

**State of California**  
CALIFORNIA HORSE RACING BOARD

**AMENDED AND SUPPLEMENTAL STATEMENT OF DECISION  
of the  
BOARD OF STEWARDS**

**Santa Anita Racetrack  
Arcadia, California**

Dated August 2, 2023

<b>IN THE MATTER OF:</b>	)	
	)	
<b>The Disqualification of the Horses</b>	)	
<b>JUSTIFY</b>	)	<b>CHRB CASE: 20SA0195</b>
<b>and</b>	)	<b>and</b>
<b>HOPPERTUNITY</b>	)	<b>CHRB CASE: 20SA0196</b>
	)	
	)	
	)	

**I. INTRODUCTION**

On December 9, 2020, the Board of Stewards of the California Horse Racing Board (“Stewards”) entered a decision in *Disqualification of the Horses Justify and Hoppertunity* (CHRB Cases: 20SA0195; 20SA0196) (“*Disqualification Complaints*”). The *Disqualification Complaints* concern the disqualification of certain first-place horses who ran at the Santa Anita racetrack in early April 2018. Specifically, “Justify” (who won the ninth race on April 7, 2018) and “Hoppertunity” (who won the fifth race on April 8, 2018). The December 9, 2020 Statement of Decision dismissed the California Horse Racing Board’s (“CHRB”) complaints.

The December 9 Statement made this dismissal in reference to the August 23, 2018 action of the CHRB sitting in an executive session (*id.*, at p. 10):

Even if this panel were to disagree with the CHRB's decision to dismiss these matters or the way the CHRB handled the situation it cannot be argued that the CHRB lacked the authority to do so. The law specifically allows such actions to take place and the CHRB followed the law.

## ORDER

After considering the evidence and testimony presented, [the] Complaint[s] are both dismissed. The CHRB has already ruled on this matter, in executive session, at the August 23, 2018 CHRB meeting in Del Mar, California and voted to not move forward with complaints.

On January 13, 2020, Ruis Racing, LLC petitioned the Superior Court of Los Angeles County for issuance of a writ of mandate setting aside the decision to dismiss the *Disqualification* Complaints and entry of an order of disqualification and forfeiture by the Court, asserting that the result is mandated under Rule 1859.5.

On May 25, 2023, the Court considered the petition and the litigants' arguments and issued an interlocutory order remanding the matter to the Stewards "to comply with *Topanga Association for a Scenic Community v. County of Los Angeles* ("*Topanga*"). (*Id.*, (1974) 11 Cal.3d 506, 514-515.) The interlocutory remand order specifies a return date of August 4, 2023.

The Stewards issue this Amended and Supplemental Statement of Decision pursuant to the Superior Court's interlocutory remand order.<sup>1</sup> The Stewards find that the dismissal of this matter by the CHRB by unanimous vote in executive session at the meeting held on August 23, 2018 in Del Mar, California effectively dismissed administrative prosecution of the underlying facts that give rise to the *Disqualification* Complaints. The parties to the administrative proceeding have not established that the Board acted formally to undo its dismissal. The August 23, 2018 action by the Board therefore remains in effect. The Stewards have no legal authority to review or set aside this action. As a result, the Stewards are compelled to dismiss the *Disqualification* Complaints.

## II. FINDINGS OF FACT

This amended statement restates the Findings of Fact in the December 9 Decision. (Dec. 9 Stat., pp. 4-7 ("Fact(s)").) The Stewards find the following material facts reflected in the administrative record the parties placed before them (*ibid.*):

1. On April 7, 2018, the horse Justify ran in the ninth race at Santa Anita Racetrack and finished first.
2. A post-race urine sample (#SA27978) was taken from the horse and analyzed at the UC Davis Maddy Equine Analytical Laboratory and showed the presence of Scopolamine, a substance prohibited by the rules and regulations of the CHRB ...
3. The owners of the horse Justify were China Horse Club, Head of Plains Partners, LLC, Starlight Racing and WinStar Farms. The trainer was Bob Baffert and the jockey was Mike Smith.
4. On April 8, 2018 the horse Hoppertunity ran in the fifth race at Santa Anita Racetrack and finished first.

