

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CARLA GAINES, Trainer
CHRB License #101504

JOHN HARRIS, Owner
CHRB License #075774

Respondents

Case Nos. 12DM0014
12DM0015
12DM0051
12DM0052

DECISION

The attached Proposed Decision in the Matter of the Accusation Against Carla Gaines and John Harris is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on August 1, 2013, on which date Carla Gaines shall commence serving the thirty (30) day suspension and payment of the fine stated in the Adopted Decision be due and owing.

The horses "A Little Luckier" and "Winding Way" shall be disqualified from their respective races and the purses redistributed in accordance with the revised order of finish as determined by the Board of Stewards.

IT IS SO ORDERED ON July 23, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman

A handwritten signature in blue ink, appearing to read "Kirk E. Breed".

Kirk E. Breed
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	
)	
CARLA GAINES, trainer,)	
JOHN HARRIS, owner,)	Case Nos. 12DM0014
et al)	12DM0015
RESPONDENTS)	12DM0051
_____)	12DM0052

PROPOSED DECISION

This matter was heard on five hearing days between May 20, 2013 and May 30, 2013 by the Board of Stewards – C. Scott Chaney, Kim Sawyer and Tom Ward at Hollywood Park Race Track in Inglewood, CA.

Two of the Respondents, trainer Carla Gaines and owner Harris Farms (John Harris) were represented by attorney Darrell Vienna. The other Respondents – owner Spendthrift Farm LLC (Bradley Hughes), jockey Victor Espinoza, and jockey Rafael Bejarano did not have representation or mount a defense.

The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) was represented initially by Deputy Attorney General Michele Logan-Stern and Supervising Deputy Attorney General Jerald Mosley. At hearing, the CHRB was represented by Supervising Deputy Attorney General Chris Knudsen.

This matter was originally filed in October of 2012. We held several pre-hearing conferences and entertained a number of motions. All of the proceedings were recorded by court reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Following the running of two races in July 2012, trainer Carla Gaines (hereinafter “Respondent” or “Gaines”) had two horses in her care allegedly test positive for testosterone. A positive in this case is a reported amount of testosterone above the decision level or approved limit. Subsequent to the CHRB laboratory reporting of the alleged positives, the CHRB filed several complaints in this matter. Case numbers 12DM0051 and 12DM0052 are concerned with disqualification and purse redistribution (involving owner, trainer, and jockey). Case numbers 12DM0014 and 12DM0015 are concerned with the trainer’s responsibility in the alleged positives. The matter was originally scheduled to begin on October 20, 2012. After considering motions for continuances, for consolidation, to compel discovery and disqualify counsel, the hearing

begin in May of 2013. The most significant motions and decisions are outlined here. Both parties joined in a motion to consolidate the four cases and for a continuance. That motion was granted and the four cases were consolidated because they involve commonalities of law and fact. Respondent then made a motion to compel discovery that included many items. We heard oral argument on all of the items, granted some of the items and did not grant others. The most significant point of contention occurred when the CHRB itself issued several subpoenas as it is required to do under the rules and regulations and then, through its counsel, made motions to quash the subpoenas. We granted the motion to quash except for that concerning post race blood samples. After entertaining that motion and gathering evidence with respect to how much of that sample existed, we elected not to grant that portion of the motion to quash. The Deputy Attorney General appealed that decision to the California Horse Racing Board itself who stayed our decision (in an order that mischaracterized the nature and scope of our ruling). Lastly, the Respondent made a motion to disqualify opposing counsel – Supervising Deputy Attorney General Jerald Mosley. Before ruling on the matter, Mr. Mosley withdrew from the matter and Supervising Deputy Attorney General Chris Knudsen took his place. After continuing the case in order to give new counsel enough time to fully prepare, the case was heard in May over a five day period. Documentary evidence and oral testimony were taken and the matter was closed.

