

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

TIM YAKTEEN
CHRB License #210770
Respondent

CHRB Case No.15DM0038

DECISION

The attached Proposed Decision 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 for payment of the three thousand dollar (\$3,000.00) fine and setting the seven (7) days of suspension.

IT IS SO ORDERED ON December 17, 2015.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)
)

TIM YAKTEEN, trainer,)
RESPONDENT)
)
)
)
_____)

Case No. 15DM0038

PROPOSED DECISION

This matter was heard on October 23, 2015 by the Board of Stewards – C. Scott Chaney, Kim Sawyer and Tom Ward at Santa Anita Race Track in Arcadia, CA.

Trainer Tim Yakteen (hereinafter “Mr. Yakteen” or “Respondent”) was represented by attorney Steve Schwartz. The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) was represented by Deputy Attorney General Leah Gershon. Also present at the hearing was CHRB Supervising Investigator Rick Amieva.

This matter was filed on September 11, 2015. A record was kept by court reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Following the running of the third race at Del Mar Race Track on July 25, 2015, the thoroughbred racehorse “Big Book,” who was trained by Tim Yakteen and finished first, tested positive for metabolites of the tranquilizer ace promazine in excess of the permitted levels. Subsequent to the CHRB laboratory reporting of the alleged positive, the CHRB filed two complaints in this matter: (1) case number 15DM0044 alleged violation of CHRB rule 1859.5 concerning disqualification and purse redistribution (involving owner, trainer, and jockey); (2) case number 15DM0038 addresses the trainer’s responsibility in the alleged positive. On September 19, 2015, a formal hearing with respect to the disqualification and purse redistribution was heard. The CHRB was unopposed at that hearing and a ruling was issued on September 20, 2015 (LAFL Ruling #010). On August 20, the instant hearing was called to order, documentary evidence and oral testimony were taken, and the matter was closed.

LIST OF EXHIBITS

| | |
|------------------------------|--|
| <i>CHRB Exhibit #1</i> | Face Page for case number 15DM0038 |
| <i>CHRB Exhibit #2</i> | Stipulation Agreement |
| <i>Respondent Exhibit #3</i> | Respondent's Demand for Disqualification; Peremptory Challenge |
| <i>Respondent Exhibit #4</i> | Respondent's Hearing Brief |

FACTUAL FINDINGS

I

At all times herein mentioned, Tim Yakteen was licensed by the CHRB in the license category of trainer.

II

On July 25, 2015, the thoroughbred racehorse "Big Book" ran in the third race at Del Mar Race Track.

III

Following the running of the race, blood and urine samples were obtained from "Big Book" and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter "Maddy Lab"), the official testing laboratory for the CHRB.

IV

After testing the samples, U.C. Davis laboratory reported that the post race urine sample #DM10791, which came from "Big Book" contained the prohibited (in excess of permitted levels) drug substance 2-(1hydroxyethyl) promazine sulfoxide, a metabolite of ace promazine.

V

The aforementioned drug substances are classified under the California Horse Racing Board rules and regulations as a class 3 substance in the penalty category B.

VI

Pursuant to the rules, Respondents requested that a split sample be tested by an approved independent laboratory, which confirmed the presence of the prohibited drug substance.

APPLICABLE RULES AND REGULATIONS

| Rule No. | Rule Title |
|----------|---|
| 1843 | <p>Medication, Drugs and Other Substances.</p> <p>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. NOTE: Authority cited: Sections 19440, 19580, 19581 and 19582, Business and Professions Code. Reference: Sections 19401, 19440, 19580, 19581 and 19582; Sections 337(f)(g) and(h), Penal Code. HISTORY: 1. Repealed and new rule filed 10-29-81; effective 11-28-81. 2. Amendment of subsections (a), (c) and (d) filed 8-19-92; effective 9-18-92.</p> |

| Rule No. | Rule Title |
|----------|--|
| 1843.3 | <p>Penalties for Medication Violations</p> <p>((a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum. (b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to: (1) The past record of the licensee regarding violations of Business and Professions Code section 19581; (2) The potential of the drug(s) to influence a horse's racing performance; (3) The legal availability of the drug; (4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug; (5) The steps taken by the trainer to safeguard the horse; (6) The steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer; (A) For the purpose of this regulation "unaffiliated trainer" means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred. (7) The probability of environmental contamination or inadvertent exposure due to human drug</p> |