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<sup>1</sup> To the extent this Amended Decision does not directly address an issue discussed in the original Statement of Decision, this Amended Statement should be understood as supplemental to the original Statement and preserving rather than supplanting original matter therein.

5. A post race urine sample (#SA28011) was taken from the horse and analyzed at the UC Davis Maddy Equine Analytical Laboratory and showed the presence of Scopolamine, a substance prohibited by the rules and regulations of the CHRB.
6. On August 25, 2020 the CHRB filed complaint #20SA0195 seeking the disqualification of the horse Justify for alleged violation of CHRB rule 1859.5 (Disqualification Upon Positive Test Finding).
7. On August 25, 2020 the CHRB filed complaint #20SA0196 seeking the disqualification of the horse Hoppertunity for alleged violation of CHRB rule 1859.5 (Disqualification Upon Positive Test Finding).
8. At all times contained herein the Respondents were duly licensed by the CHRB.
9. It was stipulated that the presence of the prohibited substance Scopolamine in the two test samples was due to environmental contamination and that the levels found in each of the tests would have no performance enhancing effect on either horse.
10. It was stipulated that five other horses had detectable levels of Scopolamine in April/May 2018 and that no complaints have been filed in those cases.
11. CHRB rule 1859.5 states a horse shall be disqualified from a race if a test sample from a horse participating in a race contained a prohibited drug substance which is determined to be in class levels 1-3 under CHRB rule 1843.2 (Classification of Drug Substances).
12. At the times of the races in 2018 rule 1843.2 stated that the classification of any substance will be determined by the CHRB Penalty Categories Listing by Classification (Revised 04/15), herein incorporated by reference, which is based on the ARCI Uniform Classification Guidelines for Foreign Substances (12/14), as modified by the CHRB.
13. At the times of the races in 2018 the CHRB Penalty Categories Listing by Classification has Scopolamine listed as a class 3 substance.
14. At the times of the races in 2018 the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule, Version 8.00 (12/14), referenced in rule 1843.2 listed Scopolamine as a class 3 substance.
15. At the times of the races on April 7, and April 8, 2018 Scopolamine was listed by the Association of Racing Commissioners International (hereinafter ARCI) as a class 4 prohibited substance.
16. The ARCI changed the classification of Scopolamine from a class 3 to a class 4 in December of 2016.
17. The CHRB formally adopted the 2018 guidelines referenced in rule 1843.2 at a CHRB meeting in Del Mar California on August 20, 2015.
18. The California Office of Administrative Law approved the rule change on October 5, 2015.

19. At a CHRB meeting in Del Mar California on August 23, 2018 the CHRB formally amended rule 1843.2 by adopting the current CHRB Classification of Foreign Substances Alphabetical List (New 05/18) which lists Scopolamine as a class 4 substance.
20. At the August 23, 2018 CHRB meeting rule 1843.2 was also amended to incorporate the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule, Version 13.4 (01/18), which listed Scopolamine as a class 4 substance.
21. The California Office of Administrative Law approved the change on October 18, 2018 and the rule took effect in January of 2019.
22. It was stipulated that in August 2018 the CHRB knew that the ARCI classified Scopolamine as a class 4 substance.
23. At the CHRB meeting in Del Mar in August 2018 Mr. Rick Baedeker, the executive Director of the CHRB and Dr. Rick Arthur, Equine Medical Director of the CHRB, recommended to the CHRB, in executive session, that the scopolamine positive tests be dismissed due to environmental contamination.
24. At the August 2018 CHRB meeting the attending Commissioners voted unanimously, in executive session, to follow staff recommendations and formally declined to move forward with any charges in the Justify matter.
25. It was stipulated that no new facts have been discovered since the CHRB made a decision not to pursue complaints against Justify and Hoppertunity in August 2018;
26. It was stipulated to by the parties that the filing of the complaint on August 25, 2020 against the trainer, owners and jockey of Justify was a condition of a settlement agreement between the Board and Ruis Racing, LLC

### III. DETERMINATION OF ISSUES

This Amended Statement reaffirms the December 9 Decision's dismissal of the 2020 disqualification complaints brought by the CHRB against Justify and Hoppertunity (*id.*, at p.10). The Amended Statement complies with the Superior Court's May 25, 2023 order upon interlocutory remand and bridges the analytical gap between the Stewards' findings and the ultimate decision to dismiss the *Disqualification* Complaints. (See, *e.g.*, *Topanga*, *supra*, 11 Cal.3d at 514-515.)

