

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

FRANK PETRELLI, Trainer
CHRB License #292848

Case No. 13SW0002

Respondent

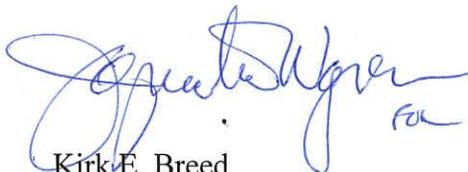
DECISION

The attached Proposed Decision in the Matter of the Complaint Against Frank Petrelli 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 Frank Petrelli shall commence serving the ninety (90) day suspension and payment of the fine stated in the Adopted Decision be due and owing.

IT IS SO ORDERED ON July 23, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman



Kirk E. Breed
Executive Director

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

CALIFORNIA HORSE RACING BOARD)	Docket No.: 13SW0002
)	
Complainant,)	Hearing Date: April 24, 2013
)	Time: 10:00 A.M.
)	
vs)	
)	
FRANK PETRELLI)	
)	
)	
Respondent.)	
)	
)	
)	

PROPOSED DECISION

The matter was heard on April 24, 2013 by Richard P. Margarita, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at the California Horse Racing Board, 1010 Hurley Way, Suite 300, Sacramento, California.

The Complainant, California Horse Racing Board (hereinafter CHRB), was represented by California Deputy Attorney General Kristin M. Daily, Esq.

1 The Respondent, Frank Petrelli, was not present but was represented by Chad C. Couchot,
2 Esq.

3
4 Also present at the hearing were Complainant's witnesses, California Horse Racing Board
5 Investigator Carol Nolan, Dr. Scott Stanley, PhD., and Dr. Rick Arthur, DVM. Respondent called
6 as their witness Dr. Lane Schloeder, DVM. The proceedings were recorded by court Reporter
7 Wendy V. Frazier, CSR License number 8035.

8
9 **PROCEDURAL BACKGROUND**

10
11 The issue presented is whether Respondent, a licensed trainer, Frank Petrelli, is
12 responsible under the Trainer-Insurer Rule (4 C.C.R. 1887) due to the fact that a horse that he
13 trained, Summer's Overtime, tested positive for Levamisole subsequent to placing first in the sixth
14 race at Cal Expo on December 21, 2012.

15
16 Both parties were noticed and the hearing was scheduled for April 24, 2013 at 10:00 a.m. On
17 that day, the hearing was called to order at approximately 10:10 a.m. in accordance with the notice
18 provided to all parties. The Complainant, CHRB, submitted oral testimony through California
19 Horse Racing Board Investigator Carol Nolan, Dr. Scott Stanley, PhD., and Dr. Rick Arthur, DVM.
20 Respondent called as their witness Dr. Lane Schloeder, DVM. The parties were allowed to submit
21 written closing arguments, and waived any time constraints relative to the issuance of a proposed
22 decision, due to their mutual concurrence to submit written closing arguments, due and submitted on
23 May 20, 2013.

1 LIST OF EXHIBITS

2 CALIFORNIA HORSE RACING BOARD EXHIBITS:

- 3 CHRB Exhibit # 1: Report of Investigation (Admitted)
4 CHRB Exhibit # 2: Cal-Expo, Sixth Race (Admitted)
5 CHRB Exhibit # 3: Daily Transaction Report (Admitted)
6 CHRB Exhibit # 4: Certificate of Analysis (Admitted)
7 CHRB Exhibit # 5: Official Veterinarian's Report (Admitted)
8 CHRB Exhibit # 6: Memorandum/CHRB Official Test Sample # CE20054 (Admitted)
9 CHRB Exhibit # 7: Positive Test Notification (Admitted)
10 CHRB Exhibit # 8: Memorandum/Subject; Sample No., Trainer Date of Race (Admitted)
11 CHRB Exhibit # 9: Complaint, SW0002 (Admitted)
12 CHRB Exhibit # 10: Complaint, SW0002 – Amended (Admitted)
13 CHRB Exhibit # 11: Proof of Service (Mail or In-Person) (Admitted)
14 CHRB Exhibit # 12: Statement from Lane M. Schloeder, DVM (Admitted)
15 CHRB Exhibit # 13: Licensee/Rulings Inquiry (Admitted)
16 CHRB Exhibit # 14: Identification of Levamisole in extracts of urine sample #CE20054 – analysis
17 for the California Horse Racing Board (Admitted)
18

19 RESPONDENT'S EXHIBITS:

- 20 Appellant Exhibit A: Statement from Lane Schloeder, DVM. (Admitted).
21 Appellant Exhibit B: CHRB Drug Testing and Enforcement Process (Admitted).
22

23 FACTUAL FINDINGS

24 I.

25 Respondent Frank Petrelli admitted that he is the trainer of record of Summer's Overtime,
26 who placed first in the sixth race at Cal Expo on December 21, 2012.
27

1 II.

2
3 The purse for the sixth race on December 21, 2012 was \$1,500.00.

