Michelle Derieg.

1. Witnesses

The following witnesses were duly sworn and testified:

Dennis Drulian
Kevin Kitashima
Rick Arthur, DVM
Scott Stanley, PHD
Jose De La Torre

2. Documents

The list of documents entered into evidence is attached hereto as Exhibit "B" and is incorporated herein by this reference.

C. FINDINGS OF FACT

Based on the Statement of Stipulated Facts, the testimony of witnesses at the Hearing and documents admitted into evidence at the Hearing, the Hearing Officer makes the following findings of fact:

1. Jose P. De La Torre was a trainer licensed by the CHRB between September 29, 2013 through November 24, 2013.

2. Jose P. De La Torre was the trainer of record of "Zoomdasher" which ran in the 9th race at Los Alamitos Race Track on 9/29/2013 finishing 2nd. Post race urine samples taken from "Zoomdasher" contained Clenbuterol.

3. Jose P. De La Torre was the trainer of record of the horse "Carlota" which ran in the 8th race at Los Alamitos Race Track on 10/25/2013 finishing 1st. Post race urine samples taken from "Carlota" contained Clenbuterol.

4. Jose P. De La Torre was the trainer of record of the horse "Walked Away" which ran in the 9th race at Los Alamitos Race Track on 11/24/2013 finishing 1st. Post race urine samples taken from the horse "Walked Away" contained Clenbuterol.

5. Jose P. De La Torre was the trainer of record of the horse "Harrisburg" which ran in the 13th race at Los Alamitos Race Track on 11/24/2013 finishing 1st. Post race urine samples taken from the horse "Harrisburg" contained Clenbuterol.

6. The CHRB duly notified Respondent of the potential positive test on each horse specified above within twenty-one (21) days from the date each (urine) sample was taken from each horse.

D. MOTIONS TO DISMISS

1. Is the ban on Clenbuterol pursuant to Rule 1844.1 an "Underground Regulation" and therefore unenforceable?

a. Background

Horse Racing Law provides statutory authorization for the conduct of parimutuel wagering on horse races, while assuring the protection of the public in that pursuit. Business & Professions Code, section 19401(a). Horse Racing Law vests the CHRB with all powers necessary and proper to enable it to carry out fully and effectively the purposes of this chapter, including adopting rules and regulations for the protection of the public and the control of horse racing and parimutuel wagering. Business and Professions Code, section 19440(a)(1).

Horse Racing Law further specifies that a "prohibited drug substance" is any drug substance, medication, or chemical, whether natural or synthetic, or a metabolite or analogue thereof, foreign to the horse, whose use is not expressly authorized by the board (CHRB). Business & Professions Code, section 19413.1. The Board is authorized to adopt regulations to establish policies, guidelines and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Business & Professions Code, section 19580(a). Via this authority given to the CHRB Rules 1843, 1843.1 and 1843.5 were enacted to specify what "drug substances, etc.," were prohibited and/ or were allowed and under what parameters.

Rule 1844.1 empowered the CHRB to temporarily designate a drug substance, etc., within Rule 1843.

b. The Suspension of Clenbuterol as an authorized drug substance

Clenbuterol is a bronchodilator used in the treatment of respiratory conditions in horses and is classified as a Class 3 drug by the Association of Racing Commissioners

International (ARCI). That classification has been adopted by the CHRB pursuant to Rule 1843.2.

The CHRB authorized the use of clenbuterol for therapeutic purposes. Pursuant to Rule 1844(e)(9) the maximum amount of Clenbuterol in a post race urine sample could not exceed 5 nano grams per millimeter. Official blood test samples could contain Clenbuterol in an amount not to exceed 25 picograms per millimeter of serum or plasma. Rule 1844(f).

Between August 25, 2011, and July 18, 2014, the CHRB has utilized Rule 1844.1 on five (5) occasions to ban the presence Clenbuterol in post race tests. The closing Brief of Respondent at pages 4-5 contains a listing of timing of each ban. For purposes of this discussion it is not in controversy as to whether or not the procedures specified in Rule 1844.1 were followed when each ban was put in place.¹

c. The Tidewater case

Both parties rely on the Tidewater case,² decided by our California Supreme Court, and which contains a discussion of "underground regulations." Respondent argues that the CHRB has illegally used Rule 1844.1 as an "underground regulation" to ban Clenbuterol without following the guidelines established by the Administrative Procedures Act (APA).³

The Tidewater court looked at various instances when regulations were required to be enacted pursuant to APA guidelines. Where the regulation involved defining a policy or procedure it was subject to enactment following APA guidelines. Where it only involved a checklist, particular case, a contract or a construction application then the APA enactment procedure was not a prerequisite. See Tidewater. Id at pages 571-572.

