

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

DANIEL FRANKO
Trainer, CHRB License #280342
Respondent

CHRB Case No. 19GG0050

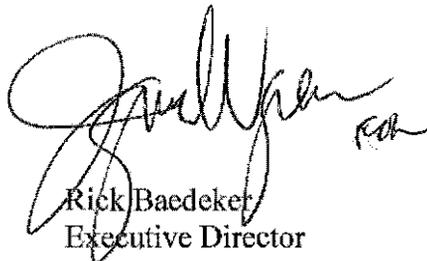
DECISION

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 fine and setting the thirty (30) days of suspension.

IT IS SO ORDERED ON July 18, 2019.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

BACKGROUND

The respondent, Daniel S. Franko (hereinafter Franko) was charged in complaint #19GG0050, filed by CHRB Investigator Jennifer Tolman (hereinafter Tolman) on behalf of the California Horse Racing Board (hereinafter Board), with alleged violations of Board rules #1843 (a) (b) & (d) (Medication Drugs and Other Substances), #1843.1 (Prohibited Drug Substances), #1844 (a) (Authorized Medication), #1887 (Trainer or Owner to Insure Condition of Horse) and #1890 (b) (Possession of Contraband) of the California Code of Regulations, Title 4, Division 4.

The Complaint states in part:

"The official urine/blood sample #GG32721 taken on February 17, 2019 at GGF was reported by Dr. Ben Moeller of the UC Davis laboratories to contain Gabapentin and Diclofenac (49 ng/mL). This sample was obtained from the horse "Ronsky's Hope" which ran in the 8th race at GGF finishing 1st. The Trainer of record is Daniel Franko. Gabapentin is considered to be a Drug Class 3, Penalty Class B violation. At the time of testing, 49 ng/mL of Diclofenac in a horse's system is considered to be a Drug Class 4, Penalty Class C violation. During an inspection of Trainer Franko's tack room, a half a pill of Sildenafil (Viagra) without a prescription was located."

EXHIBITS

CHRB EXHIBITS:

- 1 Complaint #19GG0050
- 2 Questions for licensees not Represented by Counsel at a Hearing Before the Board of Stewards
- 3 Dr. Arthur e-mail to Investigator Tolman dated May 8, 2019

FINDINGS OF FACT

I

The Horse Ronsky's Hope started in and won the eighth race at Golden Gate Fields race track in Albany, California on February 17, 2019.

II

The owner of record of Ronsky's Hope was Daniel Franko (Board License #275611 - 04/2021).

III

The trainer of record of the horse Ronsky's Hope was Daniel Franko (Board License #280342 - 04/2021).

IV

At all times contained herein Daniel Franko was duly licensed by the California Horse Racing Board as an Owner/Trainer.

V

Following the running of the eighth race on February 17, 2019 Ronsky's Hope was taken to the Test Barn, located in the barn area of Golden Gate Fields, where urine and blood samples were collected. The samples were identified as #GG32721.

VI

The urine and blood samples (#GG32721) were sent for analysis to the University of California at Davis Equine Medical Laboratory, the official laboratory for the California Horse Racing Board.

VII

On March 1, 2019 Dr. Ben Moeller, Director of the Equine Medical Laboratory at the University of California Davis, notified the Board that the blood and urine samples #32721 tested positive. The urine contained the substance Gabapentin and the blood tested positive for Diclofenac at a level of 49 ng/mL.

VIII

The Board classifies Diclofenac as a Class 4 substance with a Class C penalty.

IX

The Board Classifies Gabapentin as a Class 3 substance with a Class B penalty.

X

On March 1, 2019 Franko was notified of the laboratory's positive test findings by Board Investigator Tolman.

XI

On March 3, 2019 Franko opted to have the urine split sample sent to Industrial Laboratories in Wheat Ridge, Colorado for confirmatory testing of the prohibited substance Gabapentin.

XII

Franko declined to have the blood split sample tested for conformation of the substance Diclofenac.

XIII

On March 26, 2019 Petra Hartmann, Director of Industrial Laboratories, notified the Board that urine sample #GG32721 confirmed for the presence of Gabapentin.

XIV

During the hearing Franko did not contest the chain of custody of samples #GG32721.

