

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Complaint against:

RONALD ELLIS
Trainer, CHRB License #88925

Case No.: 21SA0078

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter, with the decision being to uphold the “Statement of Decision of the Board of Stewards” and dismiss the complaint.

IT IS SO ORDERED ON April 21, 2022.



CALIFORNIA HORSE RACING BOARD
Gregory L. Ferraro, DVM, Chairman

C. Scott Chaney

Scott Chaney
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

)	
)	
In the Matter of the Accusation Against,)	
)	
RONALD ELLIS, trainer,)	Case No. 21SA0078
RESPONDENT.)	
)	
)	

PROPOSED DECISION

INTRODUCTION

This matter was heard on February 24, 2022, by the Board of Stewards, Luis Jauregui, Will Meyers and Kim Sawyer at Santa Anita Park in Arcadia, California. Respondent, trainer Ron Ellis was present along with his attorney Steve Schwartz. The California Horse Racing Board was represented by Deputy Attorney General Brad Parr. All of the proceedings were recorded by court reporter Michelle Derieg.

PROCEDURAL BACKGROUND

The California Horse Racing Board (hereinafter "CHRB" or "Complainant") filed a complaint against trainer Ron Ellis, (hereinafter "Respondent" or "Ellis"), for alleged violation of California Horse Racing Board rules 1843 (a)(d) (Medications, Drugs and Other Substances), 1843.1 (a) (Prohibited Drug Substances) 1843.4 (Multiple Medication Violations (MMV) and 1887 (Trainer or Owner to Insure Condition of Horse).

The complaint was filed in conjunction with a positive test result from a report from Ben Moeller of UC Davis Laboratories stating there was an overage of Furosemide (herein after Lasix) in blood sample SA34356. This signifies a positive medication finding.

This overage of the drug Furosemide was a Class 1 Category A penalty at that time because it did not have a drug classification in California. This test result was from the horse "Bowl of Cherries" who ran in the first race at Santa Anita Park finishing third on June 20, 2021.

The complaint case 21SA0094 pursuant to CHRB rule 1859.9 (Disqualification of Positive Test Finding) was filed against trainer Ron Ellis, owner Doubledown Stables, Inc. and jockey Jose Valdivia, Jr. and was heard in a formal setting on February 10, 2022, at Santa Anita Park. In a majority decision the complaint was

dismissed per CHRB Rule 1843.3 (Penalties for Medication Violations) also states under Category C Penalties the following: *“Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category C penalty and furosemide as defined in Rule 1845 of this division in an official test sample are as set forth below. All concentrations are for measurements in serum or plasma.”*

Furosemide is not classified under the CHRB Rules and Regulations but it's listed in CHRB rule 1845 (Authorized Bleeder Medication) and also listed in Category C penalties. Category C penalty guidelines do not recommend disqualification of the horse. The majority also took into consideration that the Furosemide was administered by a third-party Lasix Technician.

Another factor in determining the majorities decision is listed in Investigator Barker's report (CHRB Exhibit 6) states that Santa Anita surveillance video recorded after Santa Anita's Lasix technician administered Furosemide to "Bowl Of Cherries" "no one else was seen entering the stall between then and the race". Dr. Blea (Equine Medical Director) stated in the report "there were only two possibilities for the overage of Furosemide". The first possibility was that the horse would have had to be given an oral form of Furosemide and the second possibility, and most likely, is that some of the medication may have been administered perivascular and remained in the subcutaneous tissue. It was determined in the hearing the post-race blood sample was drawn on the same side of the horse's neck as the injection. Dr. Blea has since requested all blood draws do not occur on the same side of the neck as the Furosemide injection. The majority decision was not to disqualify "Bowl Of Cherries" due to all the mitigating factors listed.

The hearing opened at 10:00 am. Present in person before the Board of Stewards were, Respondent Ron Ellis with his counsel Steve Swartz. Two witnesses appeared in person and five others were available by Microsoft Teams as was Deputy Attorney General Brad Parr.

LIST OF EXHIBITS

- CHRB Exhibit 1: CHRB Complaint case #21SA0078.
- CHRB Exhibit 2: CHRB Investigation Report.
- CHRB Exhibit 3: University of California, Davis Certificate of Analysis, dated July 2, 2022, by Ben Moeller, PhD.