The last instance discussed by our state Supreme Court in Tidewater is analogous to this case. The Court stated that resolutions approving construction of the Richmond-San Rafael Bridge and authorizing the issuance of bonds to fund the construction were not subject to the APA (*Faulkner v. Cal. Toll Bridge Authority* (1953) 40 Cal. 2d 317, 323-324 [253 P.2d 659]). The procedures to obtain funding were subject to the APA but the specific site where the bond would be used was not. The court opined that interpretations that arise in the course of case-specific adjudication are not regulations.... (*Bendix Forest Products Corp. v. Division of Occupational Saf. & Health* (1979) 25 Cal. 3d 465, 471 [158 Cal.Rptr. 882, 600 P.2d 1339]; *Carmona v. Division of Industrial Safety* (1975) 13 Cal. 3d 303, 309-310 [118 Cal.Rptr. 473, 530 P.2d

¹ Respondent has raised the issues(1) whether there can be successive bans and (2) the validity of the notification of the ban. These issues will be discussed below.

² Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal. 4th 557

³ Government Code, sec. 11340, et.seq.

161]; *Taye v. Coye* (1994) 29 Cal. App. 4th 1339, 1345 [35 Cal.Rptr.2d 27]; *Aguilar v. Association for Retarded Citizens* (1991) 234 Cal. App. 3d 21, 28 [285 Cal.Rptr. 515] (*Aguilar*.) Tidewater. Id at page 571.

Similarly in this instance the regulation (i.e., Rule 1844.1) was not amended. It had already been enacted pursuant to APA guidelines. The addition of Clenbuterol to the list of prohibited substances was not subject to the enactment guidelines of the APA. The CHRB's addition of this drug substance was within the purview of the statutory scheme designed to protect the public engaged in parimutuel wagering on horse races.

2. Can the ban be issued for successive periods of time?

Respondent points to Rule 1844.1(d) which states that the suspension of a drug substance, etc., shall not exceed 12 months and argues that the ban cannot be issued for successive periods of time. There is no specific language in the Rule that prohibits successive bans. Further the language of the Rule is very broad so as to give the CHRB an effective mechanism to react to changing environments.

Given that Clenbuterol has definite therapeutic benefits and was allowed, prior to being banned, lend to the conclusion that the ban is temporary in nature. Dr. Arthur testified regarding the proposed RMTC⁴ suggested threshold level⁵. Both Drs. Arthur and Stanley discussed the Knych and Sams studies and the evolving history of the CHRB recommended pre-race withdrawal times. These are but examples of the growing body of knowledge concerning the benefits and potential for abuse of this substance. Once quantified the CHRB will be in a position to enact appropriate permanent guidelines to control the use of Clenbuterol. In the interim however it is using Rule 1844.1 to protect the wagering public and in this context it has been necessary for the CHRB to reinstate the ban on successive occasions.

The abuse or misuse of drug substances, medications, or chemicals is widely is acknowledged as a central threat to the integrity of this sport. Rule 1844.1 serves the purpose of combating this threat. Without the power to curb abuses the CHRB would be unable to effectuate their statutory purpose. So long as each ban is put in place using the procedure specified in Rule 1844.1 there does not appear to be, and Respondent is unable to cite, any precedent to prohibit its repeated use for the same drug substance.

3. Did the trainers receive notification of the ban?

Rule 1844.1 requires the the CHRB shall notify in writing the racing association and the trainer's organization of any temporary suspension.... The un-rebutted testimony of Dr. Arthur established that that these notifications, plus additional ones,

⁴ Racing Medication and Testing Consortium, Inc.

⁵ The RMTC has proposed that the threshold level for a Clenbuterol positive be set at 140 picograms per milliliter of urine.

such as postings on the CHRB website, etc., were complied with in regards to the Clenbuterol suspensions. As such this argument has no merit.

E. CONCLUSIONS OF LAW

1. California Horse Racing Law, codified at Business and Professions Code, section 19400, et. seq., and the Rules and Regulations promulgated there under in Title 4 of Rules & Regulations, govern this case.

2. Horse Racing Law provides for the conduct of parimutuel wagering on horse races and the protection of the public while in that pursuit. B & P C, section 19401(a).

3. The CHRB is vested with all powers necessary and proper to carry out the purposes of the Horse Racing Law. B & P C, section 19440(a)(1).

