

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Official Ruling #013,
Del Mar Thoroughbred Club, dated
November 12, 2017

Case No. SAC 17-0060

DR. JENNIFER FINLEY
CHRB License #297582
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 **In the Matter of:**

11 **Appeal of the Board of Stewards Official**
12 **Ruling No. 013, Del Mar Thoroughbred**
13 **Club, Dated November 12, 2017**

14 **DR. JENNIFER FINLEY**
15 **VETERINARIAN**
16 **CHRB LICENSE NO. 297582**
17 **APPELLANT**

Case No.: SAC 17-0060

PROPOSED DECISION RE: APPEAL
OF THE BOARD OF STEWARDS'
OFFICIAL RULING NO. 013, DEL
MAR THOROUGHBRED CLUB,
DATED NOVEMBER 12, 2017

Hearing Date: August 31, 2018
Time: 10:00 a.m.

18 **I. INTRODUCTION**

19 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 013, Del
20 Mar Thoroughbred Club, dated November 12, 2017 (the "Appeal").

21 Appellant, Jennifer Finley ("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 “2” ADMINISTRATIVE RECORD FOR DR. JENNIFER FINLEY.

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. Jennifer Finley.

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. 2 at Ex. 7.)

II.

On May 28, 2017, Dr. Todd Brokken (“Brokken”) administered the Horse with Phenylbutazone (“Bute”) at approximately 9:45 a.m. (the “First Treatment”). (See, Ex. 2 at Ex. 7.) Brokken claims he notified Appellant of the First Treatment via text message. (Id.) Appellant did not acknowledge receipt of Brokken’s text message. (Id.) There is no evidence that Brokken sent any text message to Appellant. (Id.)

III.

1 Also on May 28, 2017 at approximately 11:15 a.m., unaware of the First Test, Appellant
2 gave the Horse a second Bute treatment (the "Second Treatment"). (See, Ex. 2 at Ex. 7.)
3 Appellant claims she advised Brokken of the Second Treatment, which Brokken failed to
4 acknowledge. (Id.) There is no evidence of Appellant sending a text message to Brokken
5 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. 2 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. 2 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 2 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
22 Hope on May 28, 2017 at 0935 hrs. DVM Finley administered a Phenylbutazone
23 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. 2 at Ex. 5.) Appellant appeared at the formal hearing via
25 phone. (Id.) Testimony revealed the medication overage resulted from Brokken and Appellant
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 2 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 JENNIFER FINLEY, 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. 2 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. 2 at Ex. 7.)

Specifically, the Stewards determined that Brokken's and Appellant's system of texting each other to confirm treatment of a respective horse ("texting system") was "a weak procedure" and requested Appellant and Brokken improve the texting system. (Ex. 2 at Ex. 7.)

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. 2 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's failure to personally appear at the Hearing contributed to the Ruling's excessive penalty; and (2) the Ruling's \$500.00 fine is excessive in light of the fact Appellant had no previous offenses. (Id.)

IX.

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

X.

1 On August 8, 2018, the CHRB set this Appeal for hearing on August 31, 2018 at the Del
2 Mar Thoroughbred Club. (Ex. 2 at Ex. 1.)

3 **V. ISSUES ON APPEAL AND CONTROLLING LAW**

4 The issue before this Officer is whether Appellant met the required burden of proof to
5 overrule the Stewards' unanimous decision, that Appellant violated Cal. Code Regs. Tit. 4 §§
6 1843(a)(d), 1843.1(b), and 1844(c)(1).

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

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

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

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

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

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

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

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

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

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

11 VI. DISCUSSION

12 Based upon the evidence presented, a preponderance of the evidence supports the
13 Stewards’ unanimous Ruling that Appellant violated Cal. Code Regs. Tit. 4 §§ 1843(a)(d),
14 1843.1(b), and 1844(c)(1).

15 Significantly, Appellant concedes this Appeal lacks merit as Appellant freely admitted:
16 (1) that she did not check with Brokken concerning the First Treatment; and (2) that she “was the
17 one that missed it [the alleged text from Brokken].” (H.T. at p. 19-20.)

18 Appellant’s argument that the Stewards “penalized” her for failing to personally appear at
19 the Hearing fails because Appellant did not produce any evidence supporting said argument. In
20 fact, Steward Kim Sawyer (“Steward Sawyer”) testified that: (1) Appellant’s decision to attend
21 the Hearing via telephone did not factor into the Steward’s Ruling; and (2) the Stewards did not
22 penalize Appellant for failing to personally appear. (H.T. at p. 16-17.)

23 Next, Appellant did not advance her argument that the Ruling’s fine was excessive for a
24 first-time violation. Appellant provided no evidence to demonstrate that the Ruling’s fine was
25 excessive. Thus, Appellant’s excessive fine argument fails as a matter of law.

26 Accordingly, the preponderance of the evidence supports the Stewards’ unanimous Ruling
27 that Appellant violated Cal. Code Regs. Tit. 4 §§ 1843(a)(d), 1843.1(b), and 1844(c)(1).

28 VII. CONCLUSION