LIST OF EXHIBITS

Respondent Exhibit A: Motion to Consolidate Cases

Respondent Exhibit B: Request For Production of Documents

Respondent Exhibit C: Notice Motion to Compel Discovery

Respondent Exhibit D: Points and Authorities in Support of Motion to Compel

Respondent Exhibit E: Motion to Compel Discovery

Respondent Exhibit F: Motion for Continuance 11/20/12

Respondent Exhibit G: Letter: DJV to Mosley 11/30/12

Respondent Exhibit H: Amended/Redacted Request for Production of Documents
(compel)

Respondent Exhibit I: Resp. Supplement Discovery Request

Respondent Exhibit J: Letter: DJV to Mosley 12/5/2012

Respondent Exhibit K: Resp. Opposition to Motion to Quash

Respondent Exhibit M: CHRB Request for Temporary Stay and Appeal of Decision of Stewards

Respondent Exhibit N: Curriculum Vitae: Thomas Tobin MVB, PhD, MRCVS

Respondent Exhibit O: Stay Order issued by CHRB 2/11/2013

Respondent Exhibit P: Resp. Opposition to Request for Immediate Stay/Appeal from Ruling of Stewards

Respondent Exhibit Q: Letter Darrell J. Vienna to David Israel/Kirk Breed, 02/12/13

Respondent Exhibit R: Letter Darrell J. Vienna to Robert Miller, 02/13/13

Respondent Exhibit S: Email R. Miller to Darrell J. Vienna re DJV letter of 02/13/13 RBates 216

Respondent Exhibit T: Letter Darrell J. Vienna to Robert Miller, 02/15/13

Respondent Exhibit U: Letter Darrell J. Vienna to Robert Miller, 02/25/13

Respondent Exhibit V: Letter Robert Miller to Darrell J. Vienna, 02/28/13

Respondent Exhibit W: Letter Darrell J. Vienna to Robert Miller, 03/1/13

Respondent Exhibit X: Anabolic Steroids. Rick Arthur. Trainer Magazine, April, 2008

Respondent Exhibit Y: KHRC Advisory 10/30/12

Respondent Exhibit Z: CHRB Advisory 11/07/12

Respondent Exhibit AB: CHRB Bates 0170 National HBPA Position Statement on Anabolic Steroids

Respondent Exhibit AD: *Human Nutritional Supplements in the Horse*, Dehennin et al. J. Anal. Tox.

Respondent Exhibit AE: CHRB Horseman's Handbook concerning Medication, R.Bates 099

Respondent Exhibit AF: Maddy Lab. SOP Nautilus. CHRB Bates 001-010

Respondent Exhibit AG: Maddy Lab. SOP Testosterone. CHRB Bates 087-103

Respondent Exhibit AH: CHRB Transcript Hearing, July 17, 2008, p. 74

Respondent Exhibit AI: RMTC Lab. Accred. and Operating Standards, V. 2.1. R. Bates
019-077

Respondent Exhibit AJ: UCD Data Package. Testosterone HP10517, p. 50

Respondent Exhibit AK: CHRB Report of Investigation File Number 12DM0014-
12DM0015

Respondent Exhibit AL: Receipts All Veterinary Supply

Respondent Exhibit AM: CHRB New Release March 1, 2008 CHRB

CHRB Exhibit #1: Complaints and packets regarding Case No. 12DM0052

CHRB Exhibit #2: Complaints and packets regarding Case No. 12DM0051

CHRB Exhibit #3: CHRB's Opposition to Motion to Compel Discovery

CHRB Exhibit #4: CHRB's Opposition to Motion for Continuance

CHRB Exhibit #5: Complaint in Case No. 12DM0014

CHRB Exhibit #6: Complaint in Case No. 12DM0015

CHRB Exhibit #7: Table with Attached Complaints

CHRB Exhibit #8: E-mail from Mr. Mosley to Mr. Vienna dated 12/04/2012 regarding
discovery issues.

