BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaints against:

MARISSA TYLER
CHRB License #320133
Respondent

CHRB Case No.15SW0084
16SW0001
16SW0003
16SW0006
16SW0007
16SW0008

DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board, with the following modification, as provided by Government Code Section 11517 (c) (2) (B):

1. The fine is to be nine thousand-five hundred ($9,500.00).
2. The suspension is to be one (1) year, from January 30, 2016, the date of the ex parte suspension of her California Horse Racing Board license.

The Decision shall become effective on August 29, 2016.

IT IS SO ORDERED ON August 25, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION	Docket No.: 15SW0084
	Docket No.: 16SW0001
AGAINST:	Docket No.: 16SW0003
	Docket No.: 16SW0006
MARISSA TYLER	Docket No.: 16SW0007
	Docket No.: 16SW0008
Trainer License Number 320133,11/17	
Respondent.	

PROPOSED DECISION

PROCEDURAL BACKGROUND

On January 30, 2016, the California Horse Racing Board held an ex-parte hearing as a result of the numerous positive Cobalt tests on horses trained by Respondent Marissa Tyler. The Board of Stewards issued a suspension of Tyler's license as a trainer, CHRB Trainer's license number 320133, 11/17.

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On January 30, 2016, Respondent Marissa Tyler requested that her drug violations as set forth in CHRB case numbers 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008 be heard directly before a Hearing Officer selected by the California Horse Racing Commission.

The matter was heard on April 15, 2016 by Richard P. Margarita, a Hearing Officer, designated under California Horse Racing Board (CHRB) Rule 1414 (Appointment of Referee) at the California Horse Racing Board, Cal Expo, 1010 Hurley Way, Suite 300, Sacramento, California. The Respondent, Marissa TYLER, was present and represented by Owen Eiler.

The California Horse Racing Board (hereinafter referred to as CHRB) was represented by California Department of Justice Deputy Attorney General Michelle A. Marzahn and CHRB Staff Counsel Philip J. Laird. Also present for the CHRB was Sharyn Jolly. CHRB Investigator Carol Nolan and Dr. Rick M. Arthur, veterinarian, Equine Medical Director at the University of California, Davis, and the full-time and primary veterinarian advisor to the California Horse Racing Board, also testified for the CHRB.

The Respondent called Raynor Marsland to testify on her behalf. Respondent also testified. Owen Eiler, an owner and Respondent's representative, also testified in part, although not formally, as the representative for Respondent. This Hearing Officer has taken into consideration of Mr. Eiler's statements during the hearing as testimony for the purposes of this decision.

The matter was then closed at the end of April 15, 2016, with written closing arguments to be submitted by the parties to the Hearing Officer by June 20, 2016.

Respondent submitted their closing argument to this Hearing Officer on June 8, 2016.

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The CHRB submitted their written closing argument to this Hearing Officer on June 20, 2016. Both written closing arguments by the parties were timely filed.

LIST OF EXHIBITS

CHRB EXHIBITS:

1. CHRB Exhibit # 1: Complaint, case number 15SW0084.
2. CHRB Exhibit # 2: Complaint, case number 16SW0001.
3. CHRB Exhibit # 3: Complaint, case number 16SW0003.
4. CHRB Exhibit # 4: Complaint, case number 16SW0006.
5. CHRB Exhibit # 5: Complaint, case number 16SW0007.
6. CHRB Exhibit # 6: Complaint, case number 16SW0008.

RESPONDENT'S EXHIBITS:

Respondent Exhibit A: Crime report.

Respondent Exhibit B: Flash drive of video of January 21, 2016 incident at Marissa Tyler's barn at Cal Expo.

FACTUAL FINDINGS

I.

Respondent Marissa Tyler is a duly licensed horse trainer in the State of California, Horse Trainer license number 320133, 11/17.

II.

On November 28, 2015, the horse "Young American" ran in the fifth race at Cal Expo, finishing first.

III.

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A CHRB Official took a urine sample from "Young American" on November 28, 2015, sample number CE25609. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Young American" revealed 30 ng/ml, in excess of the allowable amount of 25 ng/ml. This drug is a Class 4/Penalty B violation. This investigation had CHRB case number 15SW0084.

IV.

On December 19, 2015, the horse "Young American" ran in the first race at Cal Expo, finishing second.

V.

A CHRB Official took a urine sample from "Young American" on December 19, 2015, sample number CE25719. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Young American" revealed 124 ng/ml, in excess of the allowable amount of 25 ng/ml. This drug is a Class 3/Penalty B violation. This investigation had CHRB case number 16SW0001.

VI.

On January 2, 2016, the horse "Quantum Uptown Boy" ran in the first race at Cal Expo, finishing second.

VII.

A CHRB Official took a urine sample from "Quantum Uptown Boy" on January 2, 2016, sample number CE25817. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Quantum Uptown Boy" revealed 132 ng/ml, in excess of the allowable amount of 50 ng/ml. This drug is a Class 3/Penalty B violation. This

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investigation had CHRB case number 16SW0003.

VIII.

On January 17, 2016, the horse "Cruize Commander" ran in the first race at Cal Expo, finishing first.

IX.

A CHRB Official took a urine sample from "Cruize Commander" on January 17, 2016, sample number CE25931. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Cruize Commander" revealed 80 ng/ml, in excess of the allowable amount of 50 ng/ml. This drug is a Class 3/Penalty B violation. This investigation had CHRB case number 16SW0006.

X.

On January 17, 2016, the horse "Yankee Flyer" ran in the eighth race at Cal Expo, finishing first.

XI.

A CHRB Official took a urine sample from "Yankee Flyer" on January 17, 2016, sample number CE25937. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Yankee Flyer" revealed 64.9 ng/ml, in excess of the allowable amount of 50 ng/ml. This drug is a Class 3/Penalty B violation. This investigation had CHRB case number 16SW0007.

XII.

On January 23, 2016, the horse "Cruize Commander" ran in the seventh race at Cal Expo, finishing third.

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XIII.

A CHRB Official took a urine sample from "Cruize Commander" on January 23, 2016, sample number CE25960. That urine sample was tested at the UC Davis Maddy Laboratory. The sample was found to contain the substance Cobalt. The sample from "Cruize Commander" revealed 294 ng/ml, in excess of the allowable amount of 50 ng/ml. This drug is a Class 3/Penalty B violation. This investigation had CHRB case number 16SW0008.

XIV.

In CHRB case numbers 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008, as described in numbers II – XIII above, Marissa TYLER was the duly licensed horse trainer for those horses and responsible for their care.

XV.

On January 30, 2016, the California Horse Racing Board held an ex-parte hearing as a result of the numerous positive Cobalt tests on horses trained by Respondent Marissa Tyler. The Board of Stewards issued a suspension of Tyler's license as a trainer, CHRB Trainer's license number 320133, 11/17.

APPLICABLE LAWS AND REGULATIONS

California Code of Regulations Title 4, Section 1405, which is entitled, "Punishment by the Board," states:

> Violation of any provision of this Division, whether or not a penalty is fixed therein, is punishable in the discretion of the Board by revocation or suspension of any license, by fine, or by exclusion from all racing inclosures under the jurisdiction of

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the Board, or by any combination of these penalties. The Board may independently punish any misconduct of any person connected with racing.

California Code of Regulations Title 4, Section 1528, which is entitled, "Jurisdiction of Stewards to Suspend or Fine," states:

> The stewards' jurisdiction in any matter commences at such time as entries are taken for the first day of racing at the meeting and extends until thirty (30) days after the close of such meeting. However, the Executive Director or the Board may delegate the authority to adjudicate any matter occurring at any racing meeting to another Board of Stewards at any time. The stewards may suspend the license of anyone whom they have the authority to supervise or they may impose a fine or they may exclude from all inclosures in this State or they may suspend, exclude and fine. All such suspensions, fines or exclusions shall be reported immediately to the Board.

California Code of Regulations Title 4, Section 1843, which is entitled, "Medication, Drugs and other Substances," states:

> It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:
>
> (a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.
>
> (b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.
>
> (c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labelled.

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(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 limit 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.

California Code of Regulations Title 4, Section 1843.1, which is entitled, "Prohibited Drug Substances," states:

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.

California Code of Regulations Title 4, Section 1843.2, which is entitled, "Classification of Drug Substances," states:

The Board, the board of stewards, the hearing officer, or the administrative law judge, when adjudicating a hearing for a violation of Business and Professions Code section 19581, shall consider the classification of the substance as referenced in the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), hereby incorporated by reference, which is based on the Association of Racing Commissioners International (ARCI) Uniform Classification Guidelines for Foreign Substances (12/14), as modified by the Board.

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California Code of Regulations Title 4, Section 1843.3, which is entitled, "Penalties for Medication Violations.

(a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum.

(b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

(1) The past record of the licensee regarding violations of Business and Professions Code section 19581;

(2) The potential of the drug(s) to influence a horse's racing performance;

(3) The legal availability of the drug;

(4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(5) The steps taken by the trainer to safeguard the horse;

(6) The steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer;

(A) For the purpose of this regulation "unaffiliated trainer" means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred.

(7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors;

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(8) The purse of the race;

(9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division;

(10) Whether there was any suspicious wagering pattern on the race;

(11) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

(c) For the purpose of this regulation, the Board shall consider the classification of a drug substance as referred to in Rule 1843.2 of this division and the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification, (1/08), which is hereby incorporated by reference, if a determination is made that an official test sample from a horse contained:

(1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this division, or

(2) Any drug substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in the article.

(d) Penalties for violation of each classification level are as follows:

CATEGORY "A" PENALTIES

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 A penalty are as follows:

CATEGORY "B" PENALTIES

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 B penalty are as follows:

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CATEGORY "B" PENALTIES FOR RULE 1843.6 TOTAL CARBON DIOXIDE (TCO_2) TESTING

Penalties for violations due to exceeding permitted levels of TCO_2 as defined in Rule 1843.6 are as set forth below. All concentrations are for measurements in serum or plasma.

CATEGORY "C" PENALTIES

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 for the presence of more than one non-steroidal anti-inflammatory (NSAID) in a plasma/serum sample, as defined in Rule 1844 of this division, 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.

CATEGORY "C" PENALTIES FOR RULE 1844, AUTHORIZED MEDICATION (C) (1), (2), (3)

Penalties for violations due to overages for permitted non-steroidal anti-inflammatory drug substances (NSAIDs) as defined in Rule 1844 (c) (1), (2) and (3) of this division. All concentrations are for measurements in serum or plasma.
The official veterinarian shall consult with the treating veterinarian in all violations of 1844 (c). With permission of the official veterinarian the trainer may elect to pay the minimum fine in lieu of a stewards' hearing. If the trainer has not had an 1844 (c) violation within the previous three years, the official veterinarian or the board of stewards may issue a warning in lieu of a fine for violations of 1844 (c)(1), phenylbutazone, provided the reported level is below 7.5mcg/ml.