use or other factors; (8) The purse of the race; (9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division; (10) Whether there was any suspicious wagering pattern on the race; (11) Whether the licensed trainer was acting under the advice of a licensed veterinarian. (c) For the purpose of this regulation, the Board shall consider the classification of a drug substance as referred to in Rule 1843.2 of this division and the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification, (1/08), which is hereby incorporated by reference, if a determination is made that an official test sample from a horse contained: (1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this division, or Any drug substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in the article. (d) Penalties for violation of each classification level are as follows: [See CHRB website "Publications" section for a complete copy of rule 1843.3 including Category A, B and C Penalties chart.] (e) Violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category "D" penalty, may result in a written warning for a first offense to the licensed trainer and owner. A Category "D" penalty for a first offense may result in a written warning or fine that will remain on the licensee's record for a period of two years. After the two year period, if the licensee has had no further violations of CHRB Rule 1843, the Category "D" penalty will be expunged from the licensee's record for penalty purposes. (f) Any drug or its metabolite or analogue thereof found to be present in an official test sample that is not classified in Rule 1843.2 of this division shall be classified as a Class 1 substance and a Category "A" penalty until classified by the Board. (g) The administration of a drug substance to a race horse must be documented by the treating veterinarian through the process described in Rule 1842 of this division. (h) Any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer and his presence may be required at and all hearings relative to the case. (1) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "A" shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action. (2) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "B" or "C" may be referred to the CVMB for consideration of further disciplinary action upon the recommendation of the Equine Medical Director, the board of stewards or hearing officers. (i) A licensee who is suspended, or whose license is revoked, because of a medication violation is not able to benefit financially during the period of suspension or revocation. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members. (j) For the purpose of this regulation "licensed family members" means any person who holds an occupational license issued by the CHRB and who is related to the suspended licensee, or the licensee whose license is revoked, by blood, or by marriage or domestic partnership, or who is related by blood to the spouse or domestic partner of such licensee. (l) For the purpose of this regulation, licensed trainers suspended 60 days or more, or whose license is revoked, shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, during the period of suspension, or revocation, such trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment, tack, office equipment, and any other property. NOTE: Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: Sections 19461, 19580, 19581 and 19582, Business and Professions Code. Section 11425.50, Government Code. HISTORY: 1. New rule filed 5-23-08; effective 5-23-08. 2. Amendment filed 2-14-12; effective 3-15-12 3. Amendment filed 6-6-12; effective 7-6-12

Rule No.

Rule Title

Rule
Text

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that: (a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules. (b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered. (c) 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. (2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum. (3) Ketoprofen in a dosage amount that the test sample shall contain not more than 10 nanograms of the drug substance per milliliter of blood plasma or serum. (4) Metabolites or analogues of approved NSAIDs may be present in post race test samples. (d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID. (e) Official urine test samples may contain one of the following drug substances, their metabolites or analogs, in an amount that does not exceed the specified levels: (1) Acepromazine; 25 nanograms per milliliter (2) Mepivacaine; 10 nanograms per milliliter (3) Promazine; 25 nanograms per milliliter (4) Albuterol; 1 nanograms per milliliter (5) Atropine; 10 nanograms per milliliter (6) Benzocaine; 50 nanograms per milliliter (7) Procaine; 50 nanograms per milliliter (8) Salicylates; 750 micrograms per milliliter (9) Clenbuterol; 5 nanograms per milliliter (10) Stanazolol; 1 nanograms per milliliter (11) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings. (12) Boldenone; 15 nanograms per milliliter in males other than geldings. (13) Testosterone; 20 nanograms per milliliter in geldings. (A) Testosterone at any level in males other than geldings is not a violation of this regulation. (14) Testosterone; 55 nanograms per milliliter in fillies or mares (f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per milliliter of serum or plasma. (g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)(1)-(8), and (e)(10)-(14). (h) Procaine, following administration of procaine penicillin, is an authorized medication provided: (1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter. (2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division, (3) procaine penicillin was not administered after entry to race, (4) the horse was under surveillance for a minimum of six hours prior to racing. (i) All expenses related to surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse. NOTE: Authority cited: Sections 19440 and 19562, Business and Professions Code. Reference: Sections 19580 and 19581, Business and Professions Code. HISTORY: 1. Repealed and new rule filed 10-29-81; effective 11-28-81. 2. Amendment filed 2-9-84; effective 2-9-84. 3. Amendment filed 8-3-95; effective 9-2-95. 4. Amendment filed 6-16-97; effective 6-16-97. 5. Amendment filed 4-28-99; effective 5-28-99. 6. Amendment filed 1-28-02; effective 1-28-02. 7. Amendment filed 4-27-05; effective 5-27-05. 8. Amendment filed 9-20-07; effective 10-20-07. 9. Amendment filed 5-1-08; effective 5-31-08. 10. Amendment filed 10-26-10; effective 11-25-10. 11. Amendment filed 2-14-12; effective 2-14-12.