CHRB Exhibit #10: CHRB's Motion to Quash Subpoenas

CHRB Exhibit #11: Stipulation dated January 29-30, 2013 In the Matter of the
Accusation Against Carla Gaines and John Harris, CHRB Case Nos.
12DM0014, 15, 51, and 52

CHRB Exhibit #12: CHRB Investigative Packet regarding the horse "A Little Luckier"
and all documents, photographs, and other materials in that packet (Tabs
A-Z,1-5)

CHRB Exhibit #13: CHRB Investigative Packet regarding the horse "Winding Way" and
all documents, photographs, and other materials in that packet (Tabs A-
Z,1-5)

- CHRB Exhibit #14: Data Packet of Kenneth L. Maddy Equine Analytical Chemistry Lab, University of California, Davis for "A Little Luckier" (Study Title: "Identification of Testosterone in extracts of urine sample # HP10517-analysis for the California Horse Racing Board") (94 pages)
- CHRB Exhibit #15: Data Packet of Kenneth L. Maddy Equine Analytical Chemistry Lab, University of California, Davis for "Winding Way" (Study Title: "Identification of Testosterone in extracts of urine sample # DM04380-analysis for the California Horse Racing Board") (96 pages)
- CHRB Exhibit #16: Curriculum Vitae of Rick Mitchell Arthur, D.V.M.
- CHRB Exhibit #17: Curriculum Vitae of Scott D. Stanley
- CHRB Exhibit #18: Certificate of Analysis dated August 1, 2012 to CHRB from Scott Stanley, Ph.D. for Sample Number HP10517
- CHRB Exhibit #19: Certificate of Analysis dated August 1, 2012 to CHRB from Scott Stanley, Ph.D. for Sample Number DM04380
- CHRB Exhibit #20: Nine pages of photographs
- CHRB Exhibit #21: Photograph of Equi-Bolic suspension and ingredient label
- CHRB Exhibit #22: Jockey Club registration form for "A Littler Luckier" with photograph of horse
- CHRB Exhibit #23: Jockey Club registration form for "Winding Way" with photograph of horse
- CHRB Exhibit #24: Betfair Hollywood Park, Horse Identification for Race 1, Saturday, July 14, 2012
- CHRB Exhibit #25: Del Mar, Horse Identification for Race 4, Saturday, July 21, 2012
- CHRB Exhibit #26: Accreditation Certificate for Equine Analytical Chemistry Laboratory
- CHRB Exhibit #27: Letter regarding Accreditation of Equine Analytical Chemistry Laboratory
- CHRB Exhibit #28: Labels for Urine Samples
- CHRB Exhibit #29: Positive Test Notification to Carla Gaines re A Little Luckier

- CHRB Exhibit #30: Positive Test Notification to Carla Gaines re Winding Way
- CHRB Exhibit #31: *Dehydroepiandrosterone (DHEA) is an anabolic steroid like dihydrotestosterone (DHT), the most potent natural androgen, and tetrahydrogestrinone (THG)*, by Labrie, Luu-The et al. in Journal of Steroid Biochemistry & Molecular Biology, March 2006
- CHRB Exhibit #32: Abstract of “DHEA is an anabolic steroid like testosterone and THG.”
- CHRB Exhibit #34: NHBP A Proposed Interim Model Rule For Androgenic/Anabolic Steroid
- CHRB Exhibit #35: National HBPA Position Statement on Androgenic/Anabolic Steroids
- CHRB Exhibit #36: Human Nutritional Supplements in the Horse.
Dehydroepiandrosterone versus Androstenedione: Comparative Effects on the Androgen Profile and Consequences for Doping Analysis, by Dehennin, Bonnaire and Plou in Journal of Analytical Toxicology, November/December 2001
- CHRB Exhibit #37: Chart Entitled “Urine Levels of testosterone, DHEA and androstenediol after administration of Equibolic Suspension Equine Anabolic Formula from an ongoing research project at UC Davis
- CHRB Exhibit #38: CHRB Advisory. Advisory From Dr. Rick Arthur, Equine Medical Director, Concerning Anabolic Steroids, dated May 12, 2008
- CHRB Exhibit #39: Letter dated May 26, 2008 from Chairman Shapiro of CHRB to owners, trainers, breeders and participants
- CHRB Exhibit #40: Q and A dated May 23, 2008
- CHRB Exhibit #41: CHRB Advisory dated November 7, 2012
- CHRB Exhibit #42: Complaints and Notices to John Harris
- CHRB Exhibit #43: Complaints and Notices to Victor Espinoza
- CHRB Exhibit #44: Complaints and Notices to Carla Gaines
- CHRB Exhibit #45: Complaints and Notices to Bradley Hughes
- CHRB Exhibit #46: Complaints and Notices to Rafael Bejarano

