

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Complaints Against:

**JOSE A. MORENO**  
**CHRB License #303473**

**Respondent**

CHRB Cases #13LA0237  
#13LA0239

**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 January 16, 2014.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman

  
Jacqueline Wagner  
Assistant Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION  
of the  
BOARD OF STEWARDS**

Los Alamitos Race Course

December 20, 2013

**In the Matter of the Complaint Against:**

**Jose A. Moreno  
Respondent  
Cases #13LA0237 & #13LA0239**

**INTRODUCTION**

This has been heard before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Race Course Stewards' Office on Friday, December 6, 2013.

Present at the hearing were the respondent, Trainer Jose A. Moreno, Owner Jesus Uranga, Supervising Investigator Tom Blake, Investigator Kevin Kitashima, Stewards George Slender, Ruben Moreno, and James Dreyer. Court Reporter Michelle Derieg recorded the proceedings.

## **PROCEDURAL BACKGROUND**

Trainer Jose A. Moreno was the trainer of record for the horse "Sure Fire First," who started in the fourth race at Los Alamitos Race Course on October 5, 2013. On October 17, 2013, Sacramento Headquarters faxed information to Los Alamitos investigators that "Sure Fire First" (Urine Sample #LA24353) tested positive for the class III prohibited drug Clenbuterol after finishing second on October 5, 2013. Trainer Moreno was notified of the positive on October 18, 2013. Trainer Moreno completed the forms for the split sample testing. HFL Sport Science was selected as the laboratory to conduct the testing of the split sample.

Trainer Jose A. Moreno was the trainer of record for the horse "My Charming Chance" who started in the second race at Los Alamitos Race Course on October 6, 2013. On October 18, 2013, Sacramento Headquarters faxed information to Los Alamitos investigators that "My Charming Chance" (Urine Sample #LA24368) tested positive for the class III prohibited drug Clenbuterol after finishing second on October 6, 2013. Trainer Moreno was notified of the positive on October 18, 2013, and a barn inspection found no further violations. On October 18, 2013, Trainer Moreno completed forms for the split sample testing. HFL Sport Science was selected as the laboratory to conduct the testing of the split sample.

**LIST OF EXHIBITS**

Complainant / State

(1) California Horse Racing Board Complaint  
#13LA0237

(2) California Horse Racing Board Complaint  
#13LA0239

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 "Sure First First" when it raced in the fourth race on October 5, 2013 at Los Alamitos Race Course. "Sure Fire First" finished second in the aforementioned race.

### **III.**

A post race urine sample (labeled sample #LA24353) was taken from "Sure Fire First" 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 #LA24353 from "Sure Fire First" was uninterrupted.

### **V.**

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

### **VI.**

The Respondent requested that sample #LA24353 also be analyzed by HFL Sport Science pursuant to California Horse Racing Board Rule #1859.25 (Split Sample Testing).

### **VII.**

On November 7, 2013, Investigator Kitashima received a final report confirmation from University of Florida that urine sample #LA24353 was received in acceptable condition and that the sample contained Clenbuterol using liquid chromatography/mass spectrometry.

### **VIII.**

Respondent was the trainer of record for the horse "My Charming Chance" when it raced in the second race on October 6, 2013 at Los Alamitos Race Course. "My Charming Chance" finished second in the aforementioned race.

**IX.**

A post-race urine sample (labeled sample #LA24368) was taken from "My Charming Chance" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to the Kenneth L. Maddy Equine Analytical Chemistry Lab at the University of California, Davis. This is the official testing lab of the California Horse Racing Board.

**X.**

At all times herein mentioned, the chain of custody of sample #LA24368 from "My Charming Chance" was uninterrupted.

**XI.**

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

**XII.**

The respondent requested that sample #LA24368 also be analyzed by HFL Sport Science pursuant to California Horse Racing Board Rule #1859.25 (Split Sample Testing).

**XIII.**

On November 14, 2013, Investigator Kitashima received a final report confirmation from the University of Florida that urine sample #LA24368 was received in acceptable condition and that the sample contained Clenbuterol using liquid chromatography/mass spectrometry.

## APPLICABLE RULES

### **California Horse Racing Board Rule 1887 (a&b) (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,c&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 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 November 16, 2013 by the Los Alamitos Stewards, which was the issuing of Rulings #160 and #161 for the disqualification and purse redistribution of "My Charming Chance" and "Sure Fire First" for detection of Clenbuterol in the post-race samples. The trainer of record, Jose A. Moreno, did request a split sample for both of these horses.

