

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

JOSE A. FLORES
CHRB License #244643
Respondent

CHRB Case #14LA0063

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 (\$3000.00) fine and setting the sixty (60) day suspension with fifteen (15) days stayed on condition that the Respondent not have any violations for Class I, II, III drug substances for a period of one (1) year.

IT IS SO ORDERED ON August 21, 2014.

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 Complaint/Accusation
against:

JOSE A. FLORES,
Respondent

License Type: Trainer
License No. 244643-09/2015

Case No. 14LA0063

PROPOSED DECISION
Amended

INTRODUCTION

This matter was heard on May 31, 2014 by the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office.

Present at the hearing was the Respondent, Trainer Jose Flores, Investigator Kevin Kitashima, Safety Steward Randy Winick, and Stewards George Slender, Ruben Moreno, and James Dreyer. Court Reporter Dawn Young transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Jose A. Flores was the trainer of record for the horse "Glitter In My Face," who started in the seventh race at Los Alamitos Race Course on March 15, 2014. On March 27, 2014, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Glitter In My Face" (Urine Sample #LA25460) tested positive for the class III prohibited drug Clenbuterol after finishing first in the seventh race on March 15, 2014. Trainer Jose A. Flores was notified of the positive on March 27, 2014, and a barn inspection found no further violations. On March 27, 2014, Trainer Jose A. Flores completed the forms for the split sample testing. HFL Sport Science Laboratory of Lexington, Kentucky was selected as the lab to conduct the testing of the split sample. On May 8, 2014, investigators received a Final Report from LGC Science, Inc. (formerly known as HFL Sport Science Laboratories), confirming that split sample #LA25460 contained the presence of Clenbuterol (63 pg/ml).

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#14LA0063

Respondent / Defendant

No documents submitted.

FINDINGS OF FACT

I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "trainer."

II.

Respondent was the trainer of record for the horse "Glitter In My Face" when it raced in the seventh race on March 15, 2014 at Los Alamitos Race Course. "Glitter In My Face" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA25460) was taken from "Glitter In My Face" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

IV.

At all times herein mentioned, the chain of custody of urine sample #LA25460 from "Glitter In My Face" was uninterrupted.

V.

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

VI.

On March 27, 2014, Trainer Jose Flores was notified that "Glitter In My Face" had tested positive for Clenbuterol.

VII.

The respondent elected to have a split sample sent to the HFL Sport Science Laboratory of Lexington, Kentucky.

VIII.

On May 8, 2014, Investigator Blake received confirmation from LGC Science, Inc. (formerly HFL Sport Science Laboratories) that urine sample #LA25460 contained Clenbuterol.

APPLICABLE RULES

- California Horse Racing Board Rules:
 - **1887** (Trainer to Insure Condition of Horse)
 - **1843** (a, b & d) (Medication, Drugs and Other Substances)
 - **1859.5** (Disqualification Upon Positive Test Finding)

DISCUSSION

The first action required in this case and all class I, II, or III medication violations is to address California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding). This rule was applied on May 16, 2014, memorialized in Ruling #93 of the Los Alamitos Quarter Horse Racing Association, for the disqualification and purse redistribution of "Glitter In My Face" for detection of Clenbuterol in the post-race sample. The trainer of record, Jose A. Flores, requested a split sample, which was sent to HFL Sport Science Laboratory of Lexington, Kentucky. The presence of Clenbuterol was confirmed at 38.9 picograms, which was somewhat lower than the original test level of 63 picograms.

There is no dispute about the positive test findings by Trainer Jose A. Flores, however we must now address the portion of this process dealing with trainer responsibility (California Horse Racing Board Rule #1887 – Trainer to Insure Condition of Horse). It must also be determined if there is any or how much penalty that needs to be applied by determining if there are any mitigating and/or aggravating circumstances in Mr. Flores' culpability. Trainer Jose A. Flores is entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), which has four defenses. Section (a), (b), and (d) are procedural defenses and will not apply here. However, section (c) asks the trainer to show by a preponderance of the evidence that he made every reasonable effort to protect this horse in his care from tampering by unauthorized persons.

Jose told the Stewards in his testimony during the hearing that several things would fit into this category of protecting his horses from tampering. Mr. Flores stated that his father, Jose Flores Sr., who is the owner of the horse and also his assistant trainer, is at the barn full time to watch over his son's horses. "Glitter In My Face" is stabled at Jose A. Flores' barn at Los Alamitos and is not a ship-in, which many horses that have positive tests are. Jose A. Flores keeps meticulous training records, which indicate he stopped all Clenbuterol administration twenty-five days prior to this race. He also treated two other horses in his stable that ran on the same night as the positive horse, and these horses were tested also, showing no medication violation. They were treated the same as "Glitter In My Face" with Clenbuterol for approximately thirty days, 5cc twice a day. Mr. Flores indicated that "Glitter In My Face" was a filly that has a history of viral and throat infections, corroborated by both Dr. Anita Yacoub and Dr. Carlos Cervantes, who have treated her with antibiotics and prescribed Clenbuterol a regimine.