| Rule No. | Rule Title |
|-----------|---|
| 1887 | Trainer to Insure Condition of Horse. |
| Rule Text | <p>(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. NOTE: Authority cited: Sections 19440, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19577, 19580 and 19581, Business and Professions Code. HISTORY: Amendment filed 7-9-92; effective 8-8-92. Amendment filed 10-25-94; effective 11-24-94. Amendment filed 12-6-99; effective 12-6-99. Amendment filed 8-8-05; effective 9-7-05.</p> |

DISCUSSION OF ISSUES

In matters of medication positives, the hearings are typically bifurcated where the disqualification and purse redistribution is handled first, followed by a hearing regarding trainer responsibility. This matter is no different. The horse in question was disqualified following a perfunctory hearing two months ago. The purpose of this hearing is to determine if the trainer should be penalized. CHRB rule 1843(d) (Medication, Drugs and Other Substances) provides in part that “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.....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.” In this case, we find that prima facie evidence of a positive—in fact, both parties stipulated to this fact. For many years, that rule, coupled with CHRB rule 1887 (Trainer to Condition of Horse) created a strict liability framework for trainer responsibility and the inquiry would end here. Recently, however, the rigidity of strict liability has been somewhat eroded by two rules that allow for defenses to the trainer insurer rule and that contemplate aggravating and mitigating circumstances. We find that none of the defenses in CHRB rule 1888 (Defense to Trainer Insurer Rule) apply, so we must move onto the penalty guidelines.

CHRB Rule 1843.3 (Penalties for Medication Violations) establishes penalty categories based on drug classifications; minimum and maximum fines and suspensions for violations; and aggravating and mitigating factors that would necessitate a deviation from the guidelines. Specifically, the rule states that “there may be mitigating

circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum." We will examine each of these eleven factors here.

1. "The past record of the licensee regarding violations of Business and Professions Code section 19581." Mr. Yakteen has a very good medication record, having only two minor medication violations in the last 11 years. This factor is *mitigating*.
2. "The potential of the drug(s) to influence a horse's racing performance." A tranquilizer has great potential to influence a horse's performance in both a positive and negative manner depending upon the dosage. Furthermore, medication and drugs that are classified as class I, II or III have the potential to influence a horse's performance. This factor is *aggravating*.
3. "The legal availability of the drug." The drug is legally available from a veterinarian. This factor is *mitigating*.
4. "Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug." There is no evidence that the administration of the drug was intentional, in fact most of the evidence indicates that the administration was accidental. This factor is *mitigating*.
5. "The steps taken by the trainer to safeguard the horse." While Respondent presented evidence regarding steps taken after the positive test finding to safeguard his horses, this factor only speaks to safeguards in place at the time of the positive. There was no evidence of the presence or absence of such safeguards. *Neutral*.
6. "The steps taken by the owner to safeguard against subsequent medication violations..." There was no evidence on this factor, other than the fact that the owner has not switched trainers since the positive. *Neutral*.
7. "The probability of environmental contamination or inadvertent exposure due to human drug use or other factors." There is no evidence on this factor. *Neutral*.
8. "The purse of the race." The purse in this race was large by any standard. This factor is *aggravating*.
9. "Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division." There was no evidence with respect to this factor. *Neutral*.
10. "Whether there was any suspicious wagering pattern on the race." There was no evidence of wagering irregularities. *Neutral*.
11. "Whether the licensed trainer was acting under the advice of a licensed veterinarian." No evidence on this factor; *neutral*.

Frankly, there was scant evidence provided on any of these factors, making our decision in some ways easier and in some ways more difficult. At the end of the day, however, evidence showed that a trainer with a very good medication history had a horse test

positive for a class 3 drug substance, because of what was most likely an accidental administration.

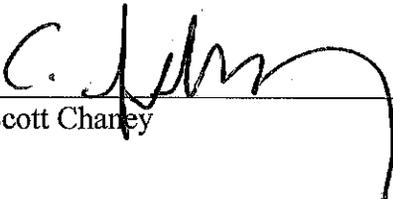
Complainant requested a 30 day suspension and \$3,000.00 fine for this alleged violation which is the minimum suspension and more than the minimum fine under the penalty guidelines absent mitigating circumstances. On balance, we find that the mitigating circumstances slightly outweigh the aggravating ones and therefore require a departure from the minimum penalties described under the guidelines. As a result, pursuant to those guidelines and factors, we believe that a 7 day suspension and \$3,000.00 fine are appropriate.

CONCLUSION/PROPOSED DECISION

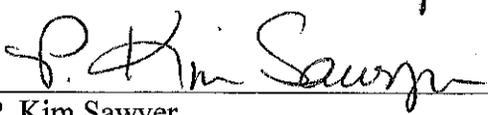
Given the foregoing, we recommend that the CHRB suspend Mr. Yakteen's license for a period of 7 calendar days, and levy a fine of \$3,000.00.

DATED: November 28, 2015.

BOARD OF STEWARDS



C. Scott Chaney



P. Kim Sawyer



Tom Ward

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