

**BEFORE THE HORSE RACING BOARD
STATE OF CALIFORNIA**

In the Matter of the Complaint
Against:

TRAINER JESUS NUNEZ
CHRB License No. 247831
Respondent

CHRB Case No. SAC 19-0047

**DECISION AFTER
NON-ADOPTION OF PROPOSED DECISION**

The Matter of the Complaint Against Licensed Trainer Jesus Nunez was originally heard by the Board of Stewards, Los Alamitos Race Course, on June 7, 2019, as Case No. 19LA0018. The Board of Stewards issued a Proposed Decision on July 7, 2019.

The Proposed Decision Recommended Trainer Jesus Nunez be fined five thousand (\$5,000.00) dollars and his California Horse Racing Board (CHRB) License be suspended for ninety (90) days, with forty-five (45) days stayed. Trainer Nunez was found to be in violation of CHRB Rule No.1887 (a) (Trainer or Owner to Insure Condition of Horse) and CHRB Rule No. 1859.5 (Disqualification Upon Positive Test) for violation of CHRB Rule No. 1843 (a, b & d) (Medication, Drugs and Other Substances) (Zilpaterol – Class II) and CHRB Rule No. 1843.1 (a) (Prohibited Drug Substances).

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated July 24, 2019, the California Horse Racing Board rejected the Proposed Decision and elected to decide the Matter itself on a review of the record, including the transcript, under provisions of the California Government Code section 11517, subsection (c)(2)(E). Trainer Nunez was notified of the Decision to Not Adopt the Proposed Decision, via registered mail, on July 24, 2019.

After being provided a copy of the Administrative Record, counsel for Trainer Nunez submitted a legal brief recommending the CHRB Trainer License of Mr. Nunez be suspended for a period of ten (10) days and he be fined five thousand (\$5,000.00) dollars. On September 18, 2019, counsel for Investigative Unit of the CHRB submitted a legal brief in response to the Decision Not to Adopt the Proposed Decision.

The California Horse Racing Board has reviewed the Matter on the record and issues its Decision in the Matter as follows:

The Proposed Decision is hereby adopted as to all factual finding as set forth in the July 7, 2019, Proposed Decision, to wit; Trainer Nunez violated CHRB Rule No. 1887 (a) (Trainer or Owner to Insure Condition of Horse) for violation of CHRB Rule No. 1843 (a, b & d) (Medication, Drugs and Other Substances) (Zilpaterol – Class II) and CHRB Rule No. 1843.1 (a) (Prohibited Drug Substances) due to the presence of Zilpaterol in the horse “Somethingaboutnick” who started the in the first race at Los Alamitos Race Course on January 12, 2019.

The attached Proposed Decision of the Board of Stewards is hereby modified to reflect that the CHRB Trainer License of Mr. Nunez is suspended for ninety (90) days and fined five thousand (\$5,000.00) dollars. The payment of the fine and the actual days of suspension are to be set by the Board of Stewards.

IT IS SO ORDERED ON December 3, 2019.

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



By: Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: July 7, 2019

In the Matter of the Complaint Against:

Name

Respondent: Jesus Nunez

Case# **19LA0018**

INTRODUCTION

This matter was heard before the Board of Stewards, Scott Chaney, David Nuesch, and James Dreyer, in the Los Alamitos Stewards' Office June 7, 2019.

Present at the hearing was the Respondent, Jesus Nunez, Supervising Investigators Kevin Kitashima and Barrett Halcromb, Angela Aquino, Roberto Dedios, Attorneys Sharon Tekolian and Mike Flory. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Jesus Nunez was the trainer of record for the horse "Somethingaboutnick," who started in the first race at Los Alamitos Race Course on January 12, 2019. On January 24, 2019, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Somethingaboutnick" (Urine Sample #LA43037) tested positive for the class II prohibited drug Zilpaterol after finishing first in the first race on January 12, 2019. Trainer Nunez was notified of the positive on January 25, 2019 and a barn inspection found no further violations. On January 27, 2019 owner Javier Lopez completed the forms for the split sample testing. University of Florida Racing Laboratory was selected as the lab to conduct the testing of the split sample.