CHRB Exhibit #47: Notice of Defense dated September 15, 2012

CHRB Exhibit #48: Acknowledgement of Test Sample

CHRB Exhibit #51: Testosterone Confirmation Validation

CHRB Exhibit #52: Standard Operating Procedures, stamped "Draft," Identification and Determination of Testosterone from Horse Urine Samples---LC/MS Procedure, dated 03/01/05

CHRB Exhibit #53: Screening of Anabolic Steroids in Horse Urine by liquid Chromatography---Tandem Mass Spectrometry," dated April 12, 2007

CHRB Exhibit #54: Testosterone Admin Range Findings

CHRB Exhibit #55: Analysis of Steroids (e.g. testosterone) in Extracted Equine Urine Samples

CHRB Exhibit #56: "06/14/08 5 AAS validation"

FACTUAL FINDINGS

I

At all times herein mentioned, Carla Gaines was licensed by the CHRB in the license category of trainer; John Harris (dba Harris Farms, Inc.) was licensed by the CHRB in the license category of owner; Bradley Hughes (dba Spendthrift Farm LLC) was licensed in the license category of owner; Rafael Bejarano was licensed by the CHRB in the license category of jockey; and Victor Espinoza was licensed by the CHRB in the license category of jockey.

II

On July 21, 2012, the thoroughbred racehorse "Winding Way" ran in the fourth race at Del Mar race Track.

III

On July 14, 2012, the thoroughbred racehorse "A Little Luckier" ran in the first race at Hollywood Park.

IV

Following the running of the respective races, blood and urine samples were obtained from "Winding Way" and "A Little Luckier" and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter "Maddy Lab"), the official testing laboratory for the CHRB.

V

After testing the samples, U.C. Davis laboratory reported that the post race urine sample #DM04380, which came from "Winding Way" contained testosterone in excess of the permitted level and post race urine sample #HP10517, which came from "A Little Luckier" also contained testosterone in excess of the permitted level.

VI

Testosterone is classified under the California Horse Racing Board rules and regulations as a class 3 substance in the penalty category B.

VII

Pursuant to the rules, Respondents made a timely request that split samples be tested by the laboratory at the University of Florida, which confirmed the presence of testosterone in excess of the permitted level in both samples.

VIII

The two testosterone positives were caused by supplementing the feed with the product "Equi-Bolic," which contains the testosterone precursor dehydroepiandrosterone (hereinafter "DHEA").

APPLICABLE RULES AND REGULATIONS

Rule No.	Rule Title
1859.5	Disqualification Upon Positive Test Finding.
Rule Text	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 deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse. NOTE: Authority cited: Sections 19440 and 19562, Business and Professions Code. Reference: Sections 19401, 19440, 19577 and 19582.5, Business and Professions Code; Sections 337f, 337g and 337h, Penal Code. HISTORY: 1. New rule filed 4-21-83; effective 5-21-83. 2. Amendment filed 8-10-95; effective 9-9-95. 3. Amendment filed 12-6-99; effective 12-6-99.

Rule No.	Rule Title
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1843 Medication, Drugs and Other Substances.

