

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

GUILLERMO MORALES
CHRB License #283625

Respondent

CHRB Case #13LA0274

DECISION

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

The 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 March 21, 2014.

CALIFORNIA HORSE RACING BOARD

Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

March 8, 2014

In the Matter of the Complaint Against:

Guillermo Morales
Respondent
Case #13LA0274

INTRODUCTION

This matter has been heard before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office on February 14, 2014.

Present at the hearing was the respondent, Trainer Guillermo Morales, Owner Jose R. Olivas, Senior Investigator Tom Blake, Investigator Kevin Kitashima, Safety Steward Randy Winick, and this Board of Stewards. The proceedings were recorded by Court Reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Trainer Guillermo Morales was the trainer of record for the horse "TR Specialty," who started in the second race at Los Alamitos Race Course on December 1, 2013. On December 19, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "TR Specialty" (Urine Sample #LA24820) tested positive for the class IV prohibited drug Cetirizine and the class II prohibited drug Hydroxyzine after finishing first in the second race on December 1, 2013. Trainer Morales was notified of the positive on December 19, 2013, and a barn inspection found no further violations. On December 19, 2013, Trainer Morales completed the forms for the split sample testing. PhAst Laboratory - ISU was selected as the lab to conduct the testing of the split sample. On January 31, 2014, investigators received a Final Report from PhAst Laboratory - ISU, confirming that the split sample #LA24820 contained the presence of Hydroxyzine (42 ng/ml) and Cetirizine (7500 ng/ml).

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#13LA0274

Respondent / Defendant

No documents submitted

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 "TR Specialty" when it raced in the second race on December 1, 2013 at Los Alamitos Race Course. "TR Specialty" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA24820) was taken from "TR Specialty" 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 #LA24820 from "TR Specialty" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, Cetirizine, a class IV substance, and Hydroxyzine, a class II substance.

VI.

On December 19, 2013, Trainer Guillermo Morales and Owner Jose Olivas were notified that "TR Specialty" had tested positive for Cetirizine and Hydroxyzine.

VII.

On January 7, 2014, PhAst Laboratory – ISU received split urine sample #LA24820.

VIII.

On January 31, 2014, investigators received a Final Report confirmation from PhAst Laboratory – ISU that urine sample #LA24820 was received in acceptable cold condition, and the sample container was sealed. Chemical analysis of the urine sample was completed, and the sample contained Cetirizine and Hydroxyzine.

APPLICABLE RULES

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 1843 (a,b,&d) (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 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.

California Horse Racing Board Rule 1859.5 (Disqualification Upon Positive Test Finding) 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.

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding) was applied to this case on February 8, 2014, by the Los Alamitos Stewards, which was the issuing of Ruling #22, for the disqualification and purse redistribution of "TR Specialty" for the detection of Hydroxyzine (Class II) and Cetirizine (Class IV) in the post-race sample. The trainer of record, Guillermo Morales, did request a split sample, which was confirmed by Iowa State University Veterinary Diagnostic Laboratory as positive for the above named drugs.

As the factual findings indicate, the Respondent owned a horse that tested positive for the drug substances Hydroxyzine (Class II) and Cetirizine (Class IV), the presence of which is prohibited by California Horse Racing Board Rules and Regulations. The split sample that was sent to Iowa State University Veterinary Diagnostic Laboratory also tested positive for Hyrdoxyzine and Cetirizine.

Trainer Guillermo Morales does not dispute the positive test finding of "TR Specialty," however he wanted to state for the record that he has never heard of these two drugs or medications and does not know what they are used for. Guillermo stated that he has never treated this horse or any horse illegally and that, if he did, he certainly would not risk his livelihood or reputation on such a low level of race or horse, where there was such insignificant money involved. (No incentive.)

Mr. Morales stated that he has four horses for the owner and has known him for some time and that it is expensive for Mr. Olivas to keep horses at the track, so Mr. Morales allows Mr. Olivas to take care of these horses at a ranch, where he leases stall space and does most of the work, except for veterinary treatments, himself. Guillermo said he knew of the risk of taking on ship-in horses and the amount of control he gives up. Guillermo stated that only Dr. Overly treated this horse the night before with bute and Dr. Lorbiecki on race night with lasix. The Stewards strongly advised Mr. Morales that by taking on ship-ins from outside ranches, he is at other people's mercy for medication positives, to which Guillermo acknowledged and would be more careful going forward.