4. The CHRB is authorized to adopt regulations to establish policies, guidelines and penalties relating to the use of equine medications to preserve and enhance the integrity of horse racing. B & P C, section 19401(a)(1).

5. Rule 1843 provides that no horse participating under the Horse Racing Law shall carry in its body any drug substance, medication, or chemical, whether natural or synthetic, or a metabolite or analogue thereof, foreign to the horse, whose use is not expressly authorized by the board (CHRB).

6. Rule 1843.1 defines "prohibited" drug substances as any drug substance or medication whose use is not expressly authorized by the Board or any drug substance or medication in excess of the authorized level.

7. Rule 1844 authorizes the administration of clenbuterol provided that the official post- race sample does not contain clenbuterol and/or its metabolites in excess of 5 nanograms per milliliter of urine (subd. (e)(9)) or 25 picograms per milliliter or serum or plasma (subd. (f)).

8. Rule 1406 provides that the Board for good cause may temporarily suspend the application of any of its rules.

9. Rule 1844.1 empowers the CHRB to temporarily designate a drug substance, etc., within Rule 1843.

10. Between September 29, 2013 through November 24, 2013, pursuant to Rule 1844.1, Clenbuterol was a temporarily designated a prohibited drug substance within Rules 1843 and 1843.1.

11. CHRB Rule 1843.3 sets forth penalty guidelines and the application of aggravating circumstances and mitigating factors to be considered with regard to penalty violations of medication rules.

12. CHRB Rule 1859.5 requires the disqualification of any horse whose official test sample contains a prohibited Class 1, 2, or 3 substance.

13. CHRB Rule 1887 provides that the trainer is the absolute insurer of the condition of the horses entered in a race and should samples of blood, urine or other tests show the presence of a prohibited substance, the trainer may be sanctioned.

F. DECISION

Between September 29, 2013 through November 24, 2013, Jose P. De La Torre was a trainer licensed by the CHRB. During that period he was trainer of record of four horses, as specified in the Findings of Fact, that ran at Los Alamitos Race Track and all four horses tested positive in official post race samples with verifiable amounts of Clenbuterol. Clenbuterol is a temporarily designated drug substance within Rules 1843 and 1843.1 and was prohibited in all four horses trained by Jose P. De La Torre.

Pursuant to Rule 1859.5 each of the horses raced while having the prohibited drug substance Clenbuterol in its system and each is therefore disqualified from its placing in each of the races in which it participated.

Jose P. De La Torre is in violation of Rule 1843 and Rule 1887 as to each of the four horses and the Accusation has been proven.

G. PENALTY

a. STATUTORY PENALTY

Rule 1843.3(d) specifies that the hearing Officer shall consider the penalties specified in that Rule and any aggravating or mitigating circumstances.

The Category "B" penalties for a licensed trainer are specified as follows:

1st Offense: Minimum 30-day suspension to maximum 60 day suspension. And/or Minimum fine of \$500 to maximum fine of \$10,000.

2nd Offense: (two years) Minimum 60-day suspension to maximum of 180 day suspension. And/or minimum fine of \$1,000 to maximum fine of \$20,000

3rd Offense: (five years) Minimum 90 days suspension to maximum one-year suspension. And/or minimum fine of \$2,500 to maximum fine of \$50,000 or 10% of purse (greater of the two).

And (the trainer) may be referred to the Board for any further action deemed necessary by the Board.

Respondent's CHRIS printout (Exhibit 2B) shows three previous violations for banned substances: May 16, 2008 (excess Clenbuterol), September 21, 2008 (excess Clenbuterol) and thereafter on August 1, 2010 (excess Clenbuterol). Dr. Arthur testified that Respondent had had nine (9) previous Clenbuterol violations.⁶

In the matter before us Respondent has violated of Rule 1843 and Rule 1887 four separate times. Since the August 1, 2010 violation occurred within five years of the most recent violations Respondent will be held to have five (5) violations within the past five (5) years making him subject to the penalties prescribed for a second offense and three third offenses; subject to the following analysis of mitigating circumstances and aggravating factors.

b. ANALYSIS OF MITIGATING CIRCUMSTANCES AND AGGRAVATING FACTORS

Rule 1843.3(b) requires the Hearing Officer to consider the following mitigating circumstances and aggravating factors:

1. The past record of the licensee regarding past violations of Business and Professions Code section 19581.

As stated above the CHRIS printout shows three previous violations for excess Clenbuterol. Since the Rule specifically limits this factor to the licensee's "record," the testimony of Dr. Arthur concerning multiple prior violations cannot be considered. Respondent's prior record and, as each successive violation occurred and the existence of which was communicated to Respondent (except for the last two which occurred on the same race card), he has a repetitive record of infractions over a substantial period of time. However Business and Professions Code section 19581 applies to drug substances that are administered **after the horse is entered** and there was nothing in the record nor was there evidence presented at the hearing which establishes this criteria. Therefore this is a neutral factor.