Rule Text

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

Rule No. Rule Title

1844 Authorized Medication.

Rule Text

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: (a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules. (b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered. (c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances: (1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum. (2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum. (3) Ketoprofen in a dosage amount that the test sample shall contain not more than 10 nanograms of the drug substance per milliliter of blood plasma or serum. (4) Metabolites or analogues of approved NSAIDs may be present in post race test samples. (d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID. (e) Official urine test samples may contain one of the following drug substances, their metabolites or analogs, in an amount that does not exceed the specified levels: (1) Acepromazine; 25 nanograms per milliliter (2) Mepivacaine; 10

nanograms per milliliter (3) Promazine; 25 nanograms per milliliter (4) Albuterol; 1 nanogram per milliliter (5) Atropine; 10 nanograms per milliliter (6) Benzocaine; 50 nanograms per milliliter (7) Procaine; 50 nanograms per milliliter (8) Salicylates; 750 micrograms per milliliter (9) Clenbuterol; 5 nanograms per milliliter (10) Stanazolol; 1 nanogram per milliliter (11) Nandrolone; 1 nanogram per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings. (12) Boldenone; 15 nanograms per milliliter in males other than geldings. (13) Testosterone; 20 nanograms per milliliter in geldings. (A) Testosterone at any level in males other than geldings is not a violation of this regulation. (14) Testosterone; 55 nanograms per milliliter in fillies or mares (f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per milliliter of serum or plasma. (g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)(1)-(8), and (e)(10)-(14). (h) Procaine, following administration of procaine penicillin, is an authorized medication provided: (1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter. (2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division, (3) procaine penicillin was not administered after entry to race, (4) the horse was under surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse. NOTE: Authority cited: Sections 19440 and 19562, Business and Professions Code. Reference: Sections 19580 and 19581, Business and Professions Code. HISTORY: 1. Repealed and new rule filed 10-29-81; effective 11-28-81. 2. Amendment filed 2-9-84; effective 2-9-84. 3. Amendment filed 8-3-95; effective 9-2-95. 4. Amendment filed 6-16-97; effective 6-16-97. 5. Amendment filed 4-28-99; effective 5-28-99. 6. Amendment filed 1-28-02; effective 1-28-02. 7. Amendment filed 4-27-05; effective 5-27-05. 8. Amendment filed 9-20-07; effective 10-20-07. 9. Amendment filed 5-1-08; effective 5-31-08. 10. Amendment filed 10-26-10; effective 11-25-10. 11. Amendment filed 2-14-12; effective 2-14-12.

Rule No.	Rule Title
1887	Trainer to Insure Condition of Horse.
Rule Text	<p>(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. (b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer 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: Amendment filed 7-9-92; effective 8-8-92. Amendment filed 10-25-94; effective 11-24-94. Amendment filed 12-6-99; effective 12-6-99. Amendment filed 8-8-05; effective 9-7-05.</p>

Rule No.	Rule Title
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1843.3	Penalties for Medication Violations
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Rule Text

((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; (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 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: [See CHRB website "Publications" section for a complete copy of rule 1843.3 including Category A, B and C Penalties chart.] (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 for a first offense to the licensed trainer and owner. A Category "D" penalty for a first offense 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. (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. (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. (l) 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. NOTE: Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: Sections 19461, 19580, 19581 and 19582, Business and Professions Code. Section 11425.50, Government Code. HISTORY: 1. New rule filed 5-23-08; effective 5-23-08. 2. Amendment filed 2-14-12; effective 3-15-12 3. Amendment filed 6-6-12; effective 7-6-12

DISCUSSION OF ISSUES

These two alleged positives were combined into one hearing and both 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). The CHRB has also filed complaints against Ms. Gaines as the trainer of these two horses, but those alleged rule violations can only be considered if we first believe that a preponderance of the evidence shows that a positive test or tests occurred. In the instant matter, we believe that CHRB has met that burden. Therefore, this discussion will first address the positives themselves and then move onto the penalty, if any, that should be levied against the trainer.

