

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**California Horse Racing Board v. Douglas
Francis "Doug" O'Neill
CHRB Owner License # 252163
CHRB Trainer License # 112723**

Case No. SAC 10-0019

**ORDER VACATING ORDER
GRANTING STAY AND ORDER OF
SUSPENION**

The California Horse Racing Board hereby vacates the Order Granting Stay for Douglas Francis "Doug" O'Neill, dated April 29, 2010, wherein Ruling No. 104052 issued by the Board of Stewards at the Hawthorne Race Course, Cicero, Illinois (hereinafter referred to as the "Illinois Ruling), was stayed from enforcement in the State of California. The Illinois Ruling required Licensee O'Neill to be suspended for a period of fifteen (15) days and is prima facie evidence of unfitness to participate in horse racing in California, pursuant to California Horse Racing Board Rule 1484. Licensee O'Neill having failed to rebut the prima facie evidence of unfitness at a hearing before the Board of Stewards, Hollywood Park Racing Association. As result Licensee O'Neill is hereby suspended for a period of fifteen (15) days in the State of California commencing June 30, 2010.

The Order of Suspension is also applicable to all Authorized Agent Registrations issued to Licensee O'Neill by the California Horse Racing Board. The Registration Numbers are as follows: 255153, 259787, 272141, 283714, 295520, 293388, 295606, 297483, 297248, 297328, 297556, 297469, 296990, 298496, 302185, 303050, 302335, 303189, 303193, 304005, 272359, 300487, 302023, 264913.

IT IS SO ORDERED ON June 23, 2010.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman



By: Kirk E. Breed
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**STATEMENT OF DECISION
of the
BOARD OF STEWARDS**

Hollywood Park

June 20, 2010

In the Matter of: California Horse Racing Board v. Doug O'Neill
Case number SAC 10-0019

INTRODUCTION AND PROCEDURAL HISTORY

Formal hearings were held before the Board of Stewards on May 23, 2010 and May 30, 2010 to address an issue between the California Horse Racing Board (hereinafter "CHRB") and trainer Doug O'Neill. As will become clear, the normal designation of the roles of Complainant and Respondent are somewhat ambiguous in this matter. On April 24, 2010, the stewards at Hawthorne Race Course in Cicero, Illinois issued a ruling (hereinafter "Illinois ruling") following a hearing that alleged a post-race total carbon dioxide (hereinafter "TCO2") overage discovered in the blood sample taken from one of Mr. O'Neill's runners. That ruling (Illinois Racing Board number 104052) exacted a penalty that included a license suspension of fifteen days (May 3, 2010 to May 17, 2010) as well as a one thousand dollar (\$1,000.00) fine. Normally, that suspension would run concurrently in California because the California Horse Racing Board honors reciprocity of such penalties from other jurisdictions. Upon learning of this reciprocity, Mr. O'Neill requested a stay of the imposition of the Illinois suspension in California in order to demonstrate at hearing why reciprocity would not be proper in this case. On April 29, 2010, Mr. O'Neill was granted a stay of the enforcement of the Illinois ruling by CHRB Chairman Keith Brackpool. Ostensibly, the purpose of this hearing is to determine whether the Illinois ruling is applicable at racetracks under the jurisdiction of the California Horse Racing Board. The matter was assigned to this Board of Stewards and originally scheduled for May 12, 2010. A continuance was requested by Mr. O'Neill's counsel Steve Schwartz in order to obtain additional evidence from Illinois. That continuance was granted and the hearing was reset for May 23, 2010. On May 23, this Board opened a formal hearing into whether the Illinois ruling should be reciprocated. Since these types of suspensions are typically automatic (reciprocated and applied without a hearing), the procedure under which it should be conducted was rather amorphous. Mr. Schwartz moved that the case should be dismissed because the CHRB had not filed a complaint in this matter while the representative for the CHRB could not provide a definitive answer with respect to whether it was seeking enforcement of the Illinois ruling. This Board ruled that filing a complaint was unnecessary, contrary to custom and practice, and judicially inefficient. It is our belief that a licensee is in a better

position to challenge either the original ruling in the state from which it arises or the prima facie imposition of reciprocity imposed by secondary jurisdictions. We did, however, continue the hearing to May 30, 2010, in order for the CHRB to provide a definitive answer with respect to whether they were seeking enforcement of the Illinois ruling. A record of this first hearing was made by court reporter Barbara Weinstein. On May 30, 2010, this Board continued the formal hearing begun one week prior. At the outset, the CHRB confirmed that it was seeking to impose reciprocity of the Illinois ruling. Present at the hearing were Mr. O'Neill's attorney Steve Schwartz, CHRB Investigator Bill Westerman, CHRB investigator Phil Miyazaki, Safety Steward Luis Jauregui, and the Board of Stewards--C. Scott Chaney, Kim Sawyer, and Tom Ward. The hearing was again recorded by court reporter Barbara Weinstein. Documentary evidence was submitted, oral argument was heard, the hearing was closed and the matter was deemed submitted.