4 III.

5
6 Summer's Overtime tested positive for Levamisole after placing first in the sixth race at
7 Cal Expo on December 21, 2012.

8
9 IV.

10 Levamisole is a Class 2 drug, that has significant potential to influence the outcome of a race.

11
12 V.

13 On January 9, 2013, Respondent admitted to CHRB Investigator Carol Nolan that he had
14 given "Summer's Overtime" Levamisole forty eight (48) hours prior to post, and has used
15 Levamisole for the past four (4) years as an "immune stimulant" for all his horses.

16
17 VI.

18 On January 11, 2013, Dr. Lane Schloeder, Respondent's veterinarian for Summer's
19 Overtime, advised CHRB Investigator Nolan that he had prescribed Levamisole for Summer's
20 Overtime as an EPM supplement medication. Dr. Schloeder advised Investigator Nolan that he
21 advised Respondent Petrelli how to use Levamisole, specifically, forty eight (48) to seventy two
22 (72) hours prior to post.

23
24 VII.

25 No Veterinary Confidentials from Dr. Schloeder were located at Cal Expo
26
27
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1 By CHRB Investigator Nolan in her search of Veterinary Confidentials for the entire month of
2 December 2012 for his treatment of "Summer's Overtime" during the month of December 2012 for
3 any ailment.

4
5 VIII.

6
7 On January 9, 2013, University of California Davis Animal Health and Food Safety
8 Laboratory System, Davis, California, Chief Chemist Scott Stanley, PhD, conducted an analysis of
9 urine sample number CE20054, taken on December 21, 2012 at Cal Expo from Summer's Overtime.
10 The sample was found to contain Levamisole. The detection, identification, and confirmation were
11 performed utilizing solid phase extraction and gas chromatography/mass spectrometry. The specific
12 gravity of the urine was 1.017 and the pH was 8.08 utilizing a clinical refractometer and pH meter.
13 The laboratory number was 121228-208467, sample number CE20054, with a sample date of
14 December 21, 2012, and a delivery date to the UC Davis Laboratory on December 28, 2012.
15

16
17 IX.

18 On January 10, 2013, CHRB Investigator Carol Nolan informed Respondent Petrelli of the
19 Levamisole positive finding from Summer's Overtime, sample number CE20054. CHRB
20 Investigator Nolan provided all positive test documentation and notification to Respondent Petrelli,
21 including information on conducting a "split sample." Respondent Petrelli declined to have a split
22 sample provided for testing and analysis.
23

24 X.

25 On January 10, 2013, Respondent Petrelli acknowledged that he had been informed and
26 notified of a positive test finding for Levamisole in the California Horse Racing Board (CHRB)
27 official test sample, sample number CE20054 from the horse Summer's Overtime, by CHRB
28

1 Investigator Carol Nolan. Respondent Petrelli dated this acknowledgment form on January 10, 2013
2 at 3:45 p.m.

3
4 XI.

5 On February 27, 2013, a complaint was filed by the CHRB against Respondent Petrelli for
6 violation of CHRB rule 1843(a)(b)(d) and 1887(a). Specifically, Petrelli is a licensed trainer in the
7 State of California, license number 292848, 02/13. The complaint alleged that on January 9, 2013,
8 the CHRB was notified by the UC Davis Laboratories that the official urine sample, sample number
9 CE20054, taken from the horse Summer's Overtime, which ran in the sixth race and finished first on
10 December 21, 2012 at the Cal Expo Race Track in Sacramento, California, contained Levamisole, a
11 Class 2 drug, Penalty Class B.
12

13
14 XII.