I. Testosterone Positives

In 2008, the CHRB began regulating anabolic steroids. For purposes of this hearing, the pertinent anabolic steroid is testosterone. In that year, CHRB Rule 1844 (Authorized Medication) set the acceptable level of testosterone in a gelding's post race urine sample at 20 nanograms per milliliter and the acceptable level of testosterone in fillies and mares at 55 nanograms per milliliter of urine. Both thoroughbreds in the instant case were fillies and therefore the acceptable level in the post race samples is 55 nanograms per milliliter of urine and below. The two fillies ran a week apart from each other and both respondent and complainant agreed that the chain of custody was not compromised. Maddy Lab reported a level of 390 ng/ml of testosterone in urine sample of "A Little Luckier" and a level of 193 ng/ml in the sample of "Winding Way." Both are clearly over the authorized decision level. Respondent requested a split sample test from the University of Florida lab. That laboratory confirmed the presence of testosterone in concentrations of 140 ng/ml and 75 ng/ml respectively.

Respondent made several arguments with respect to the accuracy of the testing process and therefore the results themselves. First, Respondent argued that the test for testosterone had not been validated and therefore the results were not actionable. Counsel went through an exhaustive list of factors necessary to scientifically validate a test such as the one used in this case. Respondent's expert, Dr. Thomas Tobin, also explained that, in his opinion, not enough work had been done to validate the testosterone test and that therefore, he could not reasonably conclude that the test was actually measuring testosterone, and if it was, if the measurement was accurate. We find this argument unconvincing. Evidence was unclear with respect to exactly what type of additional testing or information or research is required to validate the test. Evidence was clear with respect to the fact that Maddy Lab has done extensive work on testosterone testing in horses and there was no dispute with respect to the accuracy and predictability of liquid chromatography/mass spectrometry.

Second, and somewhat related to the aforementioned challenge, Respondent argued that the Maddy Lab changed its test and standard operating procedure with respect to testosterone on the very day that the first sample was tested. Evidence revealed however that this was more semantics than a substantive change. The record is replete with references to the "new test" and the "old test" but a careful analysis of the evidence that the test performed on the urine sample remained the same, rather the difference was with respect to how to measure the results. Admittedly, additional concentrations, or in layman's terms--standards against which the results are measured—were included, changing the standard operating procedure somewhat. But this addition was made because the testosterone levels were so high that the lab had not anticipated having to measure them. Adding additional standards to accurately measure the large amount can hardly constitute a "new test." Similarly, it would be counterintuitive to argue that the testosterone levels should be dismissed because they were so high that the measurement is inaccurate.

Third, Respondent argued that there were no uncertainty levels with respect to the amounts of testosterone reported. While this argument has some merit, it is not enough to discount the results. Evidence showed that had uncertainty levels been reported and the reported amount of testosterone was above the authorized level but within the uncertainty measure that a positive test report would not result. For example, had the level been 60 ng/ml with an uncertainty level of +/- 10 ng/ml, this would not be considered a positive under a 55 ng/ml decision level. Respondent's argument is somewhat strengthened by the fact that the Florida Lab that tested the split samples did provide uncertainty levels—although Respondent's expert, somewhat unbelievably, failed to even recognize those because he needed additional information. On the other hand these reservations are overcome for two reasons: (1) the rule does not require that uncertainty levels be stated, and in fact only puts forth an authorized limit for testosterone and (2) evidence showed that Maddy Lab does not generally report uncertainty levels. That fact was revealed in the testimony of Dr. Scott Stanley who heads the Maddy Lab and who the Complainant called as an expert and percipient witness.

Fourth, and perhaps a part of Respondent's uncertainty argument, involves RMTC standards for accreditation. RMTC is the Racing Medication and Testing Consortium, an industry body that seeks, among other things, uniform medication rules in the U.S. racing industry as well as uniform testing in thoroughbred racing nationally. To that end,

RMTC has developed accreditation criteria with respect to testing laboratories. One of those requirements is for laboratories to report medication amounts with uncertainty levels. Respondent argued that since the Maddy Lab did not report uncertainty levels in the instant cases, and did not meet RMTC standards, that the testosterone positives cannot be sustained. We find this argument unconvincing for two reasons: (1) there is no requirement under CHRB Rules and Regulations that RMTC standards must be followed; and (2) the fact that RMTC has accredited Maddy Lab (the only one in the country at this point) despite this lack of compliance is a testament to the laboratories testing prowess rather than cause for indictment.