(e) Violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category "D" penalty, may result in a written warning to the licensed trainer and owner. A Category "D" penalty may result in a written warning or fine that will remain on the licensee's record for a period of two years. After the two-year period, if the licensee has had no further violations of CHRB Rule 1843, the Category "D" penalty will be expunged from the licensee's record for penalty purposes.

CATEGORY "D" PENALTIES

1st offense (365 day period)	2nd offense (365 day period)	3rd offense (365 day period)

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Minimum of an official written warning to a maximum fine of $250.	Minimum of a $250 fine to a maximum fine of $500.	Minimum of a $500 fine to a maximum fine of $750.

CATEGORY "D" PENALTIES FOR RULE 1844(c)(1) VIOLATIONS

Phenylbutazone 2.1 ug/ml to 5.0 ug/ml

1st offense (365 day period)	2nd offense (365 day period)	3rd offense (365 day period)
Minimum of an official written warning to a maximum fine of $250.	Minimum of a $250 fine to a maximum fine of $500.	Minimum of a $500 fine to a maximum fine of $750.

(f) Any drug or its metabolite or analogue thereof found to be present in an official test sample that is not classified in Rule 1843.2 of this division shall be classified as a Class 1 substance and a Category "A" penalty until classified by the Board.

(g) The administration of a drug substance to a race horse must be documented by the treating veterinarian through the process described in Rule 1842 of this division.

(h) Any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer and his presence may be required at any and all hearings relative to the case.

(1) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "A" shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action.

(2) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "B" or "C" may be referred to the CVMB for consideration of further disciplinary action upon the recommendation of the Equine Medical Director, the board of stewards or hearing officers.

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(i) A licensee who is suspended, or whose license is revoked, because of a medication violation is not able to benefit financially during the period of suspension or revocation. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(j) For the purpose of this regulation "licensed family members" means any person who holds an occupational license issued by the CHRB and who is related to the suspended licensee, or the licensee whose license is revoked, by blood, or by marriage or domestic partnership, or who is related by blood to the spouse or domestic partner of such licensee.

(1) For the purpose of this regulation, licensed trainers suspended 60 days or more, or whose license is revoked, shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, during the period of suspension, or revocation, such trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment, tack, office equipment, and any other property.

California Code of Regulations Title 4, Section 1858, which is entitled, "Test Sample Required," states:

(a) Blood and urine test samples shall be taken daily from the winner of every race, from horses finishing second and third in any stakes race with a gross purse of $75,000 or more, and from not less than six other horses designated for testing by the Equine Medical Director, the stewards or the official veterinarian.

(b) Every horse within the inclosure, or every horse registered to race at an inclosure, or nominated, pre-entered or entered in any race is subject to testing and no owner, trainer or other person having the care of a horse shall refuse to submit it for testing when directed by the Equine Medical Director, the stewards or the official veterinarian.

(1) For the purpose of this regulation, a horse is "registered to race at an inclosure" when the horse's registration papers are on file with a racing association under the jurisdiction of the Board.

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California Code of Regulations Title 4, Section 1859, which is entitled, "Taking, Testing, and Reporting of Samples," states:

> (a) Urine, blood or other official test samples shall be taken under the direction of the official veterinarian, the Equine Medical Director or a person designated by the official veterinarian. All samples shall be taken in a detention area approved by the Board, unless the official veterinarian or the Equine Medical Director approves otherwise. The taking of any test sample shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his or her agent or employee, and may be witnessed by the owner, trainer or other person designated by them. All official test samples shall be sent to the official laboratory approved and designated by the Board, in such manner as the Board may direct. All required samples shall be in the custody of the official veterinarian, his or her assistants or other persons approved by the official veterinarian, from the time they are taken until they are delivered to the custody of the official laboratory.
>
> (b) The Executive Director and the Equine Medical Director shall immediately be notified by the official laboratory of each finding that an official test sample contains a prohibited drug substance, as defined in this article. The official laboratory shall further provide all information and data on which the finding is based to the Equine Medical Director, and shall transmit its official report of the finding to the Executive Director within five working days after the initial notification is made.
>
> (c) The Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis.
>
> (d) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no drug substance prohibited by this article has been administered, in violation of these rules, to the horse earning such purse money.

California Code of Regulations Title 4, Section 1859.25, which is entitled, "Split Sample Testing," states as follows:

> (a) In addition to the blood and urine official test samples transmitted to the official laboratory for testing as provided in Rule 1859 of this Article, the Board shall maintain a portion of the official test sample for each horse tested if sufficient sample

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is available after the official test samples are taken. That portion shall be designated the split sample. The Board makes no guarantee as to the amount of sample which will be available for the split sample. All samples taken by representatives of the Board are under the jurisdiction of and shall remain the property of the Board at all times. The Board shall ensure the security and storage of the split sample.

(b) When the Executive Director or the Executive Director's designee is notified of a finding by the official laboratory that a test sample from a horse participating in any race contained a prohibited drug substance as defined in this Article, the Executive Director, after consulting with the Equine Medical Director or the Equine Medical Director's designee as to the presence of the prohibited drug substance shall notify a Supervising Investigator. The owner and the trainer shall be confidentially notified of the finding by a Supervising Investigator or his/her designee and the owner and trainer shall each have 72 hours from the date he or she is notified to request that the split sample of the official test sample that was found to contain the prohibited drug substance(s) be tested by an independent Board approved laboratory.

(c) If the owner or trainer wishes to have the split sample tested, he or she shall comply with the following procedures:

(1) The request shall be made on CHRB-56, (Rev. 5/97), Request to Release Evidence, which is hereby incorporated by reference. CHRB-56 shall be made available at all CHRB offices.

(2) The owner or trainer requesting to have the split sample tested shall be responsible for all charges and costs incurred in transporting and testing the split sample. By signing CHRB-56, the owner or trainer certifies he or she has made arrangements for payment to the designated Board-approved laboratory for laboratory testing services.

(3) Verification of payment for costs incurred in transporting and testing the split sample must be received by the CHRB within five (5) working days from the CHRB receipt of CHRB-56. If such verification of payment is not received, the split sample will not be released or shipped to the Board-approved laboratory designated by the owner or trainer to test the split sample and the owner and trainer will have relinquished his/her right to have the split sample tested. If a complaint issues, the only test results that will be considered will be the results from the Board's official laboratory.

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(d) Upon approval by the Executive Director or the Executive Director's designated representative of a valid request on CHRB-56, CHRB-29 (Rev. 5/97), Authorization to Release Split Sample Urine Evidence, or CHRB-29A (Rev. 5/97), Authorization to Release Split Sample Blood Evidence, which are hereby incorporated by reference, shall be completed and the Board shall ensure that the split sample is sent to the designated laboratory for testing.

(1) If the findings by the independent Board-approved laboratory fail to confirm the findings of the prohibited drug substance as reported by the official laboratory, it shall be presumed that the prohibited drug substance was not present in the official sample.

(2) If the findings by the independent Board-approved laboratory confirm the findings of the prohibited drug substance as reported by the official laboratory, the Executive Director shall report these findings to the Board within 24 hours after receiving confirmation of the prohibited drug substance in the split sample.

(e) If the owner or trainer fails to request the testing of the split sample in accordance with the procedures specified in this rule, they shall be deemed to have waived their rights to have the split sample tested.

(f) Results of the official test sample and the split sample shall be, and shall remain, confidential and shall be provided only to the Executive Director or the Executive Director's designee, the Board, the Equine Medical Director or the Equine Medical Director's designee, and to the owner and trainer, unless or until the Board files an official complaint or accusation.

California Code of Regulations Title 4, Section 1859.5 which is entitled, "Disqualification upon Positive Test Finding," states as follows:

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance as defined in this article, which is determined to be in class levels 1-3 under Rule 1843.2 of this division, unless a split sample tested by the owner or trainer under Rule 1859.25 of this division fails to confirm the presence of the prohibited drug substance determined to be in class levels 1-3 shall require disqualification of the horse from the race in which it participated and forfeiture of any purse, award, prize or record for the race, and the horse shall be

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deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse.

California Code of Regulations Title 4, Section 1887 which is entitled, "Trainer or Owner to Insure Condition of Horse," states as follows:

(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. The owner of a ship-in horse is the joint-absolute insurer of and is equally responsible for the condition of the horse entered in a race.

(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 agents 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 this **section** 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 Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

California Code of Regulations Title 4, Section 1888 which is entitled, "Defense to Trainer Insurer Rule," states as follows:

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

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(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.

California Business and Professions Code Section 19460, which is entitled, "Licenses to Be In Writing; application of rules, regulations and conditions," states as follows:

All licenses granted under this chapter:

(a) Shall be in writing.

(b) Are subject to all rules, regulations, and conditions prescribed by the board.

(c) Shall contain such conditions as are deemed necessary or desirable by the board for the best interests of horse racing and the purposes of this chapter.

California Business and Professions Code Section 19582, which is entitled, "Violations of 19581; Penalties," states as follows:

(a)(1) Violations of Section 19581, as determined by the board, are punishable as set forth in regulations adopted by the board.

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(2) The board may classify violations of Section 19581 based upon each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime.

(3)(A) The board may provide for the suspension of a license for not more than three years, except as provided in subdivision (b), or a monetary penalty of not more than one hundred thousand dollars ($100,000), or both, and disqualification from purses, for a violation of Section 19581.

(B) The actual amount of the monetary penalty imposed pursuant to this paragraph shall be determined only after due consideration has been given to all the facts, circumstances, acts, and intent of the licensee, and shall not be solely based on the trainer-insurer rule, as established in Sections 1843 and 1887 of Title 4 of the California Code of Regulations.

(4) The punishment for second and subsequent violations of Section 19581 shall be greater than the punishment for a first violation of Section 19581 with respect to each class of prohibited drug substances, unless the administrative law judge, in findings of fact and conclusions of law filed with the board, concludes that a deviation from this general rule is justified.

(b)(1) A third violation of Section 19581 during the lifetime of the licensee, determined by the board to be at a class I or class II level, may result in the permanent revocation of the person's license.

(2) The administrative law judge shall, after consideration of the circumstances surrounding a violation specified in paragraph (1), file a decision with the board that includes findings of fact and conclusions of law.

(c) Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the license during any period of its suspension or revocation.

(d) The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions.