2. The potential of the drug to influence a horse's racing performance.

Dr. Arthur testified that, while Clenbuterol, a Class 3 drug substance, has therapeutic value, it also has the potential to influence the outcome of a race. Dr. Arthur's testimony was not effectively challenged as to this conclusion. Further, the fact that the RMTC has determined that Clenbuterol needs to be regulated, validates its potential for influence. Finally an examination of each of Respondent's horse's performance in their

⁶ Apparently the Chris records do not delineate the number of violations which were described by Dr. Arthur as two (2) (excess Clenbuterol) on September 21, 2008, and six (6) (excess Clenbuterol) on May 16, 2008

respective races provides indirect evidence of its influence in this specific situation.⁷ Therefore this is an aggravating factor.

3. The legal availability of the drug.

Both parties agree that Clenbuterol is readily available. This is a neutral factor.

4. Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug.

Mr. De La Torre testified that he administered the drug to his horses. After he was made aware of the first violation he continued to either administer the drug and/or entered the next horse in a race when he was aware or should have been aware that his entry had the potential to test positive for Clenbuterol. For example, he was notified of the "Zoomdasher" positive test on October 11, 2013, and then ran "Carlotta" on October 25, 2013, and "Walked Away" and "Harrisburg" on November 24, 2013. Since he was personally administering the drug he knew or should have known whether or not each of those horses had been given Clenbuterol inside the withdrawal period recommended by the CHRB. This is an aggravating factor.

5. The steps taken by the trainer to safeguard the horse.

The rationale discussed in the last factor has equal application here. Respondent was on notice that his actions had resulted in a positive test and did nothing to prevent it from being repeated in the next three instances. Again this is an aggravating factor.

6. The steps taken by an owner to safeguard against subsequent medication violations....

No testimony or other evidence was presented on this factor and therefore this is a neutral factor.

7. The probability of environmental contamination or inadvertent exposure....

Dr. Arthur provided un-rebutted testimony that these violations could not have occurred through these factors. This is at best a neutral factor.

8. The purse of the race.

The parties are in disagreement on this factor. The race in which "Zoomdasher" competed was a stakes race with \$150,000 purse. "Carlota" ran in a race with a \$7,035 purse. Both "Walked Away" and "Harrisburg" ran in "Futurity Trial" races having \$4,000 purses each but, if either or both of them ran well enough, they would be eligible to run in a Futurity race having a \$2m purse.

⁷ "Zoomdasher" finished 2nd beaten a nose in a ten horse field (Exhibit 2-D, p. 21); "Carlota" won by one half length in a six horse field (Exhibit 3); "Walked Away" won by one half length in an eight horse field (Exhibit 4) and "Harrisburg" won by a head in an eight horse field (Exhibit 5).

Since this factor is limited to consideration of "purse" the only horse as to which this is an aggravating factor is the "Zoomdasher" positive. The other three positives must be considered pursuant to this criteria as mitigating circumstances.

9. Whether the drug found in the drug sample was one for which the horse was receiving treatments determined through the process described in Rule 1842....

Since the drug was being administered by Respondent himself and not subject to reporting, this is a neutral factor.

10. Whether there was a suspicious wagering pattern on the race.

No evidence was presented regarding this factor and therefore it is a neutral factor.

11. Whether the licensed trainer was acting under the advice of a licensed veterinarian.

Respondent established by his own testimony that he relied on a licensed veterinarian who instructed him on the proper administration and dosage of the drug. Nevertheless Respondent either intentionally or negligently administered the drug in violation of the rules on successive occasions after he was aware that he had the initial positive test. Therefore this is a aggravating factor.

c. CONCLUSION

Respondent has violated Rule 1844 on four separate occasions; all within a two month period of time. Respondent was made aware of the first violation before the next horse ran. He could have prevented the succeeding violations and chose to run three horses which he knew or should have known had Clenbuterol in their systems. By virtue of this choice the aggravating factors outweigh the mitigating circumstances. This pattern of conduct is contrary to the interests over which the CHRB is charged to protect, including, those of the betting public, the other participants in the races, the horse owners and the horses themselves. Further there are several factors⁸ which could not be considered due to the limitations set forth in the analysis of mitigating circumstances and aggravating factors. Therefore Respondent is referred to the CHRB for determination whether or not his licensed should be revoked.