Therefore, based on the foregoing, we find that the two testosterone positives reported by the official CHRB testing lab are sustained and must then move to the second part of the inquiry involving potential penalty for the trainer, Ms. Gaines.

II. Trainer Responsibility

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 that prima facie evidence of a positive. For many years, that rule, coupled with CHRB rule 1887 (Trainer to Condition of Horse) created a strict liability framework and the inquiry would end here. Recently, 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 mitigating circumstances. 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.

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 the 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.” Ms. Gaines has a spotless record in this regard and therefore this is a mitigating factor.
2. “The potential of the drug(s) to influence a horse’s racing performance.” Respondent argues that the evidence showed that testosterone is not performance enhancing. We believe the evidence demonstrated that the research tends to indicate that testosterone can influence, and based on its classification, at the very least, has the *potential* to influence performance. Therefore this is an aggravating circumstance.

3. "The legal availability of the drug." Ms. Gaines ordered the Equi-bolic simply and legally on the internet. Therefore, this is a mitigating circumstance.
4. "Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug." This factor does not apply.
5. "The steps taken by the trainer to safeguard the horse." While evidence demonstrated that Ms. Gaines runs a safe barn with regard to medication, this factor does not apply because we find that she intentionally fed the Equi-bolic product and therefore any safeguards are inconsequential.
6. "The steps taken by the owner to safeguard against subsequent medication violations..." This factor is not applicable.
7. "The probability of environmental contamination or inadvertent exposure due to human drug use or other factors." This factor does not apply.
8. "The purse of the race." This factor does not apply because the purse was not particularly high or low.
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." Ms. Gaines was not supplementing her horses feed with Equi-bolic under the direction of a veterinarian. Although she asked her private veterinarian about whether she should use Equi-bolic, it was not administered under his supervision and did not comply with Rule 1842. We therefore find this to be an aggravating factor.
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." While Ms. Gaines asked her veterinarian about the Equi-bolic product, it was a singular inquiry and therefore we find this factor to be neutral.

Rule 1843.3 explains that the preceding factors can be mitigating or aggravating but that the list is not exhaustive. We find two other factors important to the analysis. First, the CHRB decided to treat these two testosterone positives as a single action because of their close proximity in time and the fact that the licensee was not afforded the opportunity to remedy the problem, and therefore avoid the onerous burden of a first and second violation. However, we find that the fact there were two positives an aggravating circumstance. Second, the fact that the product was called "Equi-bolic" – an "Equine Anabolic Formula" and boasted that the supplement "will enhance optimum muscle gain and speed" is, for this Board, an aggravating circumstance. Evidence revealed that a reasonable trainer or person for that matter given the ingredients, claims, and name of the product would be on notice that it might run afoul of the CHRB rules and would have investigated its legality beyond a casual conversation with a private veterinarian.

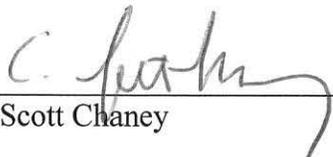
On balance, we find that the aggravating circumstances slightly outweigh the mitigating ones and therefore require a departure from the minimum penalties described under the guidelines. As a result, pursuant to those guidelines and factors, we believe that a 30 day suspension and \$2,500.00 fine are appropriate.

CONCLUSION/PROPOSED DECISION

Given the foregoing, we recommend that the CHRB disqualify "A Little Luckier" and "Winding Way" from their respective races, redistribute the purses, suspend Ms. Gaines for a period of 30 calendar days, and levy a fine of \$2,500.00.

DATED: July 8, 2013.

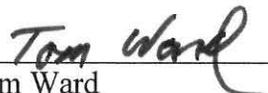
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