There was no dispute about the positive test findings by either the trainer of record or his two owners. With the first issue in this case not disputed of the actual drug positive by Trainer Moreno, 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. Moreno's culpability. Trainer Moreno 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, also does not apply either because neither horse was under his control until twenty-four hours prior to race time. "Sure Fire First" was shipped to him from Owner Rocio Luna's ranch in Bakersfield, California, and "My Charming Chance" was shipped in by Owner Jesus Uranga from Long Beach, California. Owner Uranga testified that the boarding facility that he uses in Long Beach houses saddle horses and race horses, and although he keeps his medications locked up, other people have keys to the cabinet. Owner Luna testified he has not used Clenbuterol since 2012, when its use was banned at all tracks in California. Trainer Moreno argued he had no control over horses being shipped to him, which is exactly the point we have been attempting to impress on trainers since the drug was banned.

Throughout the investigation and hearing, Trainer Moreno cooperated thoroughly.

The inquiry now goes to the penalty phase as outlined by 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. This is a class III violation that is a class "B" penalty category, which calls for a minimum thirty day suspension absent mitigating circumstances.

A review of Trainer Moreno's medication violation history reveals that he has had two high "Butes:" one in 2012 and one in 2013. This is a reasonably good record in our estimation. 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:* As stated above, he has only two medication violations on his record. Both were NSAID violations. We consider this somewhat **mitigating**.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance; therefore this is an **aggravating** factor.
- (3) *The Legal Availability of the Drug:* Clenbuterol is easily available from any veterinarian as this is not an illegal drug to use, just to race on. 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:* Reviewing the testimony by Trainer Moreno, it is our opinion that he did not intentionally administer Clenbuterol to "My Charming Chance" or "Sure Fire First." **Mitigating**.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a **neutral** factor in as much as both horses were shipped to his barn from off site stabling facilities twenty-four hours prior to race time.
- (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:* There was no evidence on this factor and is therefore **neutral**.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* No evidence was presented on this issue. **Neutral**.
- (8) *Purse of the Race:* This is **mitigating** because the two purses had a value of \$9,000 and \$8,800 respectively.
- (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):* **Mitigating**; these horses were not prescribed Clenbuterol, and it is not a drug they can run on in California.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* This is a **mitigating** factor because of no known evidence that wagering on 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 this drug to be used on his horses.

We made the following findings regarding penalty:

- A) Under Rule #1843.3 (b), the mitigating circumstances in this case outweigh the aggravating factors.
- B) Respondent's past record indicates he should not receive the maximum penalty described in Rule #1843.3 (b).
- C) Keeping these points in mind, as well as all of the facts and circumstances of this case, we reach the following conclusion.

## CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug substance (Clenbuterol) was found in urine sample #LA24353 taken from the horse "Sure Fire First," the second place finisher in the fourth race at Los Alamitos Race Course on October 5, 2013. Urine sample #LA24368 taken from the horse "My Charming Chance," the second place finisher in the second race at Los Alamitos Race Course on October 6, 2013, also tested positive for the prohibited substance Clenbuterol. These findings require the disqualification of both "Sure Fire First" and "My Charming Chance" in accordance with California Horse Racing Board Rule #1859.5.

The issue of culpability with regard to California Horse Racing Board Rule #1887 placed the responsibility on Trainer Jose A. Moreno. To avoid such responsibility, Mr. Moreno had the burden to present convincing evidence and/or testimony in accordance with California Horse Racing Board Rule #1888, 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). Clenbuterol is a class III drug that falls in the class "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 Jose A. Moreno, who started the horses "Sure Fire First" in the fourth race on October 5, 2013 and "My Charming Chance" in the second race on October 6, 2013 at Los Alamitos Race Course, is suspended sixty (60) days, fined the sum of five thousand dollars (\$5,000.00)\* and placed on probation for one year from the date of this ruling pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) and Rule #1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rules #1843 (a)(b) & (d) (Medication, Drugs and Other Substances – Prohibited Substance – Clenbuterol – Class III).

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

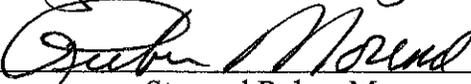
\*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 303473-11/2013

Cases# 13LA0237 & #13LA0239

Dated December 20, 2013 by this Board of Stewards:

  
Steward James Dreyer

  
Steward Ruben Moreno

  
Steward George Slender