The Stewards find that the language of Rule 1859.5, the state of the amendment process to the Rule when the races were run at Santa Anita, and the horses' test results compel disqualification under Rule 1859.5, absent further action from the CHRB. (See §§ IV., V., *infra.*; see also Dec. 9 Stat., p.9.) However, the CHRB acted on August 23, 2018 at the Board meeting in Del Mar, California ("Del Mar Meeting"), where the Board Members voted unanimously to accept the recommendation of the Executive Director and the Equine Medical Director to formally decline to pursue charges in connection with this matter. (See § VI., *infra.*) As a result of this prior dismissal of the positive tests by the CHRB Board Members, the Stewards did not adjudicate the *Disqualification* Complaints. (Dec. 9 Stat., p. 10.) The Board's statutorily authorized dismissal barred the Stewards' proceeding.

The Stewards' proceeding is barred because they do not have the authority to reverse the Board members' vote. The lack of authority follows from: (1) the recognition that the CHRB is the controlling authority over horse racing, exercising plenary constitutional power over that subject matter; (2) the recognition that the Stewards are a subordinate body, delegated power by the CHRB to act for it in certain matters; and (3) the lack of any express statutory authority for the Stewards to set aside an adjudicatory decision of the CHRB. (See § VII.A., *infra*.)

The Stewards also note that the CHRB's decision to prosecute the *Disqualification* Complaints years after the fact is not sufficient to establish that the Stewards have the authority to adjudicate those complaints. The parties failed to present the Stewards with evidence of any formal action by the Board Members that rescinds or otherwise sets aside the dismissal from the Del Mar Meeting. The parties' mutual agreement that the Stewards should proceed, without more, is not sufficient to overcome the Board's formal action at the Del Mar Meeting under Business & Professions Code section 19577(d). Subsection (d) expressly limits the ability to dismiss matters to the Board itself and only in conjunction with the official recommendations of the executive director and the equine medical director. (Bus. & Prof. Code § 19577(d).) No such action is presented in the record. (See § VII.B., *infra*.) Finally, decisions by the Stewards would be only advisory and therefore jurisprudentially disfavored. They also would likely run contrary to the best interests of horse racing in the state of California. (See §§ VIII., IX., *infra*.)

#### **IV. SCOPOLAMINE WAS A CLASS-3 SUBSTANCE WHEN THE APRIL 2018 RACES RELEVANT TO THIS ACTION WERE RUN AT SANTA ANITA**

The Stewards have considered the parties' arguments concerning the amendment of the CHRB Rules and the Association of Racing Commissioners International ("ARCI") guidelines and determined that the decision to change Scopolamine from a Class-3 to a Class-4 substance was not effective until after the relevant race days. Based on the record presented, the Stewards found that:

1. Justify and Hoppertunity each gave post-race urine samples that showed the presence of Scopolamine in sufficient quantities to trigger CHRB rules concerning the presence of prohibited substances in racing horses. (Facts 1, 2, 4, 5.)
2. At the time of the April 2018 races, Scopolamine was a Class-3 substance under Rule 1843.2 and its presence triggered the disqualification penalties under Rule 1859.5. (Facts 11-14, 17; CHRB Rule 1859.5.)
3. Rule 1843.2, the CHRB's Classification of Foreign Substances list ("CHRB List"), and the underlying professional classification system it is based on (the ARCI Uniform Classification Guidelines ("ARCI Guidelines")) have all subsequently been amended to reclassify Scopolamine as a Class-4 substance. (Facts 15, 16, 19-21.) Scopolamine – as reclassified – would not trigger the disqualification provision in Rule 1859.5. (Dec. 9 Stat., at p.8.)

CHRB's classification of Scopolamine in the CHRB List and the change to Rule 1843.2 were effective in January 2019, following approval of the change by the Office of Administrative Law ("OAL") on October 18, 2018. (Fact 21.) Moreover, the CHRB List and Rule 1843.2 could not have logically been changed before the decision to formally amend at the Del Mar Meeting. (Facts 19, 20.)