- Respondent Exhibit A: Stipulation between Parr and Swartz.
- Respondent Exhibit B: Statement of Decision dated June 5, 2006.
- Respondent Exhibit C: Scott Chaney Opinion dated March 14, 2006.

FACTUAL FINDINGS

I

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

II

Respondent was the trainer of record for the horse "Bowl of Cherries" who raced in the first race and finished third on June 20, 2021, at Santa Anita Park.

III

On June 20, 2021, the thoroughbred race horse "Bowl of Cherries" was administered Furosemide by the appointed Lasix Technician at approximately 8:47 a.m. Post time for the race was 1:00 pm. The horse was held by Ellis' assistant trainer Joe Sacco.

IV

A post-race blood sample (labeled SA34356) was taken from the horse "Bowl of Cherries" (no urine sample was obtained from the horse) in accordance with California Horse Racing Board Rule 1858 (Test Sample Required) and was sent to the Kenneth L. Maddy Equine Analytical Chemistry Laboratory (hereinafter Maddy Lab) at the University of California, Davis. This is the official testing laboratory of the California Horse Racing Board.

V

At all times herein mentioned, the chain of custody of blood sample SA34356 from the horse "Bowl of Cherries" was uninterrupted.

VI

After analyzing the sample, "Maddy Lab" reported that the post-race blood sample SA34356, which came from the horse "Bowl of Cherries" was an overage of the drug Furosemide, a Class 1 category A penalty. The reported level was 497 ng/ml, authorized limit is 100.0 nanograms per milliliter. The CHRB Investigators were informed of the failed result on July 8, 2021.

VII

This overage of the drug Furosemide which at the time was "not" classified (N/A class). Pursuant to CHRB rule 1843.3 (Penalties for Medication Violations) listed under Category "D" Penalties (h) it states, "*Any drug or its metabolite of 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."

VIII

On July 9, 2021, Supervising Investigator Mike Barker (herein Barker) emailed the respondent the complaint packet along with the list of laboratories available for split samples. Respondent returned an email on the same day stating he received the packet.

IX

On July 15, 2021, Split Sample Custodian Deborah Dugally notified Barker that the 72-hour time limit to request a split sample had expired, Ellis did not request a split sample.

X

A barn inspection was conducted on July 16, 2021, at Del Mar Race Track by CHRB Supervising Investigator Mike Barker. The Respondent was not present for the search but his assistant trainer Joe Sacco was. There was no Furosemide found in the barn inspection and no other CHRB violations were observed.

XI

The hard copy of the Positive Test Notification was signed on July 17, 2021.

XII

The Lasix Technician Katie Sullivan's electric Confidential reported the horse "Bowl of Cherries" received 5ml of Furosemide on June 20, 2021, at approximately 8:47 am.

XIII

Santa Anita Surveillance Manager Cory Martinez reported that Lasix Technician Katie Sullivan entered "Bowl of Cherries" stall at approximately 8:47 am on June 20, 2021, and no one else was seen entering the stall between then and the race. Ellis' practicing veterinarian, Dr. Joe Araujo was also present at the Ellis barn on the video.

XIV

Then Equine Medical Director Dr. Jeff Blea was interviewed by Barker and stated in his opinion, "there were two possibilities for the overage".

1. The horse would have been given an oral form of Furosemide.
2. Some of the medication may have been administered perivascular and remained in the subcutaneous tissue.

Dr. Blea believed the result of the overage was the latter (#2).

XV

In the past thirty-six (36) months Ellis has one other positive medication case listed in ruling ACFA #015 dated July 18, 2020. As of April 1, 2021, per ARCI he has no points on his record.

APPLICABLE RULES AND REGULATIONS

California Horse Racing Board rule 1843. Medication, Drugs and Other Substances.

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 veterinarians 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.
- (e) Nothing in this Article shall prevent a racing association or fair from setting eligibility conditions, as agreed to with the acknowledged horsemen's organization, for individual races, or for its entire race meet, that prohibit the use and/or presence of drug substances or medications in biological test samples collected from participating horses at detection levels lower than what is authorized by the Board. Such conditions if established in accordance with Rule 1581, shall not be deemed in conflict with the rules and regulations of the Board.