15 On March 14, 2013, the CHRB filed an amended complaint against Respondent Petrelli for
16 violation of CHRB rules 1843(a), (b), and (d), 1887(a), and 1859.5. The violation date was
17 December 21, 2012 and specified that on January 9, 2013, the CHRB was notified by the UC Davis
18 Laboratories that the official urine sample, number CE20054, taken from the horse Summer's
19 Overtime, which ran in the sixth race and finished first on December 21, 2012 at Cal Expo, in
20 Sacramento, California, contained Levamisole, a Class 2 drug, Penalty Class B.
21

22 XIII.

23 Respondent, Frank Petrelli, date of birth 2/17/71, has California Horse Racing Board license
24 number 292848, and is on probation with the CHRB pursuant to a stipulated agreement as of
25 January 25, 2011. On January 20, 2012, a fine was paid from CHRB case number SAC 10-0006.
26
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1 negligent in the care of the horse and is prima facie evidence that the
2 drug substance has been administered to the horse.

3
4 4 C.C.R. Section 1843.3, which is entitled, Penalties for Medication Violations,
5 states that:

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

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

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

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

21 (3) The legal availability of the drug;

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

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

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

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

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

10 (8) The purse of the race;

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

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

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

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

23 (1) Any drug substance, medication, metabolites or analogues thereof
24 foreign to the horse, whose use is not expressly authorized in this
25 division, or
26
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1 (2) Any drug substance, medication or chemical authorized by this
2 article in excess of the authorized level or other restrictions as set
3 forth in the article.

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

5
6 **CATEGORY "B" PENALTIES**

7 Penalties for violations due to the presence of a drug substance in an
8 official test sample, which CHRB drug classification is categorized as
9 warranting a Category B penalty are as follows:

10
11 The penalty for a Category third offense by a licensed trainer within five
12 years, is a minimum ninety (90) day suspension absent mitigating circumstances. The
13 presence of aggravating factors could be used to impose a maximum of a one year
14 suspension, and/or a minimum fine of \$2,500.00 absent mitigating factors. The
15 presence of aggravating factors could be used to impose a maximum fine of \$50,000
16 or 10% of purse (greater of the two), and may be referred to the Board for any
17 further action deemed necessary by the Board.
18

19 4 C.C.R. Section 1859.25, which is entitled, Split Sample Testing, states that:

20
21 (a) In addition to the blood and urine official test samples transmitted
22 to the official laboratory for testing as provided in Rule 1859 of this
23 Article, the Board shall maintain a portion of the official test sample
24 for each horse tested if sufficient sample is available after the official
25 test samples are taken. That portion shall be designated the split
26 sample. The Board makes no guarantee as to the amount of sample
27 which will be available for the split sample. All samples taken by
28 representatives of the Board are under the jurisdiction of and shall

1 remain the property of the Board at all times. The Board shall ensure
2 the security and storage of the split sample.

3
4 (b) When the Executive Director or the Executive Director's designee
5 is notified of a finding by the official laboratory that a test sample
6 from a horse participating in any race contained a prohibited drug
7 substance as defined in this Article, the Executive Director, after
8 consulting with the Equine Medical Director or the Equine Medical
9 Director's designee as to the presence of the prohibited drug substance
10 shall notify a Supervising Investigator. The owner and the trainer shall
11 be confidentially notified of the finding by a Supervising Investigator
12 or his/her designee and the owner and trainer shall each have 72 hours
13 from the date he or she is notified to request that the split sample of
14 the official test sample that was found to contain the prohibited drug
15 substance(s) be tested by an independent Board approved laboratory.

16
17 (c) If the owner or trainer wishes to have the split sample tested, he or
18 she shall comply with the following procedures:

19
20 (1) The request shall be made on CHRB-56, (Rev. 5/97), Request to
21 Release Evidence, which is hereby incorporated by reference. CHRB-
22 56 shall be made available at all CHRB offices.

23
24 (2) The owner or trainer requesting to have the split sample tested
25 shall be responsible for all charges and costs incurred in transporting
26 and testing the split sample. By signing CHRB-56, the owner or
27 trainer certifies he or she has made arrangements for payment to the
28 designated Board-approved laboratory for laboratory testing services.

(3) Verification of payment for costs incurred in transporting and
testing the split sample must be received by the CHRB within five (5)
working days from the CHRB receipt of CHRB-56. If such
verification of payment is not received, the split sample will not be

1 released or shipped to the Board-approved laboratory designated by
2 the owner or trainer to test the split sample and the owner and trainer
3 will have relinquished his/her right to have the split sample tested. If a
4 complaint issues, the only test results that will be considered will be
5 the results from the Board's official laboratory.