The Rules considered Scopolamine a Class-3 substance on the day of the race. Indeed, it was still a Class-3 substance immediately following the Del Mar Meeting when CHRB voted to amend the Rules and the CHRB List, as those changes required approval of the OAL, which had not been given at that point.

**V. ABSENT ACTION BY THE CHRB, THE STEWARDS WERE COMPELLED BY THE RULES TO DISQUALIFY JUSTIFY AND HOPPERTUNITY**

Justify and Hoppertunity (as well as five other horses) gave blood tests containing a sufficient amount of Scopolamine – a Class-3 substance at the time – to trigger the disqualification provisions concerning prohibited substances. (Facts 1, 2, 4, 5.)

Rule 1859.5 operates to mandate a disqualification of both Justify and Hoppertunity under these facts, as noted in the original Statement of Decision. (Dec. 9 Stat., at p. 9.) The Rule affords no discretion to refuse to disqualify the horses on these facts. Rule 1859.5 does not permit a discretionary judgment as to disqualification when a sample meets the conditions set forth in the Rule. (*Ibid*; see also Rule 1859.5 [“Disqualification shall occur regardless of culpability for the condition of the horse.”].)

**VI. ON AUGUST 23, 2018, THE CHRB, IN EXECUTIVE SESSION, ELECTED TO DISMISS THE POSITIVE TESTS OF JUSTIFY AND HOPPERTUNITY**

The Stewards considered the official action by CHRB on the matter – meaning the presence of Scopolamine at Santa Anita and the positive tests of Justify and Hoppertunity – in executive session at the Del Mar Meeting. (Facts 23, 24.) The Board’s unanimous decision at the Del Mar Meeting not to pursue disqualification for positive Scopolamine tests at the Santa Anita races adopted a joint recommendation from Rick Baedeker, CHRB’s Executive Director, and Dr. Rick Arthur, CHRB’s Equine Medical Director. (*Ibid*.) The recommendation and the election satisfy the requirements of the statutory provision within the Business & Professions Code that permits the CHRB to dismiss prohibited substance matters when certain testimony has been provided and certain conditions have been met. (Dec. 9 Stat., at pp. 9-10; see also Bus. & Prof. Code § 19577(d).)

Business & Professions Code section 19577 governs the requirements for testing samples in California and the procedure providing notice of positive tests. Section 19577 also provides a procedure for dismissing positive tests requiring a high-level staff recommendation and action by the Board. The second and third sentences of subpart (d) address the ability of the CHRB to dismiss positive tests:

Any recommendation to the board by the executive director to dismiss [a finding of a prohibited drug substance in an official test sample within 24 hours of the confirmation of that prohibited drug substance in the split sample by the independent laboratory] shall be by mutual agreement with the equine medical director. The authority for the disposition of the matter shall be the responsibility of the board.

The current version of section 19577 includes this provision to limit the ability of individual officers of the CHRB to dismiss charges against individuals unilaterally.<sup>2</sup>

The plain language of the statute provides that the CHRB board may dismiss proceedings resulting from an official positive test pursuant to a recommendation made by the Executive Director acting in conjunction with the Equine Medical Director. In other words, the Executive Director may not make this recommendation without consultation with and agreement of the Equine Medical Director. The statute also makes clear that the only party that may act to dismiss a matter is the board itself through an official action. The Executive Director, even in conjunction with the Equine Medical Director, does not have the authority to dismiss a complaint. He may only *recommend* that it be dismissed.

That is what happened here. It is fundamentally undisputed that:

1. At the Del Mar Meeting, during executive session, Rick Baedeker, the Executive Director of the CHRB, recommended that the Scopolamine tests be dismissed, noting the existence of an environmental contamination at the Santa Anita racetrack during that time period. The recommendation was joined by Dr. Rick Arthur, CHRB's Equine Medical Director. (Fact 23.)
2. At the Del Mar Meeting, the attending Board Members voted unanimously, in executive session, to follow this recommendation and formally declined to move forward with any charges in the Justify matter. (Fact 24.)