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California Business and Professions Code Section 19582.5, which is entitled, "Positive drug testing; prohibitions, disqualifications and forfeitures," states as follows:

> The board may adopt regulations that prohibit the entry in a race of a horse that tests positive for a drug substance in violation of Section 19581. Upon a finding of a prohibited drug substance in an official test sample, a horse may be summarily disqualified from the race in connection with which the drug sample was taken. Upon the disqualification of a horse pursuant to these regulations, any purse, prize, award, or record for that race shall be forfeited. However, the board, including its hearing officers and stewards, shall have the authority to order, in the interests of justice, that a jockey be permitted to keep his or her share of the purse, prize, or award for that race upon a finding that a person, other than the jockey, willfully, and with flagrant disregard for recommended veterinary practice and the regulations of the board, administered the prohibited substance. Such an order may provide that the jockey's share of the purse, prize, or award shall be paid by the person or persons determined to be responsible for willfully administering the prohibited substance

California Evidence Code Section 115, which is entitled, "Burden of Proof," states as follows:

> "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.
>
> Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

California Evidence Code Section 195, which is entitled, "Public Employee, "states as follows:

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"Public employee" means an officer, agent, or employee of a public entity.

California Evidence Code Section 606, which is entitled, "Effect of Presumption Affecting Burden of Proof," states as follows:

> The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.

California Evidence Code Section 630, which is entitled, "Presumptions Affecting the burden of producing evidence," states as follows:

> The presumptions established by this article, and all other rebuttable presumptions established by law that fall within the criteria of Section 603, are presumptions affecting the burden of producing evidence.

California Evidence Code Section 664, which is entitled, "Official Duty Regularly Performed," states as follows:

> It is presumed that official duty has been regularly performed. This presumption does not apply on an issue as to the lawfulness of an arrest if it is found or otherwise established that the arrest was made without a warrant.

DISCUSSION OF ISSUES

I. RESPONDENT MARISSA TYLER WAS THE TRAINER IN ALL CASES (15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, AND 16SW0008) WHERE HORSES THAT SHE TRAINED TESTED POSITIVE FOR COBALT ABOVE PERMISSIBLE LEVELS, AFTER RACING AT CAL EXPO RACE TRACK

A. SUMMARY OF CASES

15SW0084

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On November 28, 2015, "Young American" ran in the fifth race at Cal Expo Race Track and finished first. The trainer of record was Marissa Tyler. The owners of record were Jennifer Petrelli and Raynor Marsland. Official urine and blood samples, number CE25609, were taken from "Young American" on that date after the race. The test results reported by the UC Davis Maddy Laboratory of the blood and urine contained Cobalt in the amount of was 30 ng/milliliters, exceeding the authorized limit of 25 ng/ml. The trainer, Respondent Tyler, had initially stated she wanted a split sample of the samples collected from "Young American." Tyler never did obtain a split sample of the urine or blood sample from young American. Tyler was notified of the positive test notification of Cobalt in "Young American" by CHRB Investigator Carol A. Nolan on December 12, 2015 at approximately 4:00 p.m.

Exhibit 1 also reflects that at the time that the blood and urine sample were taken from "Young American" on November 28, 2015, sample number CE25609, Jennifer Petrelli was a witness. Jennifer Petrelli was one of the owners of "Young American." Raynor Marsland was the other owner.

This was a Class 4/Penalty B violation.

16SW0001

On December 19, 2015, "Young American" ran in the first race at Cal Expo Race Track and finished second. The trainer of record was Marissa Tyler. The owners of record were Jennifer Petrelli and Raynor Marsland. An official blood sample, number CE25719, was taken from "Young American" on that date after the race. The test results reported by the UC Davis Maddy Laboratory of the blood sample contained Cobalt in the amount of 124 ng/milliliters, exceeding the authorized limit of 50 ng/ml. The trainer, Respondent Tyler, had initially stated she wanted a split sample of the sample collected from "Young

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American." Tyler never did obtain a split sample of the blood from young American. Tyler was notified of the positive test notification of Cobalt in "Young American" by CHRB Investigator Carol A. Nolan on January 2, 2016 at approximately 2:30 p.m.

Exhibit 2 also reflects that at the time that the blood sample was taken from "Young American" on December 19, 2015, sample number CE25719 (blood), Jennifer Petrelli was a witness. She is one of the owners of "Young American." Raynor Marsland was the other owner. Exhibit 2 also contains a California Horse Racing Board Official Ruling of the Board of Stewards dated February 21, 2016, Ruling Number 24. In this order it states, "… It is hereby ordered that "Young American" be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board Rule 1859.5.… It is further ordered that all purse monies earned or awarded to owners Jennifer Petrelli and Raynor W. Marsland, Jr., ($1125) and trainer Marissa Tyler ($62.50) and driver Frank Petrelli ($62.50) be returned to the paymaster of purses on or before February 28, 2016 for redistribution pursuant to California Horse Racing Board Rule 1760..." This was signed by the three California Horse Racing Board stewards. It should also be noted that on January 12, 2016, CHRB Investigator Nolan received a call from Assistant Trainer Frank Petrelli stating that a split sample would not be requested for sample number CE25719.

This was a Class 3/Penalty B violation.

<u>16SW0003</u>

On January 2, 2016, "Quantum Uptown Boy" ran in the first race at Cal Expo Race Track and finished second. The trainer of record was Marissa Tyler. The owners of record were Marisa Tyler and Raynor Marsland. An official blood sample, number

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CE25817, was taken from 'Quantum Uptown Boy" on that date after the race. The test results reported by the UC Davis Maddy Laboratory of the blood sample contained Cobalt in the amount of 132 ng/milliliters, exceeding the authorized limit of 50 ng/ml. The trainer, Respondent Tyler, had initially stated on January 9, 2016 that she wanted a split sample of the sample collected from "Quantum Uptown Boy." Exhibit 3 also reflects that at the time that the blood sample was taken from "Quantum Uptown Boy" on January 2, 2016, sample number CE25817 (blood), Jennifer Petrelli was a witness. It should also be noted that on January 12, 2016, CHRB Investigator Nolan received a call from Assistant Trainer Frank Petrelli stating that a split sample would not be requested for sample number CE25817.

Exhibit 3 also contains a California Horse Racing Board Official Ruling of the Board of Stewards dated February 21, 2016, Ruling Number 25. In this order it states, "... It is hereby ordered that "Young American" be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board Rule 1859.5.... It is further ordered that all purse monies earned or awarded to owners Marissa Tyler and Raynor W. Marsland, Jr., ($787.50) and trainer Marissa Tyler ($43.75) and driver Frank Petrelli ($43.75) be returned to the paymaster of purses on or before February 28, 2016 for redistribution pursuant to California Horse Racing Board Rule 1760..." This was signed by the three California Horse Racing Board stewards.

This was a Class 3/Penalty B violation.

16SW0006

On January 17, 2016, "Cruize Commander" ran in the fourth race at Cal Expo Race Track and finished first. The trainer of record was Marissa Tyler. The owners of record

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were Jennifer Petrelli and Owen Eiler. An official blood sample, number CE25931, was taken from 'Cruize Commander" on that date after the race.

The test results reported by the UC Davis Maddy Laboratory of the blood sample contained Cobalt in the amount of 80.1 ng/milliliters, exceeding the authorized limit of 50 ng/ml. The trainer, Respondent Tyler, stated on January 30, 2016 that she did not want a split sample of the sample collected from "Cruize Commander." Exhibit 4 also reflects that at the time that the blood sample was taken from "Cruize Commander" on January 17, 2016, sample number CE25931 (blood), Jennifer Petrelli was a witness.

Exhibit 4 also contains a California Horse Racing Board Official Ruling of the Board of Stewards dated February 21, 2016, Ruling Number 26. In this order it states, "... It is hereby ordered that "Young American" be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board Rule 1859.5.... It is further ordered that all purse monies earned or awarded to owners Jennifer Petrelli and Owen Eiler, ($1,440.00) and trainer Marissa Tyler ($80.00) and driver Frank Petrelli ($80.00) be returned to the paymaster of purses on or before February 28, 2016 for redistribution pursuant to California Horse Racing Board Rule 1760..." This was signed by the three California Horse Racing Board stewards.

This was a Class 3/Penalty B violation.

16SW0007

On January 17, 2016, "Yankee Flyer" ran in the eighth race at Cal Expo Race Track and finished first. The trainer of record was Marissa Tyler. The owner of record was Jennifer

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Petrelli. An official blood sample, number CE25937, was taken from "Yankee Flyer" on that date after the race.

The test results reported by the UC Davis Maddy Laboratory of the blood sample contained Cobalt in the amount of 64.9 ng/milliliters, exceeding the authorized limit of 50 ng/ml. The trainer, Respondent Tyler, stated on January 30, 2016 that she did not want a split sample of the sample collected from "Yankee Flyer." Exhibit 5 also reflects that at the time that the blood sample was taken from "Yankee Flyer" on January 17, 2016, sample number CE25937 (blood), Jennifer Petrelli was a witness.

Exhibit 5 also contains a California Horse Racing Board Official Ruling of the Board of Stewards dated February 21, 2016, Ruling Number 27. In this order it states, "… It is hereby ordered that "Young American" be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board Rule 1859.5.… It is further ordered that all purse monies earned or awarded to owner Jennifer Petrelli, ($1,125.00) and trainer Marissa Tyler ($62.50) and driver Luke Plano ($62.50) be returned to the paymaster of purses on or before February 28, 2016 for redistribution pursuant to California Horse Racing Board Rule 1760..." This was signed by the three California Horse Racing Board stewards.

This was a Class 3/Penalty B violation.

16SW0008

On January 23, 2016, "Cruize Commander" ran in the seventh race at Cal Expo Race Track and finished third. The trainer of record was Marissa Tyler. The owners of record were Jennifer Petrelli and Owen Eiler. An official blood sample, number CE25960, was taken from 'Cruize Commander" on that date after the race.

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The test results reported by the UC Davis Maddy Laboratory of the blood sample contained Cobalt in the amount of 294 ng/milliliters, exceeding the authorized limit of 50 ng/ml. The trainer, Respondent Tyler, stated on January 30, 2016 that she did not want a split sample of the sample collected from "Cruize Commander." Exhibit 6 also reflects that at the time that the blood sample was taken from "Cruize Commander" on January 23, 2016, sample number CE25960 (blood), Jennifer Petrelli was a witness.