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

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

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

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

26 (f) Results of the official test sample and the split sample shall be, and
27 shall remain, confidential and shall be provided only to the Executive
28 Director or the Executive Director's designee, the Board, the Equine

1 Medical Director or the Equine Medical Director's designee, and to
2 the owner and trainer, unless or until the Board files an official
3 complaint or accusation.
4

5 4 C.C.R. Section 1859.5, which is entitled, Disqualification Upon Positive Test Finding,
6 states that:
7

8 A finding by the stewards that an official test sample from a horse
9 participating in any race contained a prohibited drug substance as
10 defined in this article, which is determined to be in class levels 1-3
11 under Rule 1843.2 of this division, unless a split sample tested by the
12 owner or trainer under Rule 1859.25 of this division fails to confirm
13 the presence of the prohibited drug substance determined to be in class
14 levels 1-3 shall require disqualification of the horse from the race in
15 which it participated and forfeiture of any purse, award, prize or
16 record for the race, and the horse shall be deemed unplaced in that
17 race. Disqualification shall occur regardless of culpability for the
18 condition of the horse.

19 4 C.C.R. Section 1887, which is entitled, Trainer to Insure Condition of Horse, states that:

20 (a) The trainer is the absolute insurer of and responsible for the
21 condition of the horses entered in a race, regardless of the acts of third
22 parties, except as otherwise provided in this article. If the chemical or
23 other analysis of urine or blood test samples or other tests, prove
24 positive showing the presence of any prohibited drug substance
25 defined in Rule 1843.1 of this division, the trainer of the horse may be
26 fined, his/her license suspended or revoked, or be ruled off. In
27 addition, the owner of the horse, foreman in charge of the horse,
28 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.

1
2 (b) Notwithstanding the above, if the Board or its agents fail to notify
3 a trainer of a potential positive test within 21 calendar days from the
4 date the sample was taken, the trainer shall not be deemed responsible
5 under this section unless it is shown by the preponderance of the
6 evidence that the trainer administered the drug or other prohibited
7 substance defined in Rule 1843.1 of this division, caused the
8 administration or had knowledge of the administration.

9 Business and Professions Code section 19581, which is entitled, Administration of
10 Substances; Limitations, Searches and Inspections, states that:

11 No substance of any kind shall be administered by any means to a
12 horse after it has been entered to race in a horse race, unless the board
13 has, by regulation, specifically authorized the use of the substance and
14 the quantity and composition thereof. The board may require that the
15 official veterinarian approve, in writing, the administration of those
16 substances in accordance with the regulations of the board. Any
17 medication or equipment used to dispense medication that is located
18 within the inclosure is subject to search and inspection at the request
19 of any board official.

20 The complainant must prove that a medication violation by preponderance of the evidence.
21 (Evidence Code Section 115). Under the Trainer-Insurer rule, the trainer has the ultimate
22 responsibility for the condition of the horses, such that the complainant does not need to prove how
23 or why the horse tested positive for the prohibited drug. (4 C.C.R. section 1887). If the trainer is not
24 notified of the medication positive within 21 days of the sample being taken, the complainant must
25 also prove the trainer administered the prohibited drug or had knowledge of the administration of
26 the prohibited drug. (4 C.C.R. Section 1887(b)).

1 DISCUSSION OF ISSUES

2 I. RESPONDENT PETRELLI ADMITTED THE MEDICATION VIOLATION.

3
4 At the hearing on the matter, Respondent, by and through his counsel of record, admitted to
5 the basic facts of the complaint; that he was the trainer of record for Summer's Overtime, the horse
6 tested positive for Levamisole, a class 2, penalty schedule B drug, on December 21, 2012, after
7 winning the sixth race at Cal Expo.¹ Pursuant to 2 C.C.R. Section 1843.3, the minimum penalty for
8 a violation given Respondent's record (two previous medication positives within the past five (5)
9 years) is a 90-day suspension and a \$2,500 fine.² Not only did the Respondent violate the
10 prohibition on horses running a race on prohibited substances, the evidence demonstrates that
11 Respondent administered Levamisole to Summer's Overtime within 24 hours of the race, and "most
12 likely" within twelve hours of the race. (Reference is made to the Reporter's Transcript (hereinafter
13 referred to as "RT") Page 68, lines 21-24, the testimony of Dr. Rick Arthur, DVM. Therefore,
14 Respondent violated Sections 1843 and 1843.5(b), which prohibit the administration of medications
15 to a horse within 48 hours of that horse running a particular race.
16