NOTE: Authority cited: Sections 19440, 19580, 19581 and 19582. Business and Professions Code. Reference: Sections 19401, 19440, 19580, 19581 and 19582; Sections 337f, 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.
3. Amendment filed 7-25-16, as an emergency; effective through 1-24-17
4. **California Horse Racing Board rule 1843.1. Prohibited Drug Substances.**

For purposes of this division, prohibited drug substance means:

- (a) any drug, substance, medication or chemical foreign to the horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in this article.
- (b) Any drug, substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in this article.

NOTE: Authority cited: Sections 19440, 19562, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19562, 19580, and 19581, Business and Professions Code.

HISTORY:

1. New rule filed 10-7-94; effective 11-6-94.

Rule 1843.4 Multiple Medication Violations (MMV)

(a) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-D, pursuant to Business and Professions Code section 19581 and Rule 1843.3, shall be assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days	1 for first violation with an additional ½ point for each additional violation within 365 days
Class D	0	0

If the Board determines that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

(1) Points for phenylbutazone violations with a concurrent flunixin violation apply only when the primary threshold is exceeded. Points are not to be separately assigned for a stacking violation.

(b) The points assigned to a medication violation by the Board shall be included in the Association of Racing Commissioners International (ARCI) official database and the Board shall assign points consistent with this section for advisory purposes for medication violations where points have not been assigned by regulatory action. Points assigned by such regulatory action shall reflect, in the case of multiple positive tests as described in subsection (d), whether they shall thereafter constitute a single violation. The Board's ruling shall be posted on the official website and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such Ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(c) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the Board and ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official Board and ARCI record and shall be considered by the Board in its determination to subject the trainer to the mandatory enhanced penalties by the Board as provided in this regulation.

(d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the Board may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the Board may treat each substance found as an individual violation for which points will be assigned.

(e) The official Board and ARCI record shall be used to advise the Board of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(f) The Board shall consider all points for violations in all racing jurisdictions as contained in the trainer's official Board and ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(g) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in their official Board and ARCI record:

Points	Suspension in Days
5 - 5.5	15 to 30
6 - 8.5	30 to 60
9 - 10.5	90 to 180
11 or more	360

MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

- (1) Has more than one violation for the relevant time period, and
- (2) Exceeds the permissible number of points.

The Board shall consider aggravating and mitigating circumstances, including the trainer's prior record for medication violations, when determining the appropriate penalty for the underlying offense within the applicable suspension day range. The

MMV is intended to be a separate and additional penalty for a pattern of violations.

(h) The suspension periods as provided in subsection (g), shall run consecutive to any suspension imposed for the underlying offense.

(i) The Board shall distinguish between the penalty for the underlying offense and any enhancement based upon a Board review of a trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(j) Points shall expire as follows:

Penalty Classification	Time to Expire
A	3 years
B	2 years
C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

NOTE: Authority: Sections 19440, 19461 and 19580, Business and Professions Code.

Reference: Sections 19461, 19580, 19581 and 19582, Business and Professions Code; and Section 11425.50, Government Code.

California Horse Racing Board rule 1887. Trainer or Owner to Insure Condition of Horse.

- (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) A ship-in horse is defined as any horse entered to race that has not been in the care of a Board-licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.
- (c) Notwithstanding the above, if the Board or its agent fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under the rules unless it is shown by the

preponderance of the evidence that the trainer or the owner of a ship-in horse administered the drug or other prohibited substance defined in ship-in horse 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:

1. Amendment filed 7-9-92; effective 8-8-92.
2. Amendment filed 10-25-94; effective 11-24-94.
3. Amendment filed 12-6-99; effective 12-6-99.
4. Amendment filed 8-8-05; effective 9-7-05.
5. Amendment filed 12-29-15; effective 4-1-16.

MITGATING / AGGRAVATING FACTORS

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 those 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.”* Each of these eleven factors are examined below.