On March 8, 2019, investigators received a Final Report from University of Florida Racing Laboratory, confirming that the split sample #LA43037 contained the presence of Zilpaterol (0.21 ng/ml).

FINDINGS OF FACT

I.

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

II.

Respondent was the trainer of record for the horse “Somethingaboutnick” when it raced in the first race on January 12, 2019 at Los Alamitos Race Course. “Somethingaboutnick” finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA43037) was taken from “Somethingaboutnick” following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

IV.

At all times herein mentioned, the chain of custody of Urine sample #LA43037 from “Somethingaboutnick” was uninterrupted.

V.

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

VI.

On January 25, 2019, Respondent was notified.

VII.

The Respondent elected to have a split sample sent to the University of Florida Racing Laboratory.

VIII.

On March 8, 2019, Investigator Blake received confirmation from University of Florida Racing Laboratory that urine sample #LA43037 contained Zilpaterol.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- | | |
|-------------|---|
| Rule 1887 | (Trainer or Owner to Insure Condition of Horse) |
| Rule 1843 | (Medication, Drugs and Other Substances) |
| Rule 1902 | (Conduct Detrimental to Horse Racing) |
| Rule 1859.5 | (Disqualification Upon Positive Test Finding) |
| Rule 1843.1 | (Prohibited Drug Substances) |

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification upon positive test findings) was applied to this case on March 15, 2019 by the Los Alamitos Stewards' Ruling #67 disqualifying "Somethingaboutnick".

Trainer Jesus Nunez was represented in the proceedings by attorney Sharon Tekolian. The positive finding of Zilpaterol was not contested. Verified by arrival and departure slips, "Somethingaboutnick" arrived at Los Alamitos the evening of January 11, 2019, the day before the race in question. The horse was shipped back to owner Roberto Dedios' CD Ranch on the evening of January 14, 2019. This indicates "Somethingaboutnick" would be considered a ship-in horse. Rule #1887 (b) states that 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. This is another classic example of program training by Nunez. It is rather obvious the horse was being trained at the ranch by Mr. Dedios. This also raises the question as to who the actual owner of the horse was. Mr. Dedios said he owned "Somethingaboutnick", but the program indicated the owner to be Javier Lopez. The purse money was credited to Mr. Lopez who withdrew it from his account and has yet to reimburse the Clerk of the Course. Nunez testified that he was under the impression Dedios owned the horse.

It is the opinion of this Board of Stewards that trainer Nunez was not involved in the events that led to "Somethingaboutnick"'s Zilpaterol positive, but he must be held somewhat culpable for accepting the horse as a program trainer.

Mr. Dedios testified that he stables approximately eighty horses along with cattle and other animals at his ranch. His feed is all kept in one barn, some of which contains Zilpaterol. This was confirmed by lab tests conducted at Davis. Mr. Dedios feels that himself or his nephew, who works at the ranch, accidentally fed "Somethingaboutnick" the feed that contained Zilpaterol.

It must now be determined if there is any or how much of a penalty that needs to be applied by weighing aggravating or mitigating circumstances in determining Mr. Nunez's culpability. Trainer Nunez is also entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rules), for which there are four defenses. Sections (a), (b), and (d) are procedural in nature and do not apply in this instance. However, section (c) asks the trainer to show by

a preponderance of evidence that he made every reasonable effort to protect the horse from tampering by an unauthorized person or persons. In our judgement, Mr. Nunez was remiss in not having more control over the horses he trains and allowing them to ship and run under his name. It is hard to have any control over your horses when your only contact is within twenty-four hours prior to race time.

The inquiry will now go to the penalty phase as outlined by California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which allows for aggravating and mitigating factors that would permit deviation from the penalties outlined in the text of that rule.