These actions – (1) a joint recommendation to the CHRB Board by the Executive Director and the Equine Medical Director; and (2) official board action undertaken pursuant to a vote of the CHRB Board Members to adopt this recommendation – satisfy the requirement for the CHRB to dismiss a complaint for the presence of prohibited substances in a racing horse. (Bus. & Prof. Code § 19577(d).) The matter was dismissed on or about August 23, 2018.<sup>3</sup>

## **VII. DISMISSAL AT DEL MAR MEETINGS CONCLUDES THE MATTER; FURTHER ACTION BY STEWARDS IS UNAUTHORIZED**

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<sup>2</sup> The analysis of Assembly Bill 747 of the 1993-1994 Regular Session, which included the current version of Business & Professions Code § 19577, provides as follows, concerning subpart (d)'s goals and origin:

This measure ... is intended to prevent ... [t]he board's chief executive officer, from ... unilaterally dismissing drugging charges against a trainer ... . This bill responds to a recent situation involving the dismissal of charges against three trainers by a former CHRB executive officer. Shortly after the charges were dismissed, each duplicate sample was found to be positive.

(Sen. Comm. on Gov't. Organization, Analysis of Assem. Bill 747 (Reg. Sess. 1993-994).)

<sup>3</sup> The Stewards also note that the use of the term "*matter*" in the statute encompasses both filed complaints and the underlying controversy that would give rise to those and other similar complaints. To hold otherwise would create an absurd wrinkle in the CHRB enforcement proceedings by permitting complaints to proceed in circumstances where the underlying factual misconduct or situation was dismissed by the board. It is unreasonable to imagine that CHRB's enforcement mechanism operates this way.

This interpretation of section 19577(d) is also responsive to the parties' argument that the *Disqualification* Complaints could proceed notwithstanding the dismissal at the Del Mar Meeting because no formal written complaints had been made at that time.

The facts introduced by the parties place Justify and Hoppertunity within the mandate for disqualification set forth in Rule 1859.5. Had the Stewards heard the Justify and Hoppertunity complaints prior to August 23, 2018 both horses would have been disqualified.

However, the Stewards have no authority to issue a ruling disqualifying the horses, as the facts and circumstances underlying the *Disqualification Matters* were previously considered and dismissed by a unanimous vote of the Board Members at the Del Mar Meeting. The CHRB has already ruled on this matter and voted to not move forward with administrative prosecutions based on these facts. The Stewards are compelled to abstain following the Board's dismissal of this matter, which is final, binding, and not subject to review or reversal by the Stewards.

#### **A. STEWARDS LACK AUTHORITY TO OVERRIDE THE BOARD'S DISMISSAL**

Preliminarily, the applicable sections of the Business & Professions Code and the applicable regulations make clear that the Stewards are a subordinate body to the CHRB and lack the power to set aside Board decisions on their own initiative.

- **CHRB IS THE CONTROLLING AUTHORITY OVER HORSE RACING IN CALIFORNIA**

The CHRB is a constitutionally-authorized body which exercises California's police powers to regulate horse-racing and wagering within the state. (Cal. Const., Art. IV, § 19; *Jones v. Superior Court (Cal. Horse Racing Bd.)* (1981) 114 Cal.App.3d 725, 730.) Its power to regulate horse racing within California is described as a "plenary" power, encompassing all aspects of regulation of the sport and pari-mutuel wagering. (*Lavin v. California Horse Racing Bd.* (1997) 57 Cal.App.4th 263, 268.) Specifically, the CHRB has "all powers necessary and proper" to carry out and effectuate its purpose, including: the "administration and enforcement of all laws, rules, and regulations affecting horse racing and parimutuel wagering" and the "adjudication of controversies arising from the enforcement of those laws." (Bus. & Prof. Code § 19440(a); (a)(3), (4); see also 4 Cal. Code Regs. §§ 1401, 1402 [taken together, designating the CHRB as "controlling authority," over horse racing and reserving all powers not specifically granted to other bodies or individuals].)

- **THE STEWARDS' POWER TO ADJUDICATE IS DERIVED BY A GRANT BY THE CHRB PURSUANT TO STATUTE**

The Stewards exercise authority over horse racing – including enforcement action and adjudications concerning the prohibitions on dosing horses with certain substances – through a delegation from the CHRB. (Bus. & Prof. Code § 19440(a)(3), (4); (b); § 19582.5; § 19517.5.) The authority to delegate this power is expressly provided for in the statute. (Bus. & Prof. Code § 19440(b).)