Subject to and in addition to that further determination, Respondent shall be fined the sum of \$100,000.00 (\$10,000 for the first offense, \$30,000 each for the second, third and fourth offenses) and suspended for a period of two (2) years (60 days for the first offense, and the balance divided equally for the second, third and fourth offenses).

⁸ The previous 9 Clenbuterol violations testified to by Dr. Arthur and the fact that two of the horses were running in Futurity Trial races where they may have gone on to run in a \$2m Futurity.

Dated: July 23, 2014

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. Schiffer", is written over a horizontal line. The signature is stylized and somewhat obscured by a diagonal scribble.

DANIEL Q. SCHIFFER, ESQ., Hearing Officer

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EXHIBIT "A"

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8 BEFORE THE CALIFORNIA HORSE RACING BOARD
9 STATE OF CALIFORNIA

10
11 **IN THE MATTER OF THE ACCUSATION**
12 **BY THE CALIFORNIA HORSE RACING**
13 **BOARD AGAINST:**

Case No. 13LA0231, 13LA0254, 13LA0269,
and 13LA0270

STIPULATED FACTS

14 **JOSE DE LA TORRE, Trainer,**

15
16 Respondent

17
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19 The parties to this action, the California Horse Racing Board ("CHRB" or "Board") and
20 Respondent Jose de la Torre stipulate to the following facts as true:

- 21 1. Respondent holds a trainer's license number 279541 issued by the Board.
22 2. Clenbuterol is a Class III drug in penalty Class B.
23 3. Regarding Case No. 13LA0231:
24 a. On September 29, 2013, Los Alamitos Race Course was conducting a licensed
25 race meeting.
26 b. On that date, Respondent was the trainer of the horse "Zoomdasher," which was
27 regularly entered in the ninth race at Los Alamitos Race Course.
28

- 1 c. Zoomdasher finished in second place in the ninth race at Los Alamitos Race
2 Course on September 29, 2013.
- 3 d. On September 29, 2013, at an appropriate time following the ninth race, a urine
4 sample was taken from Zoomdasher by Sergio Castellanos, under the supervision
5 of the Official State Veterinarian Dr. Gary Beck, and recorded as sample number
6 LA24326.
- 7 e. Peggy Lighthill is the employee at Los Alamitos Race Course who is responsible
8 for receiving and sending blood and urine samples to the University of California,
9 Maddy Equine Analytical Chemistry Laboratory ("Maddy Laboratory") for testing
- 10 f. On September 29, 2013, Peggy Lighthill received urine sample LA24326 from
11 Sergio Castellanos and properly stored it overnight.
- 12 g. On Monday, September 30, 2013, Petty Lighthill sent urine sample LA24326 to
13 the Maddy Laboratory by Federal Express.
- 14 h. On October 10, 2013, Dr. Scott Stanley, Chief Chemist of the Maddy Laboratory
15 rendered an opinion after testing urine sample LA24326 that sample LA24326
16 contained Clenbuterol.
- 17 i. Dr. Stanley's findings were memorialized in a report entitled "Certificate of
18 Analysis: CA-POS-009682."
- 19 j. On October 10, 2013, Dr. Stanley reported to the Board that urine sample
20 LA24326 contained Clenbuterol in the amount of 125 picograms per milliliter.
- 21 k. On October 11, 2013, CHRB Investigator Dennis Druillas, with Investigator Kevin
22 Kitashima and Supervising Investigator Tom Blake, personally notified
23 Respondent of the positive test result for urine sample LA24326.
- 24 l. On October 11, 2013, Respondent requested that split urine sample LA24326 be
25 released to a laboratory of his choice and paid the appropriate fee. He later
26 notified the CHRB of his selection of the University of Florida Racing Laboratory
27 to conduct the split sample testing.
- 28