(1) The past record of the licensee regarding violations of Business and Professions Code section 19581; One violation in the past 36 months as stated in the complaint. NEUTRAL

(2) The potential of the drug(s) to influence a horse's racing performance and the amount of the drug present; Possibility to influence performance in a race; Ben Moeller PhD testified it could change the physiological make-up of the horse. NEUTRAL

(3) The legal availability of the drug and whether the drug was prescribed to the horse by a California Horse Racing Board (CHRB) licensed veterinarian; Furosemide is a permitted drug to race on and the horse was registered and listed on the program to race on Lasix. MITIGATING

(4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug; Horse was registered and listed to race on Lasix. MITIGATING

(5) The steps taken by the trainer to safeguard the horse; Respondent's assistant trainer held the horse for the medication administration given by the third-party Lasix Technician. Video surveillance verified no one else entered the stall. MITIGATING

(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. NOT APPLICABLE

(7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors; No contamination as the horse was registered and listed to race on Lasix. NOT APPLICABLE

(8) The purse of the race; Maiden Special Weight, purse \$61,000.00. NEUTRAL

(9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined and documented through the process described in Rule 1842 of this division; The administration of Lasix was documented by the third-party Lasix Technician. MITIGATING

(10) Whether there was any suspicious wagering pattern on the race; No testimony of suspicious wagering pattern. NEUTRAL

(11) Whether the licensed trainer was acting under the advice of a CHRB licensed veterinarian; The trainer was acting in accordance with his trainee being registered and listed to race on Lasix. MITIGATING

DISCUSSION

The genesis of this complaint filed against the Respondent was a positive (Lasix overage) post-race drug test. There was a hearing on February 10, 2022, (case 21SA0094) with respect to the positive test and disqualification, which in a majority opinion was dismissed, leaving the sole purpose of this hearing to determine if Mr. Ellis had any responsibility with respect to the positive itself.

The CHRB Rules and Regulations provide a very specific framework regarding adjudicating these issues. *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, 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.

In this case, there is prima facie evidence of a positive. For many years, that rule, coupled with CHRB rule 1887 (Trainer or Owner to Insure Condition of Horse) created a strict liability framework 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 that affect the application of a penalty. In this case the applicable portion in CHRB rule 1888 (Defense to Trainer Insurer Rule) is section (c) and is considered pertinent to this complaint.

A trainer or other person charged with a violation of Rule 1887 of this division may defend, mitigate or appeal the charge if:

- (a) He was not, before the commencement of any proceeding against him, informed of the charges being brought against him;*
- (b) He was not permitted counsel, representation or an advisor of his choosing in any hearing before the stewards concerning the charges;*
- (c) He shows, by a preponderance of evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons; and*
- (d) He was not permitted to introduce evidence in his own behalf before any finding or ruling was made against him. Nothing herein shall require that the stewards permit cross-examination of any witness appearing before them, or issue subpoenas for the attendance of witnesses.*

NOTE: Authority cited: Sections 19440 and 19580, Business and Professions Code. Reference: Sections 19440 and 19580, Business and Professions Code.

HISTORY:

1. Amendment filed 12-6-99; effective 12-6-99.

Mitigating evidence introduced at the hearing were as follows;

In this jurisdiction by rule Furosemide is a permitted medication and was given by a third-party Lasix Technician.

In the investigative report scripted by Supervising Investigator Mike Barker stated; Santa Anita Surveillance Manager Cory Martinez (not called as a witness) when interviewed reported he observed on his surveillance video the third-party Lasix Technician enter the stall of "Bowl of Cherries" at 8:47 am on June 20, 2021, and no one else entered the stall between then and the race. During the barn search of the Respondent's barn there was no Furosemide discovered.

The count of the eleven examined mitigating/aggravating factors are;

5 MITIGATING
4 NEUTRAL
2 NOT APPLICABLE

In a unanimous opinion, Mr. Ellis is relieved of culpability for the Furosemide overage as prima facie evidence the trainer's responsibility for the care of the horse was not considered negligent.

CONCLUSION

It is believed per CHRB rule 1843.3, mitigating circumstances allows this Board of Stewards to deviate from the penalty guidelines and dismiss the complaint.

DATED: March 25, 2022

BOARD OF STEWARDS



Kim Sawyer



Luis Jauregui



Will Meyers