- **CHRB IS AUTHORIZED TO OVERRULE THE STEWARDS' DECISIONS, STEWARDS LACK AUTHORITY TO RECONSIDER CHRB DECISIONS**

With certain exceptions not relevant here, the CHRB has the authority to overrule a decision by the Stewards for multiple reasons, including the determination that a preponderance of the evidence demonstrates that "[t]he best interests of racing and the state may be better served" by setting aside the Stewards' decision. (Bus. & Prof. Code § 19517(a)(3).) The Stewards do not have a reciprocal authority to consider

challenges to the CHRB's decisions. This conforms to the hierarchy plainly expressed in statutes and the Rules. (See, e.g., 4 Cal. Code Regs. § 1527 ["The stewards are strictly responsible to the Board for the conduct of the race meeting in every particular."].) In the absence of a regulation or statute conferring that authority on the Stewards or another body, it is reserved to the Board. (4 Cal. Code Regs. § 1400; see also, generally, Bus. & Prof. Code §§ 19420; 19440.)

**B. OFFICIAL BOARD ACTION SETTING ASIDE DEL MAR MEETING'S DISMISSAL WAS NOT IN THE RECORD BEFORE THE STEWARDS**

The Stewards also note that action dismissing positive prohibited substance tests is expressly reserved for the Board itself and can only be exercised in limited circumstances based on specific statutorily required staff recommendations.<sup>4</sup> (Bus. & Prof. Code § 19577(d); see also fn. 2, *supra*.) The purpose of the amended subsection (d) and the principle of equal dignities require that the Board Members' action at the Del Mar Meeting must be repealed or otherwise set aside by the same type of formal legislative action by the Board. (See fn. 2; see also, generally, *Schildwachter v. City of Compton* (1939) 14 Cal.2d 342, 345 [recognizing the principle of "equal dignity" in the context of municipal ordinances].)

The CHRB has filed administrative complaints seeking disqualification against Justify and Hoppertunity in connection with the samples given at the Santa Anita races. The existence of these complaints merely raises the question of whether or not they are administratively justiciable, though. It does not resolve it. Section 19577(d) limits dismissal to the Board itself and the Board acted unanimously here to dismiss this matter at the Del Mar Meetings. No evidence of any Board action was placed before the Stewards to establish that the dismissal has been set aside by an action of equal dignity to what section 19577(d) requires for its dismissal. In the absence of formal Board action permitting it, the Stewards will not undertake an adjudication of matters dismissed by the formal decision of the Board.

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<sup>4</sup> The Stewards also note, for purposes of clarification, that the Del Mar Meeting's official action is not in the nature of an adjudication. It is more akin to a quasi-legislative action, insofar as it exercises discretion to CHRB afforded by statute and the California Constitution to act in the best interests of the sport and the state. (See, generally, *Industrial Welfare Comm'n. v. Superior Court (Cal. Hotel & Motel Assn.)* (1980) 27 Cal.3d 690, 702 [quasi-legislative administrative action is characterized by "exercise of a considerable degree of policy-making judgment and discretion".])

The substance of the CHRB action at the Del Mar Meeting was not to adjudicate a complaint to determine whether disqualification was warranted, it was to dismiss the underlying factual incident as not subject to enforcement, notwithstanding the presence of prohibited substances in the samples. Rather than engaging in fact-finding to determine whether the conditions existed to invoke Rule 1859.5, it appears that the Executive Director and the Equine Medical Director investigated the Scopolamine contamination from jimsonweed and determined that the matter be dismissed regardless of whether the Rule applied by its terms. (See, generally, *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 275-280 [discussing the comparison of quasi-adjudicatory and quasi-legislative action and the relation of fact-finding to each.]) Indeed, the Equine Medical Director apparently accepted that the Rule would otherwise apply. (10-29-20 Transcript ("Trans") at pp. 75, 82.) Pursuant to the authority and responsibility conferred by section 19577(d), the Board Members then voted unanimously to dismiss "the matter." The statutory structure of section 19577 makes it clear that "matter" refers to a confirmed positive test – *not* a complaint, charge, or some similar which might arise from that test.