Exhibit 6 also contains a California Horse Racing Board Official Ruling of the Board of Stewards dated February 21, 2016, Ruling Number 28. In this order it states, "... It is hereby ordered that "Young American" be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board Rule 1859.5.... It is further ordered that all purse monies earned or awarded to owners Jennifer Petrelli and Owen Eiler, ($421.20) and trainer Marissa Tyler ($23.40) and driver Frank Petrelli ($23.40) be returned to the paymaster of purses on or before February 28, 2016 for redistribution pursuant to California Horse Racing Board Rule 1760..." This was signed by the three California Horse Racing Board stewards.

This was a Class 3/Penalty B violation.

Marissa Tyler, Respondent, testified at the hearing. Tyler testified that she had twenty-one (21) horses under her care during the period of December 2015 through January 2016, and her family members are her employees which include her father, mother, sister, and brother. That would be Jennifer Petrelli, Frank Petrelli, Jennifer Petrelli, and Christopher Petrelli. She has a sister named Jennifer Petrelli and her Mother's name is also Jennifer Petrelli. Frank Petrelli is her Stepfather. Her brothers, sisters, and family members are employees of hers. (RT: pp.142:20-25).

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Tyler testified that on December 19, 2015, she was the trainer for Young American. She was not present when the blood sample was taken after the race. (RT: pp.141:6-8).

Tyler testified that on January 2, 2006, she was the trainer for Quantum Uptown Boy when the blood sample was taken after he raced on January 2, 2016. She observed Dr. Zucco taking the sample. On January 17, 2016, she was the trainer of record for Cruize Commander, and she was not present when the blood sample was taken. (RT: pp.141:6-18).

Tyler testified that on January 17, 2016, she was the trainer of record for Yankee Flyer. She was present when the blood sample was taken on January 17, 2016, after it raced. The blood sample was taken by Dr. Zucco. (RT: pp.142:1-4).

Tyler testified that on January 23, 2016, she was the trainer of record for Cruize Commander. She was not present when the blood sample was taken from Cruize Commander after the race. (RT: pp.142:10-16).

Tyler testified that the first positive test (Cobalt) was on November 28, 2016. She learned of that test on December 12. (RT: pp. 144:17-18).

Tyler testified that she took no security measures on December 12, 2015, after learning of the first positive test to protect her horses. (RT: pp.144:22-25).

Tyler testified that there was a second positive test on December 19, 2015. She was informed of the December 19, 2015 positive test on January 2, 2016. (RT: pp. 145:1-6).

Tyler testified that she did not take any security measures on January 2, 2016 or soon thereafter to protect her horses as a result of being informed of the December 12, 2015 positive

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Cobalt test. There was another positive test on January 2, 2016. She was informed of that on January 9, 2016. (RT: pp.145:1-25).

On January 15, six (6) days after being informed of the positive test on January 9, 2016, in which the test was conducted on January 2, 2016, Tyler testified that she installed cameras in the barn on January 15, 2016. Tyler stated that there had been three positive tests (Cobalt) before she decided to install cameras. (RT: pp.145:20-22).

CHRB Investigator Carol Nolan testified that she has been an Investigator for the CHRB for nine (9) years and an Investigator for approximately twenty-six (26) years.

Investigator Nolan testified that she received an email notification on December 12, 2015 regarding a Class 4 positive Cobalt test on one of Tyler's horses, Young American. This was for case number CHRB-15SW0084. A urine sample, CE25609, was taken from Young American, who raced in the fifth race at Cal Expo on November 28, 2015. The UC Davis Maddy Laboratory conducted the test and found the urine sample contained Cobalt in the amount of 30 nanograms, in excess of the allowable 25 nanograms, which was a Class 4, Penalty C. Investigator Nolan notified Marissa Tyler of those results on December 12, 2015. Investigator Nolan notified Marissa Tyler of those results on December 12, 2016.

Investigator Nolan testified that Marissa Tyler did not take a split sample of urine tests. (RT: pp. 23:17-20).

Investigator Nolan testified that when she met with Tyler, and upon notifying Tyler of the Cobalt results, Tyler was very shocked and upset about the violation and had no idea the horses had come in contact with the substance, Cobalt. (RT: pp. 22:8-13). As a result of the positive test for

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Cobalt, on December 12, 2015, Nolan conducted a cursory search of Tyler's barn and the feed. No evidence of Cobalt was located. (RT: pp. 22-23:18-25:1-9).

Dr. Rick M. Arthur, a veterinarian and the Equine Medical Director at the University of California, Davis, testified for Petitioner. He is assigned full-time to the California Horse Racing Board as their primary adviser. He has practiced on thoroughbred racetracks in Southern California, Hollywood Park, Santa Anita, and Del Mar Racetrack for 30 years. He has been the Equine Medical Director at UC Davis since September 2006. He has been the advisor to the CHRB since 2006. He monitors the veterinarian practices, drug testing, horse welfare issues, and related medication regulations. He supervises the official veterinarians. The focus of his responsibility is the drug testing program for horse racing. He has an office at the Maddy Laboratory at UC Davis. (RT: pp. 68-69:22-25:1-9).

Dr. Arthur testified that every horse winner in every race is tested for controlled substances. There can be up to six random tests every day. He also testified that if the first top finishers in a stake race are worth $75,000 or more, all three of the horses are testified. This is done to protect the integrity of the wagering event. He stated there is close to $3 billion wagered on racing in California. (RT: pp. 70:12-19).

Dr. Arthur testified that two samples are collected from a horse. The blood sample is collected by the official veterinarian, and the urine sample is collected by an assistant veterinarian. The samples are collected in front of a representative of the trainer. When the samples are taken for urine, they are collected in a jar that is then split. A sample of the urine is put into what they call a split sample container. Both the split sample and the official sample are sealed with evidence tape and labeled with a barcode label and are initialed by the representative of the trainer. When the blood is taken by the official veterinarian, there is evidence tape put over the top with the label. The tops are initialed and the samples are then delivered to the sample custodian, which is responsible

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for those samples until they are shipped to the laboratory. They are kept under lock and key until they are shipped on Monday via FedEx. They are kept under lock and key in the refrigerator in the test barn. They are shipped to the Maddy Laboratory at the University of California, Davis. The testing is all done at the UC Davis Maddy Laboratory. (RT: pp. 72:1-25).

Dr. Arthur testified that he was aware that several horses trained by Marissa Tyler, Respondent, tested positive for Cobalt. (RT: pp. 73:16-18).

Dr. Arthur testified that the first test (Exhibit 1) was done on November 28, 2015 on Young American, which tested positive for Cobalt at 30 nanograms per milliliter. The permitted level of Cobalt is 25. (RT: pp. 73:21-25).

Investigator Nolan testified that case number 16SW0001 (Exhibit 2) was based on a December 19, 2015 Cobalt test positive for the horse Young American. Nolan learned of this on December 29, 2015. The result revealed the levels of Cobalt were 124 nanograms, in excess of the allowable amount of 25 nanograms. Young American finished second in the first race at Cal Expo on December 19, 2015. This was a Class 3 positive with a Penalty B assigned to it. (RT: pp.24:22-25).

Dr. Arthur testified that in case number 16SW00001 (Exhibit 2), this was the result for a test on Young American after the race on December 19, 2015. The result was 124 nanograms per milliliter of Cobalt. (RT: pp. 75:1-3).

Dr. Arthur stated the only way that this level of Cobalt could rise would be the administration of Cobalt. He testified there is no natural process through which this Cobalt level could have risen to this level. He testified that the normal level of Cobalt in a horse is approximately 2 nanograms per milliliter. He also testified that most horses are below the level of detection, about

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1 nanogram per milliliter. In standard breeds, it is a little higher than that, probably because of additional supplementation, but it is still under 3 nanograms per milliliter. (RT: pp. 75:8-22).

Dr. Arthur also testified that a result of 30 or 124 nanograms per milliliter of Cobalt in a horse could only come from the administration of Cobalt directly into the horse. (RT: pp. 76:10-18).

Dr. Arthur testified that Cobalt takes a little while if it is orally administered to rise. He is talking about a couple of hours, and after it hits its peak after a couple hours, it will degrade over a period of time. Cobalt has a three-stage elimination which he referred to as an alpha, beta, and gamma elimination. Alpha is the first high peak, and it drops quickly. Beta is the second, and it dissipates within 12 – 24 hours. After that, it has a relatively long cap life of almost 7 days. He described it as a three-stage process, but for all practical purposes within 72 to 96 hours, there is the 7-day elimination phase. And during the half-life, it would not rise again. Dr. Arthur also testified that the Cobalt level only goes down unless additional Cobalt is added to a horse. (RT: pp. 76-77:13-25:1-3).

Investigator Nolan informed Tyler of the findings on January 2, 2016. Nolan further explained to Tyler that they would be doing a full barn search. Tyler consented to the search. Nolan described Tyler as being cooperative. They searched all the stores, the tack room, feed room, and her (Tyler's) vehicles. They took labels off the feed bags to show they were trying to determine the source of Cobalt. Nolan testified that they did not determine the source of the Cobalt. Nolan described Tyler as "shocked." Nolan stated that a split sample was requested at the time by Tyler but in fact was never conducted. (RT: pp. 26:1-16).

Investigator Nolan testified that she was not aware of any additional security precautions that Tyler took after December 19, 2015, when she informed Tyler on that date of the first Cobalt positive testing. (RT: pp. 28:1-15).

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Investigator Nolan testified that CHRB case number 16SW0003 is based on the January 2, 2016 Cobalt test for Quantum Uptown Boy. The official blood sample was CE25817, in which Quantum Uptown Boy tested positive for Cobalt with 132 nanograms, in excess of 50 nanograms. Quantum Uptown Boy finished second in the first race at Cal Expo on January 2, 2016. This was a Class 3/Penalty B violation.

Investigator Nolan advised Tyler of the positive findings on January 9, 2016, when she received notification via email from the UC Davis Maddy Laboratory of the positive Cobalt results for Quantum Uptown Boy. (RT: pp. 29:4-10) (Exhibit 3).

In case number 16SW0003 (Exhibit 3), Dr. Arthur reviewed the investigative complaint which reflected that on January 2, 2016, Quantum Uptown Boy had a positive Cobalt result of 132 nanograms per milliliter. Dr. Arthur testified that he reviewed the investigative report and initialed the bottom. He testified the only way that a level of 132 nanograms per milliliter could occur is if the Cobalt was administered to the horse. (RT: pp. 77-78:22-25:1-12).

Investigator Nolan interviewed Tyler again on January 9, 2016, after this positive test of Cobalt. Nolan was present with Investigator Dwayne Tadlock, Safety Steward Tom McCarthy, and Dr. Zucco, the CHRB veterinarian. Another inspection was conducted of the barn where Tyler kept her horses on January 9, 2016. No evidence of Cobalt was located or seized from the barn. (RT: pp. 29-30:4-25:1-15).