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

A review of the aggravating and mitigating factors is now required:

- (1) *Past Medication Record of the Licensee:* Trainer Nunez has had six medication violations since 2016. We consider this Aggravating.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Zilpaterol is a class II medication and can enhance a horse's performance. Aggravating.
- (3) *The Legal Availability of the Drug:* Zilpaterol is easily available as it is used as a feed supplement for cattle. It is, however, illegal to be used in Race Horses. Aggravating.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* It is the opinion of the Stewards that trainer Nunez did not administer nor was he aware that "Somethingaboutnick" had been administered Zilpaterol. "Somethingaboutnick" arrived at Nunez's barn on January 11, 2019 and shipped out on January 14, 2019. The horse was shipped from and returned to Dedios' CD Ranch in Acton, Ca. In addition, Nunez testified he was in the hospital the entire time and never saw the horse. Mitigating.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a neutral factor as the horse was shipped to trainer Nunez the day before the race.
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* There was no evidence on this factor and is therefore neutral.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* Owner Dedios testified "Somethingaboutnick" may have inadvertently been fed cattle feed which contained Zilpaterol. Mitigating.
- (8) *Purse of the Race:* The purse was minimal, \$4,630 and is therefore mitigating.
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* Veterinary reports do not indicate that the horse was prescribed Zilpaterol. Aggravating
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* Mitigating as there was no evidence of any unusual wagering pattern.
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian:* There is no evidence of any veterinarians advice for approval of this drug to be administered to "Somethingaboutnick". Aggravating.

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

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class II prohibited drug Zilpaterol was found in Urine sample #LA43037 taken from the horse "Somethingaboutnick," the first place finisher in the first race at Los Alamitos Race Course on January 12, 2019. This finding requires the disqualification of "Somethingaboutnick" in accordance with California Horse Racing Board Rule #1859.5.

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

PROPOSED DECISION

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

State of California
CALIFORNIA HORSE RACING BOARD

* * *

TRAINER JESUS NUNEZ WHO STARTED THE HORSE "SOMETHINGABOUTNICK" IN THE FIRST RACE ON JANUARY 12, 2019 AT LOS ALAMITOS RACE COURSE IS FINED FIVE THOUSAND DOLLARS (\$5,000.00)* AND SUSPENDED NINETY (90) DAYS) AND PLACED ON PROBATION FOR ONE YEAR FROM THE DATE OF THIS RULING PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887(a) (TRAINER OR OWNER TO INSURE CONDITION OF HORSE) AND RULE #1859.5 (DISQUALIFICATION UPON POSITIVE TEST) FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1843 (a, b & d) (MEDICATION, DRUGS AND OTHER SUBSTANCES) (ZILPATEROL - CLASS II) AND #1843.1 (a) (PROHIBITED DRUG SUBSTANCES).

FOR CAUSE, FORTY-FIVE (45) DAYS OF THE NINETY (90) DAY SUSPENSION ARE STAYED PROVIDED MR. NUNEZ IS NOT IN VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES AND REGULATIONS #1843 AND #1887 REGARDING CLASS I, II, OR III DRUG SUBSTANCES DURING THE TERM OF PROBATION. IF MR. NUNEZ VIOLATES A CONDITION OF HIS PROBATION, THE ABOVE REFERENCED FORTY-FIVE (45) DAY STAY OF SUSPENSION SHALL BE LIFTED AND THE ACTUAL SUSPENSION SHALL BE IMPOSED AFTER NOTICE AND HEARING.

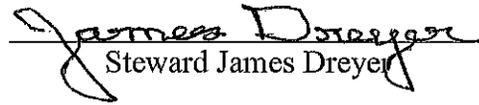
DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF JESUS NUNEZ ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS TO SUSPEND OR FINE) JESUS NUNEZ IS DENIED ACCESS TO ALL PREMISES IN THIS JURISDICTION.

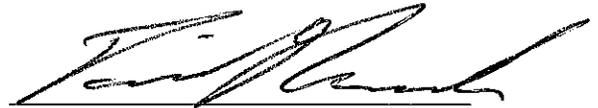
*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

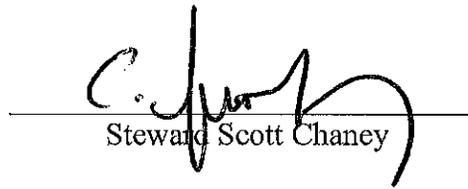
Lic# 247831 – 12/2019

Case# 19LA0018

Dated July 7, 2019 by this Board of Stewards:


Steward James Dreyer


Steward David Nuesch


Steward Scott Chaney