- **THE DEL MAR MEETING’S DISPOSITION OF THE POSITIVE SANTA ANITA SCOPOLAMINE TESTS WAS A LAWFUL AND REGULAR EXERCISE OF THE CHRB BOARD’S POWER EXPRESSLY GRANTED BY LAW**

The unanimous vote of the CHRB Board Members at the Del Mar Meetings to act on the recommendations of the Executive Director and the Equine Medical Director and dismiss the Complaints was undertaken in conformity with the express statutory mechanism for dismissal of positive prohibited substance tests under Business & Professions Code § 19577(d). As a result, the matter was dismissed. The dismissal concerned the positive drug tests by the winning horses at Santa Anita. These positive tests are the factual substance underlying the *Disqualification* Complaints.

- **THE BOARD’S DISMISSAL OF THE 2018 POSITIVE SCOPOLAMINE TESTS AT SANTA ANITA HAS NOT BEEN SET ASIDE**

The dismissal of the Scopolamine tests against Justify and Hoppertunity by the CHRB at the Del Mar Meetings is not in dispute. (Facts 23, 24.) The parties also stipulated that the CHRB’s filing of the *Disqualification* Complaints against Justify, notwithstanding this dismissal of the matter in August 2018, is the result of a settlement agreement between CHRB and Ruis Racing, LLC. (Fact 26.)

The Stewards note that the stipulated facts do not indicate that the CHRB Board took any action to set aside its dismissal from the Del Mar Meetings. (See, e.g., CHRB Exh. 1; (pp. CHRB 1003) [“Joint Stipulation of Fact”].) The document merely states that “the filing of the complaint” was a condition to the settlement and it is executed by counsel. (*Ibid.*) This settlement agreement itself was not placed in evidence by the CHRB or Ruis Racing, who balked at providing it upon the requests of the parties. (See Dec. 9 Stat., at pp.3-4 [Exhibit List].) It is not a part of the record before the Stewards. Neither have the parties submitted any documentation or other evidence of Board action setting aside the Del Mar Meeting’s dismissal independent of the stipulation that bringing the complaints was a condition of settlement.

Because there is no evidence of an official action by the Board reversing its dismissal, the Stewards lack the authority to adjudicate the *Disqualification* Complaints on their merits.

These considerations, taken together, preclude the Stewards’ substantive consideration of the *Disqualification* Complaints. Stated plainly:

1. The matter underlying the *Disqualification* Complaints was addressed and resolved by the constitutionally created controlling authority for horse racing in California, the CHRB.
2. The Stewards’ authority to even consider these sorts of issues is derived by delegation from the CHRB; and
3. There is no statutory or regulatory mechanism for the Stewards to set aside the CHRB’s official action dismissing the positive Santa Anita tests.

4. Although the Board filed the instant complaints, there is no indication that it took any official action to set aside its dismissal of the positive Scopolamine tests at Santa Anita in 2018 that gave rise to the *Disqualification* Complaints.

This being the case, the Stewards have no authority to reconsider or adjudicate the *Disqualification* Complaints. There is no statutory authority and no procedural mechanism allowing the Stewards to even review the CHRB's dismissal, let alone set it aside.

### **VIII. ANY DECISION BY THE STEWARDS ON THE MERITS WOULD BE A LEGALLY DEFECTIVE ADVISORY OPINION**

The parties stipulated that no new facts concerning the underlying scenario have come to light to suggest that reconsideration of the initial decision is warranted. (Fact 25.) As a result, any exercise of the Stewards' powers to reassess the conclusion the CHRB reached at the Del Mar Meeting would only be an advisory opinion.