Investigator Nolan testified that between the first, second, and third notifications to Tyler, she was not aware of any additional security measures that Tyler took to protect the horses in the barn. Nolan testified that at the time of service of the Cobalt results on January 9, 2016, Tyler indicated she would request a split sample. Nolan was not aware of any split samples actually being conducted or acquired by Tyler. (RT: pp. 30:19-24).

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Investigator Nolan testified that during this inspection, Tyler told Nolan that another CHRB owner had access to her barn, Juan Pacheco. Tyler told Investigator Nolan that Pacheco had been found inside one of Tyler's stalls a couple weeks previously or maybe a month. Apparently he had been looking at legs of one of the horses, Young American, which is one of the horses that was involved in the Cobalt positive tests. Nolan asked Tyler to provide her statement to that effect. It was a statement that should be included in the report. Investigator Nolan further testified that this was a concern of Tyler's in terms of trying to come up with some information explaining the Cobalt. (RT: pp. 31:1-15).

Clearly, this statement by Tyler to Investigator Nolan reflects that outside persons had access to her barn between two to four weeks prior to January 9, 2016 (December 12, 2015 through January 9, 2016).

Investigator Nolan testified that she interviewed Pacheco. He said that he had been in Tyler's barn, as he was there to look at the horses, because he wanted to buy a horse. Investigator Nolan told Pacheco it was a violation to be in another trainer's barn without permission. Pacheco told Investigator Nolan that he obtained permission from the assistant trainer, Frank Petrelli (Stepfather of Marissa Tyler). Pacheco told Investigator Nolan that he was merely there to look at the soundness of the horse. Investigator Nolan stated that this occurred between the first and second positive test for Cobalt or between November 28, 2015 and the middle of December 2015. (RT: pp. 31-32:1-25:1-12). Investigator Nolan testified that Pacheco said he had not been at the barn after the middle of December 2015, and, Pacheco did not buy the horse, Young American. (RT: pp. 32:7-12).

Investigator Nolan also testified that she was dumbfounded as to the source of the Cobalt and where it was coming from because of the various searches she did on the barn, vehicle searches, and feed searches, as well as searches of the water. (RT: pp. 32:13-20).

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Investigator Nolan testified that CHRB case number 16SW0006 is based on the January 17, 2016 Cobalt test from Cruize Commander. The test was taken on January 17, 2016. Investigator Nolan learned of the positive Cobalt result on January 25, 2016, when she received an email from the split sample unit at headquarters of the CHRB. Cruize Commander had tested positive with 80.1 nanograms of Cobalt, in excess of the 50 nanograms level. The blood sample was CE25931. This was taken on January 17, 2016 from Cruize Commander, who finished first in the fourth race at Cal Expo. (RT: pp. 33:6-17).

Dr. Arthur testified that in case number 16SW0006, the Cobalt finding set forth in Exhibit 4 was 80 nanograms per milliliter on the horse Cruize Commander. The sample was obtained on January 17, 2016. This level of over 50 nanograms per milliliter of cobalt and was a Class 3 drug with a Category B penalty. (RT: pp. 79-80:6-25:1-19).

Investigator Nolan advised Tyler of the positive findings on January 30, 2016. On January 30, 2016, Nolan interviewed Tyler of this positive result. There was no explanation that came from Tyler as to why the Cobalt positives occurred. There was no search of the barn on January 30, 2016 by Nolan or other members of the CHRB. (RT: pp. 34:9-10). Tyler did not have the split samples tested for Cobalt. (RT: pp. 35:6-8).

Investigator Nolan testified that after the video cameras were installed by Tyler (January 15, 2016), Tyler continued to race horses at Cal Expo Race Track. (RT: pp. 35:2-5).

Investigator Nolan testified that CHRB case number 16SW0007 (Exhibit 5) pertains to a positive test for Cobalt from the horse Yankee Flyer who raced at Cal Expo on January 17, 2016. Investigator Nolan testified that she learned of this positive finding on January 25, 2016 as a result of an email from CHRB Headquarters in the split sample unit. The horse, Yankee Flyer, had tested

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positive. The official blood sample, number CE25937, revealed Cobalt. Yankee Flyer had a level of Cobalt in the amount of 64.9 nanograms, in excess of 50 nanograms. Yankee Flyer finished first in the eighth race at Cal Expo on January 17, 2016. (RT: pp. 36:2-25).

Dr. Arthur testified that in case number 16SW0007, Exhibit 5, that on January 17, 2016, the horse Yankee Flyer had a Cobalt level of 64.9 milligrams per milliliter. Dr. Arthur signed the complaint at the bottom. (RT: pp. 80-81:20-25:1-11).

Investigator Nolan testified that she interviewed Tyler on January 25, 2016 regarding the Cobalt positive test for both horses (Cruize Commander and Yankee Flyer). Tyler did not have a split sample taken for these results. (RT: pp. 37:9-10).

Investigator Nolan testified that CHRB case number 16SW0008 was based on the January 23, 2016 positive Cobalt test of Cruize Commander. On February 2, 2016, Nolan received an email from the split sample unit at CHRB Headquarters that Cruize Commander had an official blood sample, number CE25960, which reflected Cobalt, in the amount of 294 grams, in excess of 50 grams. Cruize Commander finished third in the seventh race on at Cal Expo on January 23, 2016. This was a Class 3/Penalty B case. (RT: pp. 37-38:22-25:1-14).

Dr. Arthur testified that in case number 16SW0008 (Exhibit 6), there were 294 nanograms per milliliter in Cruize Commander's sample. This was from January 23, 2016. Dr. Arthur then testified that that the only way this Cobalt level could have risen to 294 nanograms per milliliter was the administration of Cobalt into the horse, Cruize Commander. (RT: pp. 81-82:12-25:1-16).

Investigator Nolan testified that on February 6, 2016, she again met Tyler and informed her of the positive Cobalt test of Cruize Commander as a result of the January 23, 2016 race at Cal Expo. Nolan offered Tyler a split sample which she requested not to be done at that time. (RT: pp.

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38:17-22). Investigator Nolan did not conduct a search of Tyler's barn on that date. (RT: pp. 38-39:23-25:1-5).

Investigator Nolan testified that Tyler stated that because she had put a security camera in the barn, she believed the individual that had accessed the barn who was on the videotape was the person to blame for the horses high Cobalt level. Nolan also testified that this violation occurred after the individual was seen on the camera (January 21, 2016). (RT: pp. 39:9-16).

Investigator Nolan testified that Tyler, Frank Petrelli, Owen Eiler, and Raynor Marsland had been in contact with the Cal Expo Police Department for security on the back side of the premises. They filed a formal complaint with the racing association regarding the lack of security that had taken place up to this point in terms of people having access to the barns. (RT: pp. 39:19-25).

Investigator Nolan testified that she was not aware of any security measures taken by Tyler other than the installation of the cameras on January 15, 2016. (RT: pp. 40:6-16).

Investigator Nolan testified that she was aware that Tyler filed a police report with the Cal Expo Police on January 21, 2016. Nolan testified that she was aware that Tyler had installed a camera system in her barn with four cameras and a recorder. This was in approximately the second week of January 2016 (January 15, 2016). (RT: pp. 42:19-25).

Owen Eiler introduced into evidence the police report that Marissa Tyler made on January 21, 2016 with the Cal Expo Police Department, which was marked as Respondent's Exhibit A. (RT: pp. 44:1-8).

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Investigator Nolan testified she could not tell who the person was on January 21, 2016 at 12:49 a.m. that was in the barn where Tyler had her horses. She could not see the face of the person depicted in the video. (RT: pp. 45:19-25).

Investigator Nolan described the video, Respondent's Exhibit B, as a person at 12:49 a.m. going into stall two for approximately 30 seconds, then stall three for approximately 30-40 seconds, and then stall four for approximately 30-40 seconds. The horse in stall four, Mssolongbyebye, bolted out of the stall. After the horse bolted out of the stall, the person that was inside the stall came out, made a left, went to the end of the barn, and disappeared out of sight. (RT: pp. 46:3-11). Investigator Nolan testified that she was aware that between stall number one and stall number two, there was only a half wall between the two horses. Nolan also testified that someone who entered stall number two could access stall number one because there was a half wall. (RT: pp.48:12-15).

Investigator Nolan testified that Cruize Commander raced on January 23, 2016. Cruize Commander was tested, and had a Cobalt level of 294 nanograms/ml. (RT: pp 49:3-9). The Tyler barn was compromised on January 21, 2016, when Cruize Commander was in stall number one. (RT: pp. 47:1-25). Nolan testified that Cruize Commander could have been accessed from stall number two because of the half wall between stall number one and stall number two. (RT: pp. 48:4-19).

Investigator Nolan then testified that, "I cannot, as an Investigator, based on my reports specifically say with the information that I have that they (Frank Petrelli and Marissa Tyler) provided the Cobalt to those horses. The investigation did not – based on my investigation – could not determine that they, either one of them, directly gave the Cobalt to these horses." (RT: pp. 51: 11-20).

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Investigator Nolan testified that on January 21, 2016, she stopped Mr. Jacobson on the back stretch at Cal Expo because she was not familiar with him. She did this to make sure he was properly licensed with the CHRB. He did not have a license. Nolan determined that Jacobson had a key to come in and out of the back gate of Cal Expo. Jacobson told Investigator Nolan that he received the key from a vendor that was employing him under the table. Nolan also testified that she believed that Jacobson was "mucking" stalls. Nolan then testified that she escorted Jacobson to Steve Wisemann's barn, had Jacobson take his personal belongings, and her partner escorted Jacobson out of the Cal Expo area. (RT: pp.52-53:20-25:1-25).

Investigator Nolan testified that she believed that Tyler put in additional cameras after the January 21, 2016 incident when someone was observed entering stalls two, three, and four. (RT: pp. 63-64:16-25:1-7).

Investigator Nolan testified she could not make a determination as to who administered the Cobalt to Tyler's horses. She then testified that ultimately the person responsible for a positive test for Cobalt on the horses is the trainer. (RT: pp. 66: 11-13).

Dr. Arthur stated that Cobalt is an element and an essential mineral. It is required in vitamin B12, and vitamin B12 is essential for life and animal life. Vitamin B12 is approximately 5% Cobalt by weight and that is why it is an essential element. (RT: pp. 82-83:23-25:1-5).

Dr. Arthur testified that Cobalt is a potential performance-enhancing drug because of its potential to increase erythropoiesis and acts as a blood-doping agent. Dr. Arthur then testified that blood-doping increases the capacity to exercise by improving the oxygen-carrying capacity. (RT: pp. 102:8-14).