- 1 m. On October 30, 2013, the University of Florida Racing Laboratory notified the
2 CHRB that its testing had confirmed the presence of Clenbuterol in the split urine
3 sample LA24236, indicating that the sample was received on October 24, 2012.
- 4 n. On November 6, 2013, the University of Florida Racing Laboratory sent an
5 amended report to the CHRB indicating that split urine sample LA24326 had been
6 received on October 24, 2013.
- 7 o. The University of Florida Racing Laboratory testing of split urine sample
8 LA24326 reported a Clenbuterol concentration of 81 picograms per milliliter.
- 9 4. Regarding Case No. 13LA0254:
- 10 a. On October 25, 2013, Los Alamitos Race Course was conducting a licensed race
11 meeting.
- 12 b. On that date, Respondent was the trainer of the horse "Carlota," which was
13 regularly entered in the eighth race at Los Alamitos Race Course.
- 14 c. Carlota finished in first place in the eighth race at Los Alamitos Race Course on
15 October 25, 2013.
- 16 d. On October 25, 2013, at an appropriate time following the eighth race, a urine
17 sample was taken from Carlota by Sergio Castellanos, under the supervision of the
18 Official State Veterinarian Dr. Gary Beck, and recorded as sample number
19 LA24509.
- 20 e. Peggy Lighthill is the employee at Los Alamitos Race Course who is responsible
21 for receiving and sending blood and urine samples to the University of California,
22 Maddy Equine Analytical Chemistry Laboratory ("Maddy Laboratory") for testing
- 23 f. On October 25, 2013, Peggy Lighthill received urine sample LA24509 from
24 Sergio Castellanos and properly stored it over the weekend.
- 25 g. On Monday, October 28, 2013, Petty Lighthill sent urine sample LA24509 to the
26 Maddy Laboratory by Federal Express.
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- 1 h. On November 4, 2013, Dr. Scott Stanley, Chief Chemist of the Maddy Laboratory
2 rendered an opinion after testing urine sample LA24509 that sample LA24509
3 contained Clenbuterol.
- 4 i. Dr. Stanley's findings were memorialized in a report entitled "Certificate of
5 Analysis: CA-POS-009750."
- 6 j. On November 4, 2013, Dr. Stanley reported to the Board that urine sample
7 LA24509 contained Clenbuterol in the amount of 488 picograms per milliliter.
- 8 k. On November 9, 2013, Respondent was not in his barn at Los Alamitos Race
9 Course when CHRB investigators arrived to give notice of the positive test result.
10 That day, CHRB Investigator Kevin Kitashima telephonically notified Respondent
11 of the positive test result for urine sample LA24509. A copy of the positive test
12 result was mailed to Respondent.
- 13 l. On November 16, 2013, Respondent requested that split urine sample LA24509 be
14 released to a laboratory of his choice and paid the appropriate fee. He later
15 notified the CHRB of his selection of the University of Florida Racing Laboratory
16 to conduct the split sample testing.
- 17 m. On December 3, 2013, the University of Florida Racing Laboratory notified the
18 CHRB that its testing had confirmed the presence of Clenbuterol in the split urine
19 sample LA24236. The concentration of Clenbuterol was confirmed at 420
20 picograms per milliliter.
- 21 5. Regarding Case No. 13LA0269:
- 22 a. On November 24, 2013, Los Alamitos Race Course was conducting a licensed
23 race meeting.
- 24 b. On that date, Respondent was the trainer of the horse "Walked Away," which was
25 regularly entered in the ninth race at Los Alamitos Race Course.
- 26 c. Walked Away finished in first place in the ninth race at Los Alamitos Race Course
27 on November 24, 2013.
- 28

- 1 d. On November 24, 2013, at an appropriate time following the ninth race, a urine
2 sample was taken from Walked Away by tester Francisco Solis, under the
3 supervision of the Official State Veterinarian Dr. Gary Beck, and recorded as
4 sample number LA24779.
- 5 e. Peggy Lighthill is the employee at Los Alamitos Race Course who is responsible
6 for receiving and sending blood and urine samples to the University of California,
7 Maddy Equine Analytical Chemistry Laboratory ("Maddy Laboratory") for testing
- 8 f. On November 24, 2013, Peggy Lighthill received urine sample LA24779 from
9 Francisco Solis and properly stored it overnight.
- 10 g. On Monday, November 25, 2013, Petty Lighthill sent urine sample LA24779 to
11 the Maddy Laboratory by Federal Express.
- 12 h. On December 4, 2013, Dr. Scott Stanley, Chief Chemist of the Maddy Laboratory
13 rendered an opinion after testing urine sample LA24779 that sample LA24779
14 contained Clenbuterol.
- 15 i. Dr. Stanley's findings were memorialized in a report entitled "Certificate of
16 Analysis: CA-POS-009826."
- 17 j. On December 4, 2013, Dr. Stanley reported to the Board that urine sample
18 LA24779 contained Clenbuterol in the amount of 687 picograms per milliliter.
- 19 k. On December 7, 2013, CHRB Investigator Dennis Drulias telephonically notified
20 Respondent of the positive test result for urine sample LA24779. Respondent
21 requested that all further communication be directed to his attorney, Darrell
22 Vienna. A copy of the positive test result was mailed to Respondent.
- 23 l. On December 7, 2013, CHRB Investigator Drulias spoke by telephone to attorney
24 Darrell Vienna about the positive test result. At Mr. Vienna's request, Investigator
25 Drulias emailed the positive test notifications to Mr. Vienna for both urine samples
26 LA24779 and LA24783.