Trainer Jose A. Flores also stated that he trains several horses for Dr. Edward Allred, the owner of Los Alamitos Race Course and would be a fool to take any chance with a medication that Dr. Allred has a zero tolerance policy against and really does not like any medications given without

a legitimate reason. Jose said he would never risk his living or position with Dr. Allred doing something like this. Jose also stated that "Glitter In My Face" may have been susceptible to retaining Clenbuterol in her system longer than other horses because of her chronic viral condition. This is just his theory, but a plausible one. The other two horses of his were not sick and tested clear.

In closing, Mr. Flores was cooperative and sincere in his testimony in our opinion, however, he does admit that he is ultimately responsible. The inquiry now goes to the penalty phase as outlined by California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which allows for aggravating and mitigating factors that would enable deviation from the penalties. This is a class III violation that is a class "B" penalty category, which calls for a minimum thirty (30) day suspension and a five hundred dollar (\$500.00) fine. Absent mitigating circumstances, a review of Trainer Flores' medication violation history reveals that he has had several violations in the past three years, including Flunixin, Methylprednisolone, and a Methamphetamine positive, with extenuating circumstances.

A review of the aggravating and mitigating factors is now required to determine if some deviation from the minimum penalty is appropriate:

- (1) *Past Medication Record of the Licensee:* Mr. Flores' record is rather dubious: ten class IV violations, five class III violations, and one class I violation. **Aggravating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance, however, at the minute level of 63 picograms/ml, it is highly unlikely. **Mitigating.**
- (3) *The Legal Availability of the Drug:* Clenbuterol is available from any veterinarian as is not an illegal drug to use, just to race on. This is a **neutral** factor.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Upon reviewing the testimony by Trainer Flores, he testified the horse was sick and given Ventipulmin to help its breathing. He stated the horse was given 5cc of Ventipulmin twice a day for thirty days. This is pretty much the standard treatment for a horse with bronchial problems. He stated the horse was taken off of Clenbuterol twenty-five days prior to race day. This is aggravating as he was aware the horse was receiving Ventipulmin. **Aggravating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a **neutral** factor as Trainer Flores was treating a sick horse.
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* There was no evidence on this factor and is therefore **neutral.**
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to*

Human Drug Use or Other Factors: Trainer Flores admits he was treating a sick horse with the aforementioned drug, therefore, this is a **neutral** factor.

- (8) *Purse of the Race:* This is **mitigating** as the purse of the race was rather small: \$6,000.
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* This is **mitigating** as Dr. Cervantes prescribed the Clenbuterol to treat “Glitter In My Face.”
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* This is a **mitigating** factor because of no known evidence that wagering on this race was out of the ordinary.
- (11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian:* The evidence suggests that Trainer Flores was acting under the advice of both Dr. Cervantes and Dr. Yacoub. **Mitigating.**

A review of the factors reveals that there are more mitigating and neutral factors than aggravating ones.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug substance, Clenbuterol, was found in urine sample #LA25460 taken from the horse "Glitter In My Face," the first place finisher in the seventh race at Los Alamitos Race Course on March 15, 2014. This finding requires the disqualification of "Glitter In My Face" in accordance with California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding).

This Board of Stewards took judicial notice of the penalty guidelines as defined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations). Clenbuterol is a class III drug that falls in the class "B" penalty.

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

Trainer Jose A. Flores who started the horse "Glitter In My Face" in the seventh race on March 15, 2014 at Los Alamitos Race Course, is fined three thousand dollars (\$3,000.00)*, suspended sixty (60) days, and placed on probation for one year from the date of this ruling pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) and Rule #1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rules #1843 (a,b,&d) (Medication, Drugs and Other Substances – Clenbuterol – Class III).

Fifteen (15) of the days of suspension are stayed. Jose A. Flores is placed on probation and shall not have any violations for Class I, II, or III substances. If probation is violated subject shall serve the fifteen (15) stayed days.

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

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

Lic# 244643-09/2015

Case# 14LA0063

July 5, 2014

DATED: _____

By the Los Alamitos Board of Stewards:

Sub Norm

George Blender

James D. [unclear]

AMENDED: July 25, 2014

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