

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaints Against:

KELLY CASTANEDA
Trainer, CHRB License #260672
Respondent

CHRB Case Nos. 19LA0220
19LA0251
19LA0275

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order for payment of the two thousand five hundred dollars (\$2,500.00) fine and setting the one hundred and twenty (120) days of suspension.

IT IS SO ORDERED ON March 26, 2020.

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



Folk

Rick Baedeker
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

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In the Matter of the Accusation Against,)	
)	
KELLY CASTANEDA, trainer,)	Case Nos. 19LA0220, 19LA0251
RESPONDENT.)	19LA0275
)	
)	

PROPOSED DECISION

This matter was heard on January 17, 2020 by the Board of Stewards – C. Scott Chaney, James Dreyer, and Tom Ward at Los Alamitos Race Track in Cypress, CA.

Respondent trainer Kelly Castaneda (hereinafter “Respondent” or “Castaneda”) represented himself, with some assistance from his partner Candy Melero. The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) was represented by Investigator Barrett Halcromb.

The hearing was called to order at 4:30 pm, we heard oral testimony and entered documentary evidence into the record. All of the proceedings were recorded by court reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Respondent trained three horses that tested positive for the class 2, penalty class B drug Lidocaine, following races over a two month period. The CHRB filed three separate complaints. However, given that they involve common facts and law, we combined the matters and heard them all in a single hearing. Case number 19LA0220 concerned the horse “Gone Skyward” which ran on September 21, 2019, finishing first in the second race at Los Alamitos Race Track. Case number 19LA0251 concerned the horse “Clean Living” which ran on October 25, 2019, finishing second in the first race at Los Alamitos Race Track. Case number 19LA0275 concerned the horse “Angry Bobby” which ran on November 10, 2019, finishing second in the third race at Los Alamitos Race Track. No split samples were tested subsequent to the three positives. Each of the horses mentioned were disqualified in separate actions from the instant matter. Those actions were not contested, therefore the purse money earned in each of three races was redistributed pursuant to our rulings. The instant matter, case numbers 19LA0220, 19LA0251, and

19LA0275, is concerned with the trainer's responsibility in the positive. At hearing, documentary evidence was submitted and oral testimony was heard. The following witnesses testified at the hearing: Respondent Kelly Castaneda, Candy Melero and CHRB Investigator Barrett Halcomb. The record was then closed.

LIST OF EXHIBITS

CHRB Exhibit 1 Case number 19LA0220 complaint packet: cover page, definition, CHRB Regulations, Report of Investigation, Certificate of Analysis, Test Sample Report, Positive Test Notification, Split Sample Expiration, Past Performances, Results, Bleeder Treatment Report, Acknowledgement of Test Sample, Official Veterinarian's Report, Test Sample Shipping Invoice, Veterinarian Invoice, Selection of Administrative Adjudication, Horse Medication Inquiry, Declarations of Peggy Lighthill and Joel Esparza regarding Chain of Custody, Investigations File, Inspection Report, Barn Inspection Report, Trainer's Backstretch Workers List, CHRB License Histories.

CHRB Exhibit 2 Case number 19LA0251 and related documents.

CHRB Exhibit 3 Case number 19LA0275 and related documents.

FACTUAL FINDINGS

I

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

II

On September 21, 2019, the thoroughbred racehorse "Gone Skyward" ran in the second race at Los Alamitos Race Course and finished first.

III

Following the running of the race, blood and urine samples were obtained from "Gone Skyward" and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter "Maddy Lab"), the official testing laboratory for the CHRB.

IV

After testing the samples, U.C. Davis laboratory reported that the post race blood sample #LA44517, which was obtained from "Gone Skyward," contained Lidocaine (749 pg/ml) above the authorized threshold (20 picograms/ml). No split sample analysis was requested.

V

On October 25, 2019, the thoroughbred racehorse "Clean Living" ran in the first race at Los Alamitos Race Course and finished second.

VI

Following the running of the race, blood and urine samples were obtained from "Clean Living" and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter "Maddy Lab"), the official testing laboratory for the CHRB.

VII

After testing the samples, U.C. Davis laboratory reported that the post race blood sample #LA44735, which was obtained from "Clean Living," contained 3-hydroxylicocaine (1,170 pg/ml), a metabolite of lidocaine, above the authorized threshold (20 picograms/ml). No split sample analysis was requested.