17
18 The testimony of Respondent's witness, Dr. Lane Schloeder, was such that even though he
19 testified that he told Respondent to follow his guidelines in the administration of Levamisole, which
20 was a 48 to 72 hour withdrawal time, Dr. Schloeder could not confirm when Summer's Overtime
21 was administered Levamisole prior to December 21, 2012.³
22

23 _____
24 ¹ Reference is made to Complainant's Exhibits 1 – 14, inclusively.

25 ² Reference is made to Complainant's Exhibit 13, and the Sentencing Brief of Respondent's counsel, Chad C. Couchot,
26 dated April 22, 2013.

27 ³ Reference is made to Reporter's Transcript, Page 44, Lines 10 – 21, inclusively.
28

1 Additionally, no metabolites of the drug Levamisole, such as Pemoline and/or Aminorex in
2 the horse's system nor detected in the urine sample taken from Summer's Overtime, which clearly
3 refutes Respondent Petrelli's position that the drug Levamisole "accumulated" in Summer's
4 Overtime over a period of time.⁴ The evidence is beyond the requisite standard of proof, and in fact
5 is beyond a clear and convincing standard that the drug Levamisole was administered to Summer's
6 Overtime within 12 to 24 hours of post time, especially in light of the high concentration level of
7 Levamisole in Summer's Overtime, coupled with the fact that no metabolites such as Pemoline
8 and/or Aminorex were in the horse's system.
9

11 **II. THE CHRB COMPLIED WITH ITS REGULATIONS AND THE TEST WAS VALID**

12
13 Respondent Petrelli argues that because the CHRB did not strictly comply with the
14 "guidelines" posted on its website regarding the timing when urine samples are to be delivered to
15 the laboratory (UC Davis Laboratory), and when test results are going to be reported back to the
16 CHRB by the laboratory (UC Davis Laboratory), his due process was violated. Based on the
17 following reasons, the respondent's argument is flawed and fails.
18

19 First, the CHRB Drug Testing and Enforcement Process Memorandum posted on the CHRB
20 website was created in part by veterinarian Dr. Rick Arthur to respond to press inquiries regarding
21 why it took so long to prosecute medication violations (RT 69:12-70:7). It should be noted that these
22 are guidelines and not regulations. Therefore, no State of California regulations relative to the
23 California Horse Racing Board were violated. All testing was done within the specific regulations
24 set forth within Section 1887. The only applicable regulation that specifically addresses when a
25
26

27 ⁴ Reference is made to Respondent's closing brief, dated May 20, 2013, Page 4, Lines 15 – 19.
28

1 sample is to be shipped and when a result is reported is Section 1887(b) (4 C.C.R. section 1887), the
2 Trainer-Insurer rule. According to Section 1887(b), a trainer must be notified of a medication
3 violation within 21 days of the date the sample was taken, or the CHRB cannot rely on the Trainer-
4 Insurer rule, but must then prove that the trainer administered the prohibited drug, or had knowledge
5 of the administration. (4 C.C.R. Section 1887(b)). The timeframe does not prohibit the finding of a
6 medicine violation, but rather affects only the presumption of guilt of the trainer.
7

8
9 In this instance, it was admitted by Respondent Petrelli that he was notified of the positive
10 Levamisole test within 21 days of the sample being taken.⁵ Furthermore, the testimony elicited at
11 the hearing confirmed that neither the timing of the shipping of the sample to the UC Davis
12 Laboratory nor the state of the sample when it was taken from Summer's Overtime during the time,
13 could have affected a false positive test result. Additionally, Dr. Stanley and Dr. Arthur respectively
14 testified the only possible effect any untimeliness could have been would be the reduction in the
15 presence and strength of the prohibited medication, Levamisole, not an increase in strength. The
16 sample tested so high for Levamisole that according to Dr. Arthur's testimony, it must have been
17 administered within 12 to 24 hours of the race because there were no metabolites in the sample.⁶
18

19
20 Finally, Respondent's assertion that he was denied due process fails. On or about January
21 10, 2013, CHRB Investigator Nolan specifically advised Respondent Petrelli of the positive drug
22 test from Summer's Overtime, as a result of a urine sample collected on December 21, 2012 from
23 the Summer's Overtime. Respondent Petrelli was offered a split sample to confirm the validity of
24 the testing pursuant to 4 C.C.R. Section 1859.25, and failed to request such a split sample.
25

26 ⁵ Reference is made to Complainant's Exhibits 1 and 7, inclusively.