If the Stewards were to consider the merits of the *Disqualification* Complaints notwithstanding the Board's dismissal and determine that disqualification is warranted they would be an inferior tribunal with no authority over legislative matters making a legally void ruling contrary to a policy decision made nearly five years ago and dictated by a superior body expressly authorized to make decisions like this when policy matters collide with enforcement obligations. (See, e.g., Bus. & Prof. Code § 19577(d).) This is not an appropriate exercise of the Stewards' authority. A court should "not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*Vernon v. State of California* (2004) 116 Cal.App.4th 114, 120, internal quotations omitted.) (See, e.g., Civil Code § 3532 ["The law neither does nor requires idle acts."].) The CHRB made their position on the *Disqualification* Complaints' substance clear at the Del Mar Meeting, following extensive testimony by the Equine Medical Director who concurred with the recommendation of the Executive Director. The Stewards have no authority to undermine that quasi-legislative determination by the Board.

### **IX. ANY DECISION SETTING ASIDE THE DEL MAR MEETING'S DISMISSAL ALSO RUNS CONTRARY TO THE BEST INTERESTS OF RACING**

Additionally, the Del Mar Meeting's dismissal implicates the CHRB's authority and responsibility to act in the best interests of horse racing in California, a subject over which they exercise plenary power at their sole discretion. (See, e.g., *Jones, supra*, 114 Cal.App.3d at 730; *Lavin, supra*, 57 Cal.App.4th at 268.) The Business & Professions Code also recognizes that the best interests of racing will occasionally require the intervention of the Board to override Stewards' decision-making. (Bus. & Prof. Code § 19517(a)(3).)

The record before the Stewards indicates that the best interests of horse racing likely underlie the vote to dismiss the *Disqualification* Complaints at the Del Mar Meeting. The record contains extensive discussions from the Equine Medical Director concerning the pending reclassification of Scopolamine (Trans. at pp. 58-62, 68, 69, 74, 80-81, 85-89; 91-92). The record also includes stipulated or fundamentally undisputed findings that the origin of the Scopolamine was an environmental jimsonweed contamination at Santa Anita (CHRB 1003; Stip. Fact 6); that multiple other positive Scopolamine results at Santa Anita have not resulted in complaints or disqualifications (CHRB 1003; Facts 10, 11); and that CHRB has not issued a Scopolamine-related complaint between 2008 and 2019 (CHRB 1003; Fact 8). All of these facts suggest a

policy-based rationale for the recommendation by the CHRB officials and the subsequent Board vote to employ section 19577(d)'s dismissal provision. Along these lines, it is also significant that subpart (d)'s existence is plainly a safety valve to prevent unexpectedly detrimental impacts from otherwise uncompromising regulations like Rule 1859.5. The relation of the statute and the regulation further enforces the impropriety of proceedings to enforce Rule 1859.5 when the Board has acted pursuant to section 19577(d) and no evidence of any subsequent Board action to set aside their dismissal is present in the record.

Under these circumstances, setting aside the Del Mar Meeting dismissal and entering a disqualification potentially runs counter to the regulatory goals of the CHRB and the best interests of horse racing in California.

## **X. CONCLUSION**

The underlying matter at issue – the positive tests for Scopolamine in Santa Anita in 2018 – were addressed by the CHRB and its Commissioners in executive session at the August 23, 2018 CHRB meeting in Del Mar, California. The Commissioners unanimously voted to not move forward with complaints and penalties based on the April 2018 Scopolamine contaminations. This dismissal was undertaken in compliance with the provisions of Business & Professions Code section 19577(d).

The Stewards have no authority review or vacate this action by the CHRB Board. Notwithstanding the existence of these Complaints, the record before the Stewards contains no evidence that the Board's statutorily authorized decision to dismiss the 2018 Santa Anita Scopolamine tests and contamination was set aside by the CHRB Board through formal action.

The Stewards therefore find that the CHRB's August 2018 dismissal completely and finally disposes of the matter and that they lack any authority to set aside that dismissal and adjudicate the *Disqualification* Complaints.

## **ORDER**

After considering the evidence and testimony presented by the parties, Complaint #20SA0195 and Complaint #20SA0196 are both dismissed. The CHRB previously made a determination under Business and Professions Code section 19577(d), in executive session at the August 23, 2018 CHRB meeting in Del Mar, California to dismiss the matter of the 2018 positive tests that form the factual basis of these complaints. This policy decision has not been set aside by the Board and precludes adjudication of the complaints on their merits.

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Steward John B. Herbuveaux

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Steward Kim Sawyer

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Steward Ron Church

Dated: August 8, 2023