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- 1 6. Regarding Case No. 13LA0270:
- 2 a. On November 24, 2013, Los Alamitos Race Course was conducting a licensed
- 3 race meeting.
- 4 b. On that date, Respondent was the trainer of the horse "Harrisburg," which was
- 5 regularly entered in the thirteenth race at Los Alamitos Race Course.
- 6 c. Harrisburg finished in first place in the thirteenth race at Los Alamitos Race
- 7 Course on November 24, 2013.
- 8 d. On November 24, 2013, at an appropriate time following the thirteenth race, a
- 9 urine sample was taken from Harrisburg by tester Joel Esparza, under the
- 10 supervision of the Official State Veterinarian Dr. Gary Beck, and recorded as
- 11 sample number LA24783.
- 12 e. Peggy Lighthill is the employee at Los Alamitos Race Course who is responsible
- 13 for receiving and sending blood and urine samples to the University of California,
- 14 Maddy Equine Analytical Chemistry Laboratory ("Maddy Laboratory") for testing
- 15 f. On November 24, 2013, Peggy Lighthill received urine sample LA24783 from
- 16 Joel Esparza and properly stored it overnight.
- 17 g. On Monday, November 25, 2013, Petty Lighthill sent urine sample LA24783 to
- 18 the Maddy Laboratory by Federal Express.
- 19 h. On December 4, 2013, Dr. Scott Stanley, Chief Chemist of the Maddy Laboratory
- 20 rendered an opinion after testing urine sample LA24783 that sample LA24783
- 21 contained Clenbuterol.
- 22 i. Dr. Stanley's findings were memorialized in a report entitled "Certificate of
- 23 Analysis: CA-POS-009827."
- 24 j. On December 4, 2013, Dr. Stanley reported to the Board that urine sample
- 25 LA24783 contained Clenbuterol in the amount of 428 picograms per milliliter.
- 26 k. On December 7, 2013, CHRB Investigator Dennis Drulias telephonically notified
- 27 Respondent of the positive test result for urine sample LA24783. Respondent
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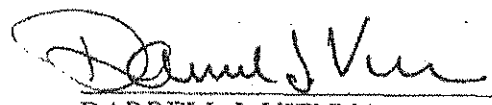
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requested that all further communication be directed to his attorney, Darrell Vienna. A copy of the positive test result was mailed to Respondent.

1. On December 7, 2013, CHRB Investigator Drulias spoke by telephone to attorney Darrell Vienna about the positive test result. At Mr. Vienna's request, Investigator Drulias emailed the positive test notifications to Mr. Vienna for both urine samples LA24779 and LA24783.

SO STIPULATED

Dated: 5/9/14



DARRELL J. VIENNA
For Jose De La Torre

Dated: 5/12/14



PATRICIA A. NEVONEN
For the California Horse Racing Board

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **In the Matter of the Accusation by the CHRB Against: Jose P. DeLaTorre**

No.: **13LA0231, 13LA0254, 13LA0269, 13LA0270**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 12, 2014, I served the attached **Stipulated Facts** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Darrell J. Vienna, Esq.
Law Offices of Darrell J. Vienna
P.O. Box 725
Sierra Madre, CA 91025
E-mail Address: horselawyer@gmail.com

Daniel Q. Schiffer
Law Offices of Daniel Q. Schiffer
215 N. Marengo Ave., Suite 346
Pasadena, CA 91101
E-mail Address: dschifferlaw@earthlink.net

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 12, 2014, at Los Angeles, California.

Yvette Wright
Declarant

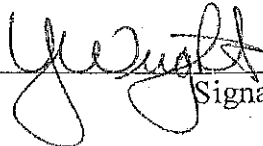

Signature

EXHIBIT "B"

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BEFORE THE CALIFORNIA HORSE RACING BOARD

In the Matter of the Accusations Against,
Jose De La Torre,

Respondent.