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Dr. Arthur explained that someone would administer Cobalt as it is considered a blood-doping agent. (RT: pp. 83-84:6-25:1-12).

Dr. Arthur testified the effect of Cobalt on a horse depends on the dose. Horses sometimes get sweaty and colicky when they are administered IV doses of Cobalt at high levels. (RT: pp. 85:20-25).

Dr. Arthur testified that there was an abnormal amount of Cobalt in Tyler's horses. "Somebody administered Cobalt to them." (RT: pp. 89:11-12).

Clearly, Respondent Tyler knew which horses were in stalls one, two, three, and four, and that there was a half-wall between stalls one and two, making stall one quite accessible to anyone that wanted to access both stalls one and two on January 21, 2016. No one knew the layout to stalls one and two better than Respondent Tyler and her Assistant Trainer, Frank Petrelli, her Step-Father, as well as her Mother, Jennifer Petrelli, a co-owner of Cruize Commander, who tested positive after the January 21, 2016 incident where someone was viewed on video surreptitiously entering Tyler's barn and stalls two, three, and four. These stalls all contained horses that Marissa Tyler trained.

Pursuant to California Code of Regulations Title 4, Section 1887 which is entitled, "Trainer or Owner to Insure Condition of Horse," respondent Tyler, as the trainer of all the aforementioned horses, was the trainer of them, and, was 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.

As such, all the positive Cobalt test results acquired from the horses described herein in CHRB cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008, which were trained by Marissa Tyler during all relevant times, were above the

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prohibited limits of California law, and Respondent is hereby deemed responsible for each and every one of the positive Cobalt test results set forth in CHRB cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008.

II. THERE IS NO EVIDENCE THAT ANY OF THE SAMPLES WERE TAMPERED OR ALTERED THAT WERE TAKEN FROM RESPONDENT TYLER'S HORSES

Investigator Nolan testified that Dr. Zucco, the CHRB veterinarian at Cal Expo, has had his girlfriend with him in the barn areas. She is not licensed to be there. Nolan was asked if Dr. Zucco's girlfriend handled blood samples or urine samples, which would violate the chain of custody, Investigator Nolan answered, "Yes." (RT: pp. 57:10-13).

Dr. Arthur testified that the process of drawing blood from the horse is such that there are two blood tubes. There is the official blood sample and a split. The blood tubes then have evidence tape placed over the sample. The label is placed over the evidence tape to keep everything in place on top on both the split and the official sample. The person who observes the sample signs the top of the evidence tape, and then those are delivered to the sample custodian, who has to let them sit for a period of time, spins them down, and refrigerates them. (RT: pp. 100:1-25).

Dr. Arthur testified that once the evidence tape is over the top of the blood or urine sample, it could not be tampered with, because if you try to tear off the evidence tape, it goes to a different color, "something else weird." Dr. Arthur then testified that if you poked the sample from the top, it would leave a mark on the top, and when the samples arrive at the laboratory, all of them are checked for any abnormalities. It is the first thing the sample custodian does at the laboratory and notes any abnormalities, broken tubes, labels that have come off, those sorts of things. (RT: pp. 97-98:1-25:1-4).

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Dr. Arthur testified that if someone just carried those test tubes, it would not impact or interfere with the results. (RT: pp. 101:4-6).

Dr. Arthur stated that Dr. Zucco's girlfriend is a veterinarian who works in a government regulatory agency. (RT: pp. 101:12-16).

Dr. Arthur stated that Dr. Zucco asked (him) if it was all right if his girlfriend (Zucco's) was in the barn. Dr. Arthur told him, "Fine," as the barn is under Dr. Zucco's supervision. Dr. Arthur also testified that the CHRB can actually allow people to visit the test and allow people to visit their facilities when it is under the supervision of the official veterinarian, as he determines what is allowed. (RT: pp. 101:17-21).

Additionally, if Respondent Tyler had such a concern about the accuracy and validity of the blood samples, she had the ability to have split samples taken. In each and every case, she never obtained a split sample, despite being offered such each and every time a sample was taken from horses under her dominion and control, that eventually all tested positive for Cobalt above the proscribed limits pursuant to California law. The Respondent cannot have it both ways.

The California Horse Racing Board employees, including Investigator Nolan, Dr. Rick M. Arthur, and Dr. Zucco are all public employees within the meaning of Evidence Code Section 195.

California Evidence Code Section 664 is applicable in the instant case. It is presumed that official duty has been regularly performed by members of the CHRB.

California Evidence Code Section 630, which is entitled, "Presumptions Affecting the burden of producing evidence, requires that presumptions established by this article, and all other

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rebuttable presumptions established by law that fall within the criteria of Section 603, are presumptions affecting the burden of producing evidence.

Respondent Tyler has the burden, pursuant to California Evidence Code Section 606, to demonstrate that the effect of presumption affecting burden of proof to the nonexistence of the presumed fact by a preponderance of the evidence. As such, respondent Tyler failed to overcome and rebut that burden of proof that the testing and handling of the urine and blood samples were improperly conducted and that the CHRB employees, did not regularly perform their official duties.

A review of Exhibits 1 – 6, inclusively, reveal that none of the urine and/or blood samples taken from respondent Tyler's horses that were then sent to the UC Davis Maddy Laboratory were tampered with or altered. The exhibits, 1-6, inclusively, reflect no notations of any tampering of the evidence tape and samples. The fact that Dr. Zucco's girlfriend was present in the barn, and that she may have momentarily or temporarily held onto the samples from Tyler's horses, does not invalidate the positive Cobalt results of the horses that were under Respondent's care and control, and, tested positive for Cobalt above the permissible limits. The CHRB is entitled to the presumption that the CHRB officials properly executed their official duties in a proper manner.

Furthermore, the bare allegation that Dr. Zucco's girlfriend, herself a veterinarian, who had the permission of Dr. Rick Arthur to be in the barn area with Dr. Zucco, being in the barn area at the time of the sampling, absent further evidence of tampering, lacks credibility and merit. Additionally, Respondent Tyler had the opportunity to subpoena both Dr. Zucco and his girlfriend to question both of them under oath as to the handling of the evidence. No evidence was presented by the Respondent that they had even attempted to subpoena Dr. Zucco or his girlfriend for the hearing.

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In People v. Wallace (2008) 4 Cal.4th 1032, the California Supreme Court discussed the issue of chain of custody of evidence, when it stated the following:

> *People v. Riser* (1956) 47 Cal.2d 566, 305 P.2d 1 sets forth the rules for establishing **chain** of **custody**: 'The burden on the party offering the **evidence** is to show to the satisfaction of the trial court that, taking all the circumstances into account including the ease or difficulty with which the particular **evidence** could have been altered, it is reasonably certain that there was no alteration. The requirement of reasonable certainty is not met when some vital link in the **chain** of possession is not accounted for, because then it is as likely as not that the **evidence** analyzed was not the **evidence** originally received. Left to such speculation the court must exclude the **evidence**. Conversely, when it is the barest speculation that there was tampering, it is proper to admit the **evidence** and let what doubt remains go to its weight.' (*People v. Diaz* (1992) 3 Cal.4th 495, 559, 11 Cal.Rptr.2d 353, 834 P.2d 1171.)

Furthermore, any allegation of tampering of the urine and blood samples by Dr. Zucco's girlfriend, a veterinarian, which has been raised by Respondent Tyler, goes only to the weight of the evidence, and not the admissibility of the evidence (People v. Wallace). Additionally, Respondent's representative, Owen Eiler, and a co-owner of Cruize Commander, did not object during the hearing to the admission of exhibits 1 – 6, inclusively, including the test results of the blood and urine samples taken from the horses under Marissa Tyler's care and control as the horse trainer in cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008 (RT: pps. 37, 41, and 67).

Therefore, the urine and blood samples taken from the horses as described herein under the care and control of Respondent Marissa Tyler in CHRB cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008, and corresponding test results are deemed by this Hearing Officer as valid, official, and above the prescribed limits as set forth by California law.

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Pursuant to California Code of Regulations Title 4, Section 1887 which is entitled, "Trainer or Owner to Insure Condition of Horse," respondent Tyler, as the trainer of all the aforementioned horses, was the trainer of them, and, was 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.

As such, all the positive Cobalt test results acquired from the horses described herein in CHRB cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008, which were trained by Marissa Tyler during all relevant times, were above the prohibited limits of California law, and Respondent is hereby deemed responsible for each and every one of the positive Cobalt test results set forth in CHRB cases 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008.

III. REPONDENT TYLER'S CONDUCT WAS SUCH THAT SHE IS NOT ENTITLED TO THE APPLICATION OF THE TRAINER INSURER RULE

Dr. Arthur explained the Trainer-Insurer Rule, which is, "The trainer has to be absolutely sure of the condition of the horse. It's like the captain of the ship in the Navy. No matter what goes on, they are responsible for it. And it's a rather owner's obligation, and it's the reason you have to pay very close attention to what goes on in the barn and avoid any mistakes. They are responsible for it. It's really the only way that horse racing can maintain it's integrity." (RT: pp. 87: 14-21).

Dr. Arthur then testified that the trainer is allowed to provide a defense. Primarily, the activities you have done to protect your horses, those sorts of things. Security guards, cameras, pre-race blood tests, and all sorts of different avenues, [and] security people. (RT: pp. 87:24-25).

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Dr. Arthur stated that reading from the investigative reports, there is some mention of some cameras at some time but he doesn't know exactly what that is. He stated that you would have to act on whatever you find in the camera for it to be useful, and of course the cameras don't protect the horses in and of themselves. (RT: pp. 88:6-11).

Dr. Arthur testified that in his opinion, as a horseman and Equine Medical Director, he thinks it would be a defensible argument to the trainer's responsibility rule depending on what actions the trainer took to protect against that. (RT: pp. 92:22-25).

Dr. Arthur testified it could be a potential defense with the installation of a camera system and video recorder in the barn. (RT: pp. 93:18-20).

Dr. Arthur testified that if there was an unlicensed third party in the barn at the time of the testing, it would not be a violation of the chain of custody but instead a bad practice if they were under observation. (RT: pp. 94:16-21).

Dr. Arthur testified that if a trainer was aware there had been potential tampering of horses at the trainer's barn and they had video of potential tampering, the responsibilities of the trainer would be to notify the Cal Horse Racing Board and scratch all of his/her/the trainer's horses. He then testified any horse that was in that weekend after the incident should be scratched. (RT: pp. 99:13-25).

Investigator Nolan testified that she was not aware of any additional security precautions that Tyler took after December 19, 2015, when she informed Tyler on that date of the first Cobalt positive testing. (RT: pp. 28:1-15).