XV

During the hearing Franko did not contest the findings from the University of California, Davis Equine Medical Laboratory that urine sample #GG32721 contained Gabapentin and that blood sample #GG32721 contained Diclofenac at a level of 49 ng/mL.

XVI

The specified level of Diclofenac permitted by Board regulations shall not exceed 5 ng/mL

XVII

There is no threshold level for Gabapentin according to the Board regulations.

XVIII

At the hearing Tolman highlighted the investigative report contained in complaint #GG0050 (Exhibit 1).

XIX

In that report Tolman stated that during the course of her investigation she discovered that a groom in Franko's employ, Ron Wallace (hereinafter Wallace), Board license #093419 - 10/2019, had a doctor's prescription for both Gabapentin and Diclofenac.

XX

Wallace is the groom and primary attendant for the horse Ronsky's Hope,

XXI

Wallace, in his testimony at the hearing, stated the he has a prescription for both Gabapentin and Diclofenac.

XXII

Wallace said the Diclofenac comes in a gel form and he applies it to his shoulders and back for pain relief from arthritis.

XXIII

Wallace testified that the Diclofenac could have still been on his hands when he rubbed the legs of Ronsky's Hope prior to the race on February 17, 2019.

XXIV

Wallace stated that he takes 1600 milligrams of Gabapentin a day, two 400 Mg pills in the morning and two 400mg pills at night.

XXV

Wallace said that he occasionally urinates in the stall occupied by Ronsky's Hope rather than walking to the restrooms located in the barn area.

XXVI

Wallace opined that Ronsky's Hope may have eaten hay Wallace had urinated on thereby ingesting the Gabapentin.

XXVII

In an E-mail (Exhibit 3), dated May 8, 2019 written by Dr. Rick Arthur, the Equine Medical Director for the Board, Arthur stated that no data has been collected to either confirm or refute Wallace's theory that Ronsky's Hope ingestion of contaminated hay could have led to the test findings of Gabapentin.

XXVIII

Arthur's E-mail further stated that Wallace's contention concerning contamination was theoretically possible but also pointed out that the Board website warns trainers of the risk associated with allowing personnel to urinate in a horse's stall.

XXIX

Franko acknowledged that while he did not personally administer the substances found by the laboratories in the blood and urine samples, that he, as trainer of record for the horse Ronsky's Hope, is responsible under Board regulations for the test results.

XXX

Franko stated that he has a relatively clean record with respect to medication violations since he took out his trainer's license in 2004.

APPLICABLE CALIFORNIA HORSE RACING BOARD RULES California Code of Regulations, Title 4, Division 4

California Horse Racing Board rule 1843 (a) (b) & (d) (Medication, Drugs and Other Substances).

California Horse Racing Board rule 1843.1(b) (Prohibited Drug Substances).

California Horse Racing Board rule 1844 (a) (Authorized Medication).

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

California Horse Racing Board rule 1890 (b) (Possession of Contraband).

DISCUSSION

The fact that both the urine and the blood samples #GG32721, taken from the horse Ronsky's Hope following the running of the eighth race at Golden Gate Fields on February 17, 2019 tested positive for prohibited substances is a given. The urine sample showed the presence of Gabapentin and the blood sample contained Diclofenac at a level of 49 ng/mL. There is no threshold level of Gabapentin allowed by Board rules. The mere detection of the substance is a violation of Board regulations. The permitted level of Diclofenac per the rules and regulations of the Board shall not exceed 5 ng/mL.

The stewards determined the presence of these two drugs following a disqualification hearing for the horse Ronsky's Hope on May 2, 2019. The Stewards issued Golden Gate Fields ruling #82 on May 3, 2019 which disqualified Ronsky's Hope from the race in question, ordered the redistribution of all purse monies and changed the order of finish to reflect the disqualification.

The presence of Gabapentin in a postrace test sample requires the disqualification of the horse pursuant to Board rule #1859.5 (Disqualification Upon Positive Test Finding). The Board classifies Gabapentin as a class 3 substance and rule #1859.5 requires the disqualification of a horse if a class 1, 2 or 3 substance is found in a postrace test sample.

The detection of Diclofenac, a class 4 medication, does not require a disqualification but its presence can be an aggravating factor when determining a penalty.