LIST OF EXHIBITS

California Horse Racing Board Exhibit 1 – Illinois Racing Board Steward Ruling #104052

California Horse Racing Board Exhibit 2 – Notice of Withdrawal (appeal) by Doug O'Neill

California Horse Racing Board Exhibit 3 – Order Granting Stay to Doug O'Neill (Case No. SAC 10-0019)

O'Neill Exhibit 1 – Illinois Administrative Code Title 11, Subtitle B, Chapter I, Subchapter c, Part 603, Section 603.180 (Carbon Dioxide Tests)

O'Neill Exhibit 2 – Letter from Steven A. Barker, MS, Ph. D.

O'Neill Exhibit 3 – “A Beginner’s Guide to Uncertainty of Measurement” by Stephanie Bell

O'Neill Exhibit 4 – Curriculum Vitae of Dr. Steven A. Barker

O'Neill Exhibit 5 – Race Report/Race History of Doug O'Neill

O'Neill Exhibit 6 – RMTC *Recommended “Best Practices” for TCO2 Testing and Sample Collection*

FINDINGS OF FACT

I

At all times, herein mentioned, Doug O'Neill was licensed by the California Horse Racing Board in the license category of trainer.

II

On Saturday, April 3, 2010, the racehorse "Stephen's Got Hope" finished seventh in the seventh race at Hawthorne Race Course in Cicero, Illinois.

III

On April 24, 2010, the Board of Stewards (Joseph Lindeman, Eddie Arroyo, and Rick Evans) found that a blood sample obtained from "Stephen's Got Hope" showed a total carbon dioxide level of 37.8 +/- 0.0 mmol/L and that this level was a violation of Illinois' racing board rules.

IV

On April 24, 2010, the aforementioned Board of Stewards at Hawthorne Race Course issued a ruling that suspended trainer Doug O'Neill's license for fifteen calendar days and assessed him a fine of one thousand dollars.

V

Mr. O'Neill appealed the Hawthorne stewards' ruling to the Illinois Racing Board but withdrew his appeal on April 30, 2010. He also paid the civil fine levied in the ruling on date that is not specified in the record.

VI

On April 29, 2010, Mr. O'Neill requested a stay of the enforcement of the Illinois ruling from the California Horse Racing Board. That stay was granted later the same day.

APPLICABLE RULES

California Horse Racing Board 1484 (Evidence of Unfitness for License). If any applicant for a license or any licensee is under suspension, set down, ruled off, excluded from the inclosure, or otherwise barred from any racing occupation or activity requiring a license, it is prima facie evidence that he or she is unfit to be granted a license or unfit to hold a license or participate in racing in this State as a licensee during the term of any suspension or exclusion from racing imposed by any competent racing jurisdiction.

DISCUSSION

The issue before this Board of Stewards is whether or not the Illinois ruling is enforceable here in California. More specifically, the issue is whether the CHRB should recognize reciprocity as described in CHRB rule 1484 (Evidence of Unfitness for License) and require that trainer Doug O'Neill serve the fifteen day suspension outlined in the Illinois ruling. (Note: There is no claim, nor does the CHRB rule contemplate, that Mr. O'Neill would be required to pay the civil fine outlined in the Illinois ruling in California). The CHRB rule states in pertinent part: "If any. . . licensee is under suspension, . . . it is prima facie evidence that he. . . is unfit to. . . hold a license or participate in racing in this State. . . during the term of any suspension. . . imposed by any competent racing jurisdiction." At hearing, the CHRB presented evidence in the form of the Illinois ruling that Mr. O'Neill was suspended in Illinois for a period of fifteen calendar days. This Board views that ruling as "prima facie evidence" that Mr. O'Neill is unfit to hold a license for that same period in this jurisdiction. However, as Mr. O'Neill correctly argued, prima facie evidence merely establishes a fact or the presumption of a fact and can be rebutted. Mr. O'Neill attempted to rebut the evidence embodied by the Illinois ruling using two basic arguments. In our view, those arguments were unsuccessful.

First, Mr. O'Neill argued that California Business and Professions Code section 19401, which is included in chapter 4 and governs horse racing, is applicable. Section 19401 states: "The intent of this chapter is to allow parimutuel wagering on horse races, while: (a) Assuring protection of the public. (b) Encouraging agriculture and the breeding of horses in this state. (c) Supporting the network of California fairs. (d) Providing for maximum expansion of horse racing opportunities in the public interest. (e) *Providing uniformity of regulation for each type of horse racing.*" (emphasis added) Mr. O'Neill argued that enforcing reciprocity in this case would violate subsection (e) because California has different rules and standards regarding total carbon dioxide testing than Illinois and that more importantly, several other jurisdictions failed to recognize the Illinois ruling. Not only is this a misreading of the Business and Professions Code, it is a misinterpretation of the evidence. On its face, the stated goal of "providing uniformity of regulation for each type of horse racing" refers to uniformity of rules *within California* governing types of horse racing—thoroughbred, quarter horse, standardbred, mixed breed, etc. It does not seek to, nor can it seek to, create uniformity of rules of racing throughout the country. While there are several organizations seeking to achieve this laudable goal, they must work within the existing legal framework in each jurisdiction. Moreover, the argument that Illinois employs a different standard and testing procedure than California and that therefore reciprocity is not appropriate, is not persuasive.