27 ⁶ Reference is made to Reporter's Transcript, Page 68, Lines 21 – 24, the testimony of Dr. Rick Arthur, DVM.
28

1
2 Respondent Petrelli was the trainer for Summer's Overtime at the time of the December 21,
3 2012 sixth race and medication violation. Summer's Overtime, was under Respondent's care at the
4 time of the December 21, 2012 sixth race at Cal Expo, ⁷ and tested positive for a Class 2
5 medication. All the official rules were followed relative to the collection and testing process.
6

7
8 Therefore, there was no violation of any regulation which had any effect on the
9 Respondent's due process rights, and as such, Respondent is subject to the mandates of section
10 1887(a), the Trainer-Insurer rule.
11

12 **PENALTY DISCUSSION**
13

14 Respondent Petrelli has two prior substance violations in the past five (5) years, a Category
15 B violation on August 26, 2009 and a Category A violation on December 14, 2009.⁸
16

17 In deciding the appropriate penalty, both the mitigating circumstances and aggravating
18 factors, which must be considered. They include, but are not limited to, the following:
19

- 20 (1) The past record of the licensee regarding violations of Business
21 and Professions Code section 19581;
22

23
24 ⁷ Reference is made to Complainant's Exhibit 1, the interview of Respondent Petrelli by CHRB Investigator Carol
25 Nolan on January 10, 2013.

26 ⁸ Reference is made to Respondent's Sentencing Statement, CHRB Docket number 13SW0002, submitted by
27 Respondent's counsel of record, Chad C. Couchot, on April 22, 2013, as well as Complainant's Exhibit 13.
28

- 1 (2) The potential of the drug(s) to influence a horse's racing
2 performance;
- 3 (3) The legal availability of the drug;
- 4
- 5 (4) Whether there is reason to believe the responsible party knew of
6 the administration of the drug or intentionally administered the drug;
- 7
- 8 (5) The steps taken by the trainer to safeguard the horse;
- 9
- 10 (6) The steps taken by an owner to safeguard against subsequent
11 medication violations including, but not limited to, the transfer of the
12 horse(s) to an unaffiliated trainer;
- 13 (A) For the purpose of this regulation "unaffiliated trainer" means a
14 trainer or an assistant trainer who is not related by blood, marriage or
15 domestic partnership, or who is not or was never employed by the
16 trainer from whose care such horse(s) were transferred.
- 17 (7) The probability of environmental contamination or inadvertent
18 exposure due to human drug use or other factors;
- 19 (8) The purse of the race;
- 20
- 21 (9) Whether the drug found to be present in the official test sample
22 was one for which the horse was receiving treatment as determined
23 through the process described in Rule 1842 of this division;
- 24 (10) Whether there was any suspicious wagering pattern on the race;
- 25
- 26 (11) Whether the licensed trainer was acting under the advice of a
27 licensed veterinarian.
- 28

1 **I. THE FACTORS IN AGGRAVATION OUTWEIGH THE FACTORS IN**
2 **MITIGATION REGARDING THE PENALTY FOR RESPONDENT PETRELLI**
3

4 Pursuant to the regulation governing medication violation penalties and Respondent's
5 record, a 90-day suspension and \$2,500 fine is the minimum penalty for a Class 2 medication
6 violation (4 C.C.R. Section 1843.3). 4 C.C.R. Section 1843.3(b) provides that mitigating and
7 aggravating circumstances must be considered in the penalty assessed of a licensee, and provides
8 examples of such circumstances. Based on the balancing of the mitigating and aggravating
9 circumstances, it is hereby held that the factors in aggravation outweigh those factors in mitigation
10 for the following reasons, set forth below.
11