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Investigator Nolan testified that between the first, second, and third notifications to Tyler, she was not aware of any additional security measures that Tyler took to protect the horses in the barn. Nolan testified that at the time of service of the Cobalt results on January 9, 2016, Tyler indicated she would request a split sample. Nolan was not aware of any split samples actually being conducted by Tyler. (RT: pp. 30:1-25).

Investigator Nolan testified that during this inspection, Tyler told Nolan that another CHRB owner had access to her barn, Juan Pacheco. Tyler told Investigator Nolan that Pacheco had been found inside one of Tyler's stalls a couple weeks previously or maybe a month. Apparently he had been looking at legs of one of the horses, Young American, which is one of the horses that was involved in the Cobalt. Nolan asked Tyler to provide her statement to that effect. It was a statement that should be included in the report. Investigator Nolan further testified that this was a concern of Tyler's in terms of trying to come up with some information explaining the Cobalt. (RT: pp. 31:3-13).

Clearly, this statement by Tyler to Investigator Nolan reflects that outside persons had access to her barn between two to four weeks prior to January 9, 2016 (December 12, 2015 through January 9, 2016).

Investigator Nolan testified that she interviewed Pacheco. He said that he had been in Tyler's barn, as he was there to look at the horses, because he wanted to buy a horse. Investigator Nolan told Pacheco it was a violation to be in another trainer's barn without permission. Pacheco told Investigator Nolan that he obtained permission from the assistant trainer, Frank Petrelli (Step-Father of Marissa Tyler). Pacheco told Investigator Nolan that he was merely there to look at the soundness of the horse. Investigator Nolan stated that this occurred between the first and second positive or

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between November 28, 2015 and the middle of December 2015. (RT: pp. 31:18-25). Investigator Nolan testified that Pacheco said he had not been at the barn after the middle of December 2015, and, Pacheco did not buy the horse, Young American. (RT: pp. 32:7-12).

Investigator Nolan testified that Tyler stated that because she had put a security camera in the barn, she believed the individual that had accessed the barn who was on the videotape was the person to blame for the horses and the high Cobalt. Nolan also testified that this violation occurred after the individual was seen on the camera/video (January 21, 2016). (RT: pp. 39:6-18).

Investigator Nolan testified that Tyler, Frank Petrelli, Owen Eiler, and Raynor Marsland had been in contact with the Cal Expo Police Department for security on the back side of the premises. They filed a formal complaint with the racing association regarding the lack of security that had taken place up to this point in terms of people having access to the barns. (RT: pp. 40:1-16).

Investigator Nolan testified that she was not aware of any security measures taken by Tyler other than the installation of the cameras on January 15, 2016. (RT: pp. 40:1-16).

Investigator Nolan testified that she was aware that Tyler filed a police report with the Cal Expo Police on January 21, 2016. Nolan testified that she was aware that Tyler had installed a camera system in her barn with four cameras and a recorder. This was in approximately the second week of January 2016. (RT: pp. 42:19-22).

Owen Eiler introduced into evidence the police report that Marissa Tyler made on January 21, 2016 with the Cal Expo Police Department, which was Respondent's Exhibit A. (RT: pp. 44:4-8).

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Investigator Nolan testified she could not tell who the person was on January 21, 2016 at 12:49 a.m. that was in the barn where Tyler had her horses. She could not see the face of the person depicted in the video. (RT: pp. 45:19-25).

Investigator Nolan described the video, Respondent's Exhibit B, as a person at 12:49 a.m. going into stall two for approximately 30 seconds, then stall three for approximately 30-40 seconds, and then stall four for approximately 30-40 seconds. The horse in stall four, Mssolongbyebye, bolted out of the stall. After the horse bolted out of the stall, the person that was inside the stall came out, made a left, went to the end of the barn, and disappeared out of sight. (RT: pp. 46:3-11). Investigator Nolan testified that she was aware that between stall number one and stall number two, there was only a half wall between the two horses. Nolan also testified that someone who entered stall number two could access stall number one because there was a half wall. (RT: pp.48:1-25).

Investigator Nolan testified that Cruize Commander raced on January 23, 2016. Cruize Commander was tested, and had a Cobalt level of 294 nannograms/ml. (RT: pp 49:1-5). The Tyler barn was compromised on January 21, 2016, when Cruize Commander was in stall number one. (RT: pp. 47:7-13). Nolan testified that Cruize Commander could have been accessed from stall number two because of the half wall. (RT: pp. 49:10-17).

Investigator Nolan then testified that, "I cannot, as an Investigator, based on my reports specifically say with the information that I have that they (Frank Petrelli and Marissa Tyler) provided the Cobalt to those horses. The investigation did not – based on my investigation – could not determine that they, either one of them, directly gave the Cobalt to these horses." (RT: pp. 51: 11-20).

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Investigator Nolan testified that she stopped Mr. Jacobson [January 21, 2016] on the back stretch at Cal Expo because she was not familiar with him. She did this to make sure he was properly licensed with the CHRB. He did not have a license. Nolan determined that Jacobson had a key to come in and out of the back gate of Cal Expo. Jacobson told Investigator Nolan that he received the key from a vendor that was employing him under the table. Nolan also testified that she believed that Jacobson was "mucking" stalls. Nolan then testified that she escorted Jacobson to Steve Wisemann's barn, had Jacobson take his personal belongings, and her partner escorted Jacobson out of the Cal Expo area. (RT: pp.53:1-25).

Investigator Nolan testified that she believed that Tyler put in additional cameras after the January 21, 2016 incident when someone was observed entering stalls one, two, three, and four. (RT: pp. 63-64).

Investigator Nolan testified she could not make a determination as to who administered the Cobalt to Tyler's horses. She then testified that ultimately the person responsible for a positive test on the horses is the trainer. (RT: pp. 66:11-13).

Tyler testified that she had twenty-one (21) horses under her care during the period of December 2015 through January 2016, and her family members are her employees which include her Step-Father, Mother, sister, and brother. That would be Jennifer Petrelli, Frank Petrelli, Jennifer Petrelli, and Christopher Petrelli. She has a sister named Jennifer Petrelli and her mother's name is also Jennifer Petrelli. Frank Petrelli is her stepfather. Her brothers, sisters, and family members are employees of hers. (RT: pp.142:20-25).

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Tyler testified that she took no security measures on December 12, 2015, after learning of the first positive test to protect her horses. (RT: pp.144:22-25).

Tyler testified that there was a second positive test on December 19, 2015. She was informed of the December 19, 2015 positive test on January 2, 2016. (RT: pp. 145:8-13).

Tyler testified that she did not take any security measures on January 2, 2016 or soon thereafter to protect her horses as a result of being informed of the December 12, 2015 positive Cobalt test. There was another positive test on January 2, 2016. She was informed of that on January 9, 2016. (RT: pp.145:11-19).

On January 15, six (6) days after being informed of the positive test on January 9, 2016, in which the test was conducted on January 2, 2016, Tyler testified that she installed cameras in the barn on January 15, 2016. Tyler stated that there had been three positive tests (Cobalt) before she decided to install cameras. (RT: pp.145:23-25).

Tyler testified that there were no other security measures she took other than installing the cameras when she was aware of positive Cobalt tests on the horses. She locked up the grain room and stopped putting her grain out at night. She testified that she began locking up her grain room and storing her grain at night after the third positive test. (RT: pp. 146:5-11).

Tyler stated that somebody came into the barn on January 21, 2016 (Exhibit B). The light was fixed on January 21, 2016, subsequent to the person coming into the barn at approximately 12:40 a.m. on January 21, 2016. (RT: pp. 146:24).

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Tyler testified that the light in the barn had been out for four months prior to January 21, 2016. (RT: pp. 147:3-7).

Tyler testified that she did not realize the video was poor quality when she started viewing the video each morning starting January 16, 2016. (RT: pp. 147:11-14). It is concerning that Respondent Tyler claims that she did not realize the video quality was poor, especially when she had previously complained to Cal Expo management about the lighting situation in the barn area. Either she did not truly care about the quality of the lighting in this area because she in fact knew the identity of the true culprit contaminating her horses with Cobalt, and did not want a better quality picture to identify that person, or in the alternative, she exercised a reckless and negligent indifference and disregard for the care and health of her horses and truly identifying the culprit administering the Cobalt to the horses under her control.

Tyler admitted that all her family members had access to the medications. They also had access to the feed and grain. (RT: pp. 147:20-21).

Tyler testified that she is the only one that feeds the horses at night and in the morning. (RT: pp. 147: 25).

Tyler testified that all her employees (family members) have access to the feed and grain. She stated that she did not know if her family members were medicating the horses. (RT: pp.148:2-7).

Tyler testified that between stall number one and stall number two, there is a half wall. She was aware on January 21, 2016 that there was a half wall between stall number one and stall number two. She stated that even though it was feasible somebody could have reached the horse in stall number one through the half wall, it was possible, but she did not think about it at the time yet. (RT:

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pp. 148:21-25). This is another instance in which respondent did not exercise every reasonable effort to protect her horses in her care from tampering by unauthorized persons.

Tyler admitted that she raced the horse that had been in stall number one on January 21, 2016, Cruize Commander. She stated, "And I regret every bit of it." (RT: pp.149:1-3).

Tyler testified that there were two positive Cobalt samples taken (Cruize Commander and Yankee Flyer) on January 17, 2016. This was after she installed the cameras on January 15, 2016. (RT: pp.149:23-25).

Tyler testified that she did not see any evidence of tampering in the video from January 15, 20-16 to January 16, 2016. Tyler stated that she did not subpoena Mr. Wisemann or Mr. Jacobson to be present for the hearing. She also stated she did not subpoena Mr. Pacheco to be at the hearing. (RT: pp. 150:4-9).

Tyler testified that she was aware on January 1, 2016 that her horses had been compromised but continued to race those horses after that time. (RT: pp.150:13-15).

Tyler testified that she was not allowed to fix the light in the barn and she had to contact maintenance. She stated that several times she attempted to contact maintenance. She stated that her Step-Father called maintenance three times. (RT: pp.151:3-12). Despite this, Tyler never had Frank Petrelli testify at the hearing to confirm that he had called maintenance and complained of the problem.

Tyler testified that she locked up the key to the grain room and only she and her Step-Father (Frank Petrelli) had the key. (RT: pp. 152:2-5).

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Tyler testified that during the day when they are there, the grain room is unlocked all day. (RT: pp. 152:1-7).