Mr. O'Neill relied more heavily on the argument that jurisdictions other than California did not reciprocate the Illinois ruling. While we do not believe that Business and Professions code section 19401 is relevant to this argument, if it were, the evidence does not support the proposition. While Mr. O'Neill did present evidence that he raced horses in other jurisdictions while the suspension in Illinois was underway, there was no evidence with respect to whether or not those other jurisdictions were recognizing the suspension or contemplating recognizing the suspension. In fact, that same evidence indicated that Mr. O'Neill had raced horses in California during the Illinois suspension,

but it would be an incorrect inference to draw that California would not enforce reciprocity, as will become clear in the conclusion to this statement of decision. Furthermore, even if there were evidence in the record that unequivocally demonstrated that other jurisdictions would not enforce the Illinois ruling, this Board of Stewards fails to understand how California is bound by those decisions. Rather, we are bound by and have a duty to enforce California rules and regulations as they relate to licensees. Finally, Mr. O'Neill attempted to imply that the CHRB was somehow capricious in determining which rulings from other jurisdictions to enforce and which ones to ignore, and was thus treating Mr. O'Neill unfairly, but offered no actual evidence to support this claim.

The second line of rebuttal argument that Mr. O'Neill put forth centered around the way in which the total carbon dioxide test was designed and carried out in Illinois. The thrust of the argument was a critique of the manner in which the laboratory in Illinois (Animal Forensic Toxicology of the University of Illinois at Chicago) reported the TCO₂ overage as required by the Illinois Administrative Code section that governs TCO₂ testing. Specifically, Mr. O'Neill presented expert testimony from Dr. Steven Barker, MS, PhD that the reporting lab failed to include a measurement uncertainty with respect to the TCO₂ level as required by the rule. While the lab did report a level of 37.0 millimoles per liter +/- 0.0, Dr. Barker maintains that this is actually an error calculation rather than an uncertainty calculation as the rule requires. This Board of Stewards does not take a position on what the laboratory reported and how it relates to the Illinois rule partly because those facts are not entirely clear from the hearing (which is problematic for Mr. O'Neill's attempt to rebut the prima facie evidence embodied by the Illinois ruling) but mostly because we believe that this type of evidence was appropriate for the Illinois hearing not the one being considered here. Once Mr. O'Neill was informed of the total carbon dioxide overage discovered in his horse, the Illinois rules delineate an elaborate and specific way in which a split sample can be tested in order to negate the finding of the original overage. Mr. O'Neill apparently chose not to avail himself of this due process protection because, as his attorney argued, it would have been "impractical." Next, Mr. O'Neill appeared to have participated in the hearing regarding this matter in Illinois by telephone. Evidence suggested that Mr. O'Neill represented himself and did not put on much of a case. After the ruling was issued, Mr. O'Neill appealed the penalty, but later dropped the appeal, again failing to avail himself of the due process that the appeal process affords. Lastly, he both paid the fine and served the suspension in Illinois as required by the ruling but now seeks relief from its application here in California. This Board finds it both ironic and problematic that he failed to avail himself of any of the due process protections afforded in Illinois (and accepted the ruling) but now seeks to raise substantive arguments in order to avoid its application here. While interesting and potentially helpful, this Board will not accept new evidence that which could have and should have been raised in the original hearing in Illinois.

Lastly, while not argued at hearing, this Board recognizes that an argument could be made regarding the CHRB rule 1484 requirement that the ruling which CHRB is seeking to enforce via reciprocity originate from a "competent" racing jurisdiction. Mr. O'Neill's assertion that Illinois failed to apply its own rule appropriately may provide the beginning of an argument designed to show that Illinois is not a competent racing jurisdiction, but that assertion requires more elucidation. Furthermore, even if proven,

demonstrating that a racing jurisdiction is not competent would require far more evidence and examples of procedural and substantive shortcomings.

Therefore, this Board finds that the CHRB adequately provided prima facie evidence that the Illinois ruling should be carried out in this jurisdiction as required by CHRB rule 1484 (Evidence of Unfitness for License), and also finds that Mr. O'Neill has failed to rebut this presumption.

CONCLUSION

For the foregoing reasons, this Board of Stewards recommends that the California Horse Racing Board rescind its stay order in this matter and enforce reciprocity of the Illinois ruling as required by CHRB rule 1484 (Evidence of Unfitness for License); and therefore suspend Mr. O'Neill's training license (as well as any other licenses) for a period of fifteen calendar days as determined by the Board.

Board of Stewards

C. Scott Chaney

Kim Sawyer

Tom Ward