VIII

On November 10, 2019, the thoroughbred racehorse "Angry Bobby" ran in the third race at Los Alamitos Race Course and finished second.

IX

Following the running of the race, blood and urine samples were obtained from "Angry Bobby" and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter "Maddy Lab"), the official testing laboratory for the CHRB.

X

After testing the samples, U.C. Davis laboratory reported that the post race blood sample #LA44859, which was obtained from "Angry Bobby," contained 3-hydroxylicocaine (587 pg/ml), a metabolite of lidocaine, above the authorized threshold (20 picograms/ml). No split sample analysis was requested.

XI

Lidocaine and its metabolite, 3-hydroxylicocaine, are classified under the California Horse Racing Board rules and regulations as a class 2 substance in the penalty category B.

XII

On October 19, 2019, Ruling #270 at Los Alamitos was published disqualifying "Gone Skyward" and distributing the purse accordingly.

XIII

On December 14, 2019, Ruling #338 at Los Alamitos was published disqualifying "Clean Living" and distributing the purse accordingly.

XIV

On December 15, 2019, Ruling #343 at Los Alamitos was published disqualifying "Angry Bobby" and distributing the purse accordingly.

APPLICABLE RULES AND REGULATIONS

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

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

- (a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.
- (b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.
- (c) No person other than a licensed veterinarians or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled.
- (d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of the limits established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse.
- (e) Nothing in this Article shall prevent a racing association or fair from setting eligibility conditions, as agreed to with the acknowledged horsemen's organization, for individual races, or for its entire race meet, that prohibit the use and/or presence of drug substances or medications in biological test samples collected from participating horses at detection levels lower than what is authorized by the Board. Such conditions if established in accordance with Rule 1581, shall not be deemed in conflict with the rules and regulations of the Board.

NOTE: Authority cited: Sections 19440, 19580, 19581 and 19582. Business and Professions Code. Reference: Sections 19401, 19440, 19580, 19581 and 19582; Sections 337f, g and h. Penal Code.

HISTORY:

1. Repealed and new rule filed 10-29-81; effective 11-28-81.
2. Amendment of subsections (a), (c) and (d) filed 8-19-92; effective 9-18-92.
3. Amendment filed 7-25-16, as an emergency; effective through 1-24-17.
4. Amendment filed 7-26-17; effective 7-26-17.

California Horse Racing Board rule 1843.1. Prohibited Drug Substances.

For purposes of this division, prohibited drug substance means:

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

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

HISTORY:

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

California Horse Racing Board rule 1844. Authorized Medication.

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

- (d) Official blood test samples may contain the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels in serum or plasma:
 - (4) Lidocaine; 20 picograms per milliliter;

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

- (a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off. The owner of a ship-in horse is the joint-absolute insurer of and 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 agent fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under the rules unless it is shown by the preponderance of the evidence that the trainer or the

owner of a ship-in horse administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

NOTE: Authority cited: Sections 19440, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19577, 19580 and 19581 Business and Professions Code.

HISTORY:

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

DISCUSSION OF ISSUES

These three positives (from three racehorses) were combined into one hearing because they involved common questions of law and fact, and all three will be addressed here. Class I, II and III medication positives (a drug substance over the authorized decision level is considered a positive under CHRB Rules and Regulations), if proven, require a disqualification of the horse and redistribution of the purse (CHRB Rule 1859.5 Disqualification Upon Positive Test Finding). In the instant matter, the actual positive tests were not contested, all three horses were disqualified and the purses were redistributed. Here we must determine whether the trainer is subject to a penalty for the underlying medication positives.