Tyler testified that even though she became aware after the first positive test of Cobalt on November 28, 2015, the feed remained unlocked during the day through this period of time. She also stated that she did not change her feed after November 28, 2015. This was despite the fact she had been told it was possible feed contamination that could cause the Cobalt-positive tests. She also stated she was not worried about the feed. She stated after the second positive finding, she still did not change the feed. She stated that she never changed the feed. (RT: pp.153-154:8-25:1-2).

Tyler testified that the person that came into the barn that was viewed on the video on January 21, 2016 appeared based on the description to be Paul Jacobson. Tyler stated she sees Paul Jacobson every day. She described him as bigger, limps with his right leg. He is not too tall but he is not too short, either, and probably her height. (RT: pp.156-157:17-25:1-12).

Tyler testified that it could be Paul Jacobson that was in the video on January 21, 2016. She stated that she does not know him. (RT: pp.157:18-20).

Tyler testified that other than installing the video cameras, she did not take any other security measures. She stated, "There was nothing else I could do." (RT: pp.158:7).

Neither respondent Tyler nor her representative offered any evidence that they attempted to subpoena Paul Jacobson to testify in the instant hearing. Furthermore, respondent Tyler and her representative never had either Assistant Trainer Frank Petrelli, Respondent's Step-Father or Mother, Jennifer Petrelli, a co-owner of some of the horses, testify in this matter, despite the fact that the evidence is clear that they were present in the Cal Expo area during most of the times that Respondent was in control and care of all the herein described horses. Had they testified, they

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maybe could have shed more light on description of the potential alleged suspect/culprit, Paul Jacobson.

The law is very clear that to avoid any and all liability and responsibility for a horse under a trainer's dominion and control, that trainer must make ***every reasonable effort*** to ensure she shows, by a preponderance of evidence, that she made every reasonable effort to protect the horses in her care from tampering by unauthorized persons.

Respondent Tyler made some veiled efforts to protect the horses, but not every reasonable effort as requited by Section 1888. Respondent Tyler had a total of three (3) positive Cobalt violations which she was aware of before she installed a video camera in her barn on January 15, 2016. She did not hire any security guards, or position one of her family members to stay in the barn area to protect the horses from potential tampering or contamination, despite the fact that she had her Mother, Jennifer Petrelli, Step-Father, Frank Petrelli, sister Jennifer Petrelli, and brother, Christopher Petrelli, all working for her at Cal Expo during this time frame.

Claims by Respondent that the Cal Expo Police were lacking in their security and policing efforts in the barn area at Cal Expo does not constitute an applicable defense pursuant to Section 1888. Respondent's claim that the light was not working in her barn area until after the January 21, 2016 incident of an "intruder" viewed on tape, does not constitute an applicable defense pursuant to Section 1888. Respondent Tyler could have installed an inexpensive, portable, battery operated, motion activated, night light in the barn, to operate in that area if and when there was some movement in the barn during the nighttime. Respondent Tyler, for whatever reason, chose not to place such a device, or implement other reasonable efforts to protect the safety of the horses under her dominion and control. But, the law places an even higher burden on a trainer, as it specifically requires that she, as the trainer of record for the horses, ***exercise every reasonable effort to protect***

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the horses in her care from tampering by unauthorized persons, and demonstrate that she did so by a preponderance of evidence.

Additionally, Respondent Tyler continued to race Cruize Commander on January 23, 2016, despite having viewed Exhibit B on January 21, 2016, knowing that stalls two, three, and four were entered by an "unknown" person. Furthermore, Tyler knew that stall one, where Cruize Commander was housed, was accessible through the half-wall, and therefore, subject to tampering and contamination. Respondent Tyler should have scratched Cruize Commander from the January 23, 2016 race. Her failure to scratch Cruize Commander from the January 23, 2016 race at Cal Expo reflects an indifference and reckless disregard for the health of that particular horse, Cruize Commander. Furthermore, it reflects a mentality and mind-set that she did not understand or appreciate the seriousness of the prior positive Cobalt tests on her horses under her control, and that such an indifferent mentality reflects an overall lack of exercising every reasonable effort as required by Section 1888 to protect the horses in her care from tampering by unauthorized persons.

Simply put, Respondent Tyler clearly did not meet that burden required by Section 1888.

Therefore, it is the decision of this Hearing Officer that Respondent Tyler is not entitled to the protections of California Code of Regulations Title 4, Section 1888, the "Defense to Trainer Insurer Rule."

Therefore, Respondent Tyler is responsible for each and every charged violation in CHRB case numbers 15SW0084, 16SW0001, 16SW0003, 16SW0006, 16SW0007, and 16SW0008, where horses under her dominion and control as their trainer, tested positive for Cobalt, above the proscribed limits set forth in California law.

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IV. PROPOSED PENALTY FOR RESPONDENT TYLER

The CHRB requested discipline of Respondent Tyler for a three-year, 240-day suspension and a $25,000 fine which they claim is within the parameters established by Business and Professions Code Section 19582, as each violation is subject to a three-year suspension. There are six (6) violations involved in these cases within an approximate two-month period of time. The CHRB further argues that the penalty is prescribed by CHRB Rule 1843.3. Pursuant to that section, the presence of Cobalt above 50 ng/milliliter is a Category B Penalty.

Respondent had five Class 3/Penalty B violations in approximately five weeks (between December 19, 2015 and January 26, 2016), as well as one Class 4/Penalty C violation on November 28, 2015, approximately three weeks prior to the first Class 3/Penalty B violation. There was a total of six (6) violations in approximately two months (November 28, 2015 through January 26, 2016).

The CHRB has requested the suspension of respondent Tyler's trainer's license for three (3) years, the maximum allowed pursuant to Business and Professions Code Section 19582. Additionally, the CHRB seeks a suspension of Respondent Tyler's trainer's license, number 320133 – 11/17, for three (3) years and 240 days, as well as a $25,000 fine. A fine of $25,000 for the violations, less than the $100,000 fine authorized under Business and Professions Code Section 19582.

Substantial consideration has been made by this Hearing Officer to propose an appropriate and fair penalty to Respondent Tyler. Although the CHRB seeks a three (3) year suspension of her license and $25,000 fine, this Hearing Officer is required pursuant to California Code of Regulations Title 4, Section 1843.3 to consider both mitigating and aggravating factors. The mitigating factors for Respondent Tyler include the fact that she has no prior disciplinary action with the CHRB. Furthermore, there is no evidence that Respondent Tyler knew of the administration of the drug or intentionally administered the drug herself. But, she should have

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known by at least the third positive test for Cobalt in a short period of time, that her horses were being tampered with by someone. That someone could have been an outsider, as she alleged, or even a family member of hers, without her knowledge or consent. As to the steps she took to safeguard her horses, this is both an aggravating and mitigating factor. Respondent Tyler took **some actions** to insure the safety of her horses, but, she did not take **every reasonable effort** as required by Section 1888 to protect the horses in her care from tampering by unauthorized persons.

Additionally, Respondent Tyler did notify Investigator Nolan and the Cal Expo Police that her barn had an unknown person inside the stalls (two, three and four were observed entered) during the morning of January 21, 2016. Furthermore, Respondent argues that out of competition testing was conducted on January 19, 2016 on all horses trained by Tyler, including Commander Richards and Sinfun Vito. The test results reflect that Commander Richards and Sinful Vito had levels of Cobalt below the allowable threshold of 25 nanograms per milliliter. But, neither Commander Richards nor Sinfun Vito were ever tested subsequent to a race at Cal Expo, and are not the basis of the pending charges against Respondent Tyler. Ms. Tyler also testified that she was "dumbfounded" when she learned that her horses tested positive for Cobalt, indicating, at least to CHRB staff, that she had no knowledge of the administration of Cobalt into her horses. Respondent Tyler testified that she locked up the feed at night after learning of the third positive Cobalt tests. On January 15, six days after being informed of the third positive test on January 9, 2016, in which the test was conducted on January 2, 2016, she installed cameras in the barn on January 15, 2016. Tyler also testified that there had been three positive tests before she decided to install cameras. (RT: pp.145:3-25). Tyler also testified that there were no other security measures she took other than installing the cameras.

In the alternative and in aggravation, she has a total of six (6) serious violations, five of which are Class B violations and one (1) Class C violation, all within a period of less than two (2) months. Furthermore, the introduction of Cobalt into the horses under her dominion during this

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time frame has the potential to influence a horse's racing performance. This Hearing Officer considers that both aggravating, serious, and detrimental to the specified horses that had Cobalt levels introduced into their systems that exceeded any permissible norms as proscribed by California law. As the CHRB duly notes in their closing brief, Respondent Tyler **never** changed her feed, despite knowledge of the tampering of her horses and positive Cobalt tests. Additionally, Tyler delayed in taking any action until the third positive Cobalt test became known to her. As previously stated herein, Tyler could have installed an inexpensive, motion activated, battery night light, available in most retail stores and hardware stores, many of which are in close proximity to Cal Expo. Furthermore, with the listed number of family members that were her employees, they could have been more vigilant, and taken shifts in the barn both during the day and night, to insure the safety of their horses. Respondent chose to rely on a video camera and eventually locking up the feed at night. There is no evidence that the feed was watched or changed by Respondent during the daytime hours, where the horses were readily available to be tampered and contaminated.

As such, this Hearing Officer finds that Respondent Tyler's conduct was such that she did not take **every reasonable effort,** as required by Section 1888, to protect the horses in her care from tampering by unauthorized persons, and is not entitled to the provisions set forth in Rule 1888, the "Defense to Trainer Insurer Rule."

After considering all the evidence, both the mitigating and aggravating factors, it is the proposed decision by this Hearing Officer, applying the standards set forth in Business and Professions Code Sections 19581 and 19582, as well as California Code of Regulations Title 4, Section 1843.3, as well as fundamental fairness, that based on the six (6) Cobalt violations within less than a two (2) month period of time, Respondent Tyler be subjected to a fine of $15,000.00, and a suspension of her license for a period of two (2) and six (6) months years. Based on some of the mitigating factors described herein, including Respondent Tyler's cooperation with the investigation and CHRB Investigators, this Hearing Officer proposes that the suspension date of Respondent

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Tyler be retroactive to January 30, 2016, when her license was initially suspended by the CHRB Stewards in an ex parte hearing.

CONCLUSION/PROPOSED DECISION

For the foregoing reasons and evidence presented, it is this Hearing Officer's Proposed Ruling that Respondent Tyler be subjected to a fine of $15,000.00, a suspension of her license for a period of two (2) years and six (6) months, retroactive to January 30, 2016, the date when her license was initially suspended by the CHRB Stewards pursuant to an ex parte hearing held on that date.

DATED: 7/25/16

RICHARD P. MARGARITA, ESQ.
Hearing Officer

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