Case No. 13LA0231, 13LA0254, 13LA0269,
13LA0270

EXHIBIT LIST

The California Horse Racing Board (CHRB) presents the following list of exhibits to be offered into evidence at the hearing in the Matter of Jose de la Torre:

1. Stipulated Facts.
2. Investigation File re 13LA0231 (Zoomdasher).
 - 2A. Investigation Report 13LA0231.
 - 2B. License record re Jose de la Torre.
 - 2C. September 29, 2013 Official Program (Equibase) re 9th Race.
 - 2D. Equibase Chart re Results of 9th Race.
 - 2E. Maddy Laboratory Certificate of Analysis re LA24326.
3. Investigation File re 13LA0254 (Carlota).

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- 3A. Investigation Report 13LA0254.
- 3B. October 25, 2013 Official Program/Results re 8th Race.
- 3C. Maddy Laboratory Certificate of Analysis re LA24509.
- 4. Investigation File re 13LA0269 (Walked Away).
 - 4A. Investigation Report 13LA0269/13LA0270 (Walked Away & Harrisburg).
 - 4B. November 24, 2013 Official Program/Results re 9th Race.
 - 4C. Maddy Laboratory Certificate of Analysis re LA24779.
- 5. Investigation File re 13LA0270 (Harrisburg).
 - 5A. November 24, 2013 Official Program/Results re 13th Race.
 - 5B. Maddy Laboratory Certificate of Analysis re LA24783.
- ~~6. Curriculum Vitae - Rick Mitchell Arthur, D.V.M.~~
- 7. Curriculum Vitae 2014 - Scott D. Stanley
- 8. June 22, 2012 News Release re Summary of CHRB Actions and Discussions 6/20/13.
- 9. Maddy Laboratory Packet re Sample LA24326 (Zoomdasher).
- 10. Maddy Laboratory Packet re Sample LA24509 (Carlota).
- 11. Maddy Laboratory Packet re Sample LA24779 (Walked Away).
- ~~12. Maddy Laboratory Packet re Sample LA24783 (Harrisburg).~~

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- A - CHRB Notice of Meeting. Thursday, April 28, 2011.
~~CHRB Staff Analysis. Proposed addition of CHRB Rule 1844.1. April 28, 2011.~~
~~CHRB Notice of Meeting. Thursday, August 25, 2011.~~
- B - CHRB Meeting, Thursday, August 25, 2011. Transcript: Pages 175-176.
~~CHRB Notice of Meeting. Thursday, April 26, 2012.~~
~~CHRB Meeting, Thursday, April 26, 2012. Transcript: Pages 8-10.~~
- C - CHRB Notice of Meeting. Thursday, June 28, 2012.
- D - CHRB Meeting, Thursday, June 28, 2012. Transcript: Pages 19-25.
- E - CHRB Summary of CHRB Actions and Discussions. June 30, 2012.
- F - CHRB Notice of Meeting. Thursday, June 20, 2013.
- G - CHRB Staff Analysis. The Extension of Board Decision to Suspend the Use of Clenbuterol. June 20, 2013.
- H - CHRB Meeting, Thursday, June 20, 2013. Transcript: Pages 64-66.
- I - CHRB Summary of CHRB Actions and Discussions. June 22, 2013.
- J - CHRB Memorandum: Clenbuterol Regulation at All California Tracks. June 7, 2012.
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- K - CHRB Letter dated 5/19/2014 to D Vienna

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



May 19, 2014

Darrell J. Vienna
P.O. Box 725
Sierra Madre, CA 91025-0725

SUBJECT: Public Records Act Request 048-14

Dear Mr. Vienna,

I am writing in response to your request received by the California Horse Racing Board (CHRB) on March 10, 2014 for public records pursuant to the Public Records Act, Government Code section 6250 et seq.

You requested the following records:

1. *For the years 2011 through and including 2014, all records, data, preliminary drafts, notes, memos and writings related to, commenting on, responding, or indicating compliance in any way to the requirements of CHRB Rule No. 1844.1(c) requiring written notification of any temporary suspension of authorization to administer a drug, substance, or medication to a horse entered to race.*

The CHRB posts notifications, meeting summaries, etc. and other information regarding rules and regulations on our website. If you use the search tool and input 1844 and 1844.1 (c), you will find the information that the CHRB has presented regarding this rule. Other than this information it has been determined that the CHRB does not hold any records responsive to your request.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "V. Thornton".

Vicky Thornton
Public Records Request Coordinator
916-263-6008