The CHRB Rules and Regulations provide a very specific framework regarding adjudicating these issues. CHRB rule 1843(d) (Medication, Drugs and Other Substances) provides in part that "A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board.....shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse." In this case, we find prima facie evidence of a positive. For many years, that rule, coupled with CHRB rule 1887 (Trainer or Owner to Insure Condition of Horse) created a strict liability framework and the inquiry would end there. However, the rigidity of strict liability has been somewhat eroded by two rules that allow for defenses to the trainer insurer rule and that contemplate aggravating and mitigating circumstances that affect the application of a penalty. We find that none of the defenses in CHRB rule 1888 (Defense to Trainer Insurer Rule) apply, so we must move onto the penalty guidelines. Before so doing, however, there is some evidence from the hearing that should be highlighted. The most obvious piece is that there was not a clear understanding of the source from which these positives arose. At the time of the positives, Mr. Castaneda had suffered a stroke and was spending most of his time at home recuperating, leaving the day to day operation of his stable to his employees. Also, all three horses that tested positive were owned by the same person. There was further evidence that although these horses were at Los Alamitos under Respondent's care, the owner's husband was very active in their training

and care, going so far as to pay the groom that looked after these horses. While there was some speculation that a leg salve called "blue ice" or the like was responsible for the positives, testing by the CHRB did not confirm the presence of lidocaine in the tested products. There was further speculation that the horses could have been given additional medication by the owner or their groom. However, neither the groom, the owner Silvia Soto, nor her husband were called as witnesses.

CHRB Rule 1843.3 (Penalties for Medication Violations) establishes penalty categories based on drug classifications, minimum and maximum fines and suspensions for violations, and aggravating and mitigating factors that would necessitate a deviation from those guidelines. Specifically, the rule states that "there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum." We will examine each of these eleven factors here.

1. "The past record of the licensee regarding violations of Business and Professions Code section 19581." While Castaneda does not have any class I, II, or III positives in his license history, he does have six medication positives since 2016. Therefore, this is an aggravating factor.
2. "The potential of the drug(s) to influence a horse's racing performance." Lidocaine is an anesthetic and therefore has great potential for influencing performance. This is an aggravating factor.
3. "The legal availability of the drug." Lidocaine is legal and prescribed by a veterinarian. Therefore, this is a mitigating factor.
4. "Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug." Since the source of the positive is unknown, this factor is neutral.
5. "The steps taken by the trainer to safeguard the horse." There was no direct evidence of preventative actions, although the fact that the owner was so involved in the training of the horses makes this factor aggravating.
6. "The steps taken by the owner to safeguard against subsequent medication violations..." Respondent did scratch three horses (with some encouragement from this Board) when it became clear that the positives were accumulating. However, he immediately entered more horses. Finally, the trainer and owner did part ways shortly thereafter. This factor is neutral.
7. "The probability of environmental contamination or inadvertent exposure due to human drug use or other factors." This factor is neutral.
8. "The purse of the race." None of the purses were remarkable and therefore this factor is mitigating.
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." Lidocaine was not listed on any veterinary confidential, hence this factor is aggravating.

10. "Whether there was any suspicious wagering pattern on the race."
There was no evidence of wagering irregularities and therefore this is a mitigating factor.
11. "Whether the licensed trainer was acting under the advice of a licensed veterinarian." Respondent was not acting under the advice of a licensed veterinarian with respect to lidocaine, therefore this factor is aggravating.

Rule 1843.3 explains that the preceding factors can be mitigating or aggravating but that the list is not exhaustive. We find one other factor important, if not controlling, to the analysis. With respect to the enumerated factors, a simple count reveals two more aggravating factors than mitigating ones. However, given that the positives all came within close proximity to each other, this Board believes that overall, the evidence requires the penalty be determined from a neutral or slightly mitigated approach based on the penalty guidelines. Those guidelines call for a 180 day suspension (30, 60, 90 day suspensions for each additional positive) absent mitigating circumstances and/or a \$4,000.00 fine (\$500, \$1,000, and \$2,500 fine for each additional violation) absent mitigating circumstances.

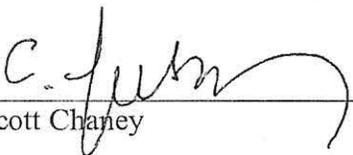
Consequently this Board believes that a 120 day suspension and \$2,500.00 fine is an appropriate penalty for these violations.

CONCLUSION/PROPOSED DECISION

Given the foregoing, this Board of Stewards recommends that the CHRB suspend Mr. Castaneda's license(s) for a period of one hundred and twenty (120) calendar days, and levy a fine of two thousand five hundred dollars (\$2,500.00).

DATED: March 8, 2020.

BOARD OF STEWARDS



C. Scott Chaney



James Dreyer



Tom Ward

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