With the first issue in this case not disputed of the actual drug positive by Trainer Guillermo Morales, the second portion of the equation, that of trainer responsibility (California Horse Racing Board Rule #1887 – Trainer to Insure Condition of Horse), needs to be addressed along with if there is any penalty that needs to be applied and to what extent by determining if there are mitigating and/or aggravating circumstances in Mr. Morales' culpability. Trainer Morales is entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), which has four defenses. Sections (a), (b), and (d) (Procedural Defenses) do not apply in this case, and section (c), which asks the trainer to show by a preponderance of the evidence that he made every

reasonable effort to protect the horses in his care from tampering by unauthorized persons, does not apply in that Guillermo only had the horse for approximately twenty-four (24) hours, and in that time, he was under his help's normal supervision. Mr. Morales understands it is still his responsibility.

Throughout the investigation and hearing, Mr. Morales cooperated completely.

The inquiry now goes to the penalty phase as outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which differentiates specific penalties for medication positives as well as mitigating factors that would allow for deviation from the penalties. These are class II and class IV violations that are both class "B" penalties, which calls for a minimum thirty (30) day suspension absent mitigating circumstances and up to ninety (90) days and a substantial fine due to aggravating factors.

A review of Mr. Morales' medication violation history reveals that he has had two previous class "B" positives since 2009. A review of the aggravating and mitigating factors is now required to determine if some deviation from the minimum penalty is appropriate:

- (1) *Past Medication Record of the Licensee:* Guillermo Morales has had two prior class "B" penalties in the past five (5) years for Clenbuterol violations in addition to this case. **Aggravating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Hydroxyzine and Cetirizine have the potential to produce a drowsy, dizzying effect when taken, along with slowed breathing. This would be an **aggravating** factor.
- (3) *The Legal Availability of the Drug:* These drugs are readily available either through a doctor's prescription or over the counter in any drug store or pharmacy. These drugs are primarily for human use for allergies. **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. Morales was not aware of these drugs being administered, as he only had the horse for twenty-four (24) hours prior to racing and that the owner had control of this horse all other times. The owner also admitted to having a prescription for this medication. **Mitigating** factor.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* Mr. Morales had safeguards in place once the horse was in his stable at Los Alamitos, twenty-four (24) hours prior to the race. **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 owner testified that he would "not" give any medication in the future to any of his horses pre-race at the ranch and would be more aware. **Mitigating.**

- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* It is quite probable that Guillermo Morales' owner inadvertently gave this medication to the horse by mistake while in his control at the ranch. **Mitigating** for Morales.
- (8) *Purse of the Race:* This is **mitigating**, for the simple reason that the purse was quite low: \$5,490.
- (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):* **Aggravating** because there is no reason that this drug was given to this horse. He was not treated for any reason these drugs are used for.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* This is a **mitigating** factor because of no known evidence that the wagering for this race was out of the ordinary.
- (11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian:* **Mitigating** as there is no evidence of his or any veterinarian's advice for approval of these drugs.

A review of the factors reveals that there are more mitigating (7) factors than aggravating (3) ones. There is one neutral factor.

It is the opinion of this Board of Stewards that Trainer Morales is guilty of extremely poor judgment, rather than any malicious intent. It was his poor decision to allow this or any owner to ship in a horse so close to race time, simply because he would not know 100% what they may have given said horse.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class IV prohibited drug, Cetirizine, and the class II prohibited drug, Hydroxyzine, were found in urine sample #LA24820 taken from the horse "TR Specialty," the first place finisher in the second race at Los Alamitos Race Course on December 1, 2013. This finding requires the disqualification of "TR Specialty" 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 Guillermo Morales. To avoid such responsibility, Trainer Morales 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). Cetirizine is a class IV drug that falls in the class "B" penalty, and Hydroxyzine is a class II drug that also falls in the "B" 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 Guillermo Morales, who started the horse "TR Specialty" in the second race on December 1, 2013 at Los Alamitos Race Course, is suspended sixty (60) days and fined the sum of five thousand dollars (\$5,000.00)* 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 Substances – Cetirizine [Class IV] and Hydroxyzine [Class II]) and #1902 (Conduct Detrimental to Horse Racing).

During the term of suspension, all licenses and license privileges of Trainer Guillermo Morales 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# 283625-10/2016

Case# 13LA0274

Dated March 8, 2014 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Ruben Moreno
Steward Ruben Moreno

George Slender
Steward George Slender

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