The test results provided by the University of California, Davis Maddy Laboratory were uncontested. Further, Franko had the urine split sample tested for the presence of Gabapentin at Industrial Laboratories in Colorado, and that facility confirmed that Gabapentin was present in the urine.

The purpose of the instant hearing is to determine the responsibility of Franko as the trainer of record for Ronsky's Hope. Board rule #1887 (a) (Trainer or Owner to Insure Condition of Horse) holds that the trainer can be held responsible for the condition of their horse regardless of the acts of third parties. It appears by the evidence and testimony presented at the hearing that Franko may not have had any direct knowledge of, or take any constructive role in, the introduction of Gabapentin or Diclofenac into Ronsky's Hope's system but under #1887 he must accept the ultimate responsibility for the drugs present in the horse.

The fact that Ron Wallace, the groom for Ronsky's Hope, has accepted fault for the presence of the drugs is notable but Wallace has not been charged with any violations of Board rules and currently is beyond the jurisdiction of the Stewards until or unless a complaint is filed against him. As a result, Franko remains the sole party responsible for the test findings of sample #GG32721.

Franko testified he did not personally play a role in the introduction of either the Gabapentin or Diclofenac. The explanation may then be that Ronsky's Hope ate hay contaminated with Wallace's urine and was the source of the Gabapentin in the test sample. The presence of Diclofenac was similarly explained as coming from Wallace after he rubbed his prescription gel containing Diclofenac on his own shoulders and back and then rubbed his hands over Ronsky's Hope's legs. Dr. Arthur, Equine Medical Director for the Board stated in an e-mail (Exhibit 3) that no studies have been conducted to determine if such a theory of contamination is either possible or impossible.

There is another possible theory that was not examined on the record and that concerns the deliberate administration of one or both substances by either Franko and/or Wallace.

Before a penalty can be imposed on Franko the stewards must consider the aggravating factors or mitigating circumstances that may or may not be applicable.

Neutral or non-applicable circumstances in this case are:

- 1) The drugs were not prescribed by a veterinarian and are not for use in animals.
- 2) There is no testimony to indicate Franko knew of the administration of the drugs or was aware they were being administered.
- 3) Franko took no steps to safeguard the horse from the administration of the drugs but at the same time didn't realize contamination by touch or urination was possible.
- 4) The purse of the race was sizable but not so large that a person would go to extreme measures.
- 5) No suspicious wagering was introduced into the record.
- 6) Franko was not acting under the advice of a veterinarian and the horse was not being treated by a veterinarian with the substances found in the test samples.

Mitigating circumstances are:

- 1) Franko's past medication history with the Board does not show any recent violations. He was fined \$500 in 2010 for a Flumethasone (Class 4) overage and in 2006 was penalized \$3000 for a Clenbuterol (Class 3) positive.
- 2) It is possible that the introduction of the substances in Ronsky's Hopes's system could be due to inadvertent and/or environmental contamination.

The aggravating factor in the case is that the Gabapentin is a pain reliever which has the potential to affect the horse's performance.

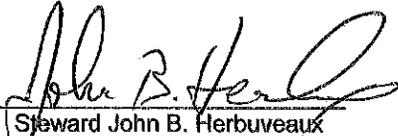
After considering all the testimony and evidence the stewards have come to the following decision.

PROPOSED DECISION

Owner/Trainer Daniel S. Franko, who started the horse RONSKY'S HOPE, winner of the eighth race at Golden Gate Fields on February 17, 2019, is suspended Thirty (30) Days and fined the sum of Three Thousand Dollars (\$3000.00) pursuant to California Horse Racing Board rule #1887 (a) (Trainer or Owner to Insure Condition of Horse) for violation of California Horse Racing Board rules #1843 (a) (b) & (d) ((Medication, Drugs and Other Substances: Gabapentin [Class 3] and Diclofenac [Class 4], in excess of permitted level, 49 ng/mL) and #1843.1 (b) (Prohibited Drug Substances).

Further, Daniel S. Franko is placed on probation for one (1) year from the date of the ruling. For cause Fifteen Hundred Dollars (\$1500.00) of the fine is stayed provided Daniel S. Franko has no Class 1, 2 or 3 medication violations during the term of probation.

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


Steward John B. Herbuveaux


Steward Dennis Nevin


Steward Will Meyers

Dated: June 1, 2019