12
13 First, Respondent's prior record must be considered. Mitigating circumstances as well as
14 aggravating circumstances should be considered and include but are not limited to the licensee's
15 prior record regarding violations of Business and Professions Code Section 19581. Business and
16 Professions Code Section 19581 relates to the administration of prohibited substances to horses.
17 Despite the Respondent's argument that his prior record should not be considered because it is
18 somehow "built in" to the proposed penalty, his prior record must in fact be considered (4 C.C.R.
19 Section 1843.3(b)(1)). Here, Respondent had a prior Class 1 violation and a prior Class 2 violation
20 within five years. He was also on probation for his previous Class 1 violation. Respondent's prior
21 record warrants at least a minimum penalty for the violation, if not more. Therefore, this is a factor
22 in aggravation relative to Respondent Petrelli.
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25 The next factor to be considered is the potential for the drug to influence a race horse's
26 performance (4 C.C.R. Section 1843.3(b)(2)). Levamisole is currently a Class 2 drug, but was a
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1 Class 1 drug at the time of the offense. It has a significant potential to influence the outcome of a
2 race.⁹ Therefore, this is a factor in aggravation relative to Respondent Petrelli.

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4 The next factor to be considered is whether the party knew of the administration of the drug
5 (4 C.C.R. Section 1843.3(b)(4)). Respondent admitted he administered the drug and did so for
6 multiple horses in his barn.¹⁰ Therefore, this is a factor in aggravation relative to Respondent
7 Petrelli.

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10 Another factor to be considered is whether any steps and methodology were taken to
11 safeguard the horses (4 C.C.R. Section 1843.3(b)(5)). There was no testimony on any measures
12 Respondent Petrelli used to safeguard his horses from testing positive for prohibited race day
13 medications. He claimed in his January 10, 2013 statement to CHRB Investigator Nolan to have
14 given the medication 48 hours prior to post time to Summer's Overtime,¹¹ and the only testimony
15 that was derived during the hearing was from Dr. Arthur, DVM, who testified that given the
16 concentration of Levamisole in the horse's urine, coupled with the fact that there were no
17 metabolites as a result of the use which would have occurred within 12 to 24 hours, the medication
18 must have been given within 12 to 24 hours of post time.¹² Although Dr. Schloeder testified that he
19 had prescribed and examined Summer's Overtime, no Veterinary Confidential's were located for the
20 whole month of December, 2012 relative to his treatment of Summer's Overtime. There is no
21 documented treatment located for Dr. Schloeder during the aforementioned timeframe. Furthermore,

22
23 ⁹ Reference is made to Reporter's Transcript, Page 60, Lines 4 – 10, inclusively, the testimony of Dr. Rick Arthur,
24 DVM.

25 ¹⁰ Reference is made to Complainant's Exhibit 1.

26 ¹¹ Id.

27 ¹² Reference is made to Reporter's Transcript, Page 68, Lines 21 – 24, the testimony of Dr. Rick Arthur, DVM.

1 Dr. Schloeder's testimony and credibility was at best questionable, and highly suspect, based on his
2 demeanor, lack of straightforward answers, and evasive testimony. Therefore, this is a factor in
3 aggravation relative to Respondent Petrelli.

4
5 Another factor to be considered was whether the Respondent was acting under the advice of
6 a licensed veterinarian (2 C.C.R. Section 1843.3(b)(11)). While the medication had been prescribed
7 by Dr. Schloeder, no Veterinary Confidential was filed and/or located by CHRB Investigator Nolan.
8 Therefore, it is highly suspect whether he in fact diagnosed and examined Summer's Overtime and
9 actually came up with a diagnosis of EPM, or in fact just provided the Levamisole to Respondent
10 Petrelli as a result of Respondent Petrelli's request for that drug. Dr. Schloeder's credibility was
11 less than exemplary; but, the hearing officer hereby considers this factor to be a factor in mitigation
12 for Respondent Petrelli.
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15 The next factor is legal availability of the drug. The substance in question,
16 Levamisole, is not available without a prescription, and is a Class 2 B drug.
17 Therefore, this is a factor in aggravation against Respondent Petrelli.
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20 The next factor is the probability of environmental contamination or
21 inadvertent exposure due to human drug use or other factors. There was no testimony
22 submitted by either side relative to this factor. Therefore, this is considered to be a
23 factor in mitigation for Respondent Petrelli.
24

25 The next factor is the size of the purse of the race. The purse was \$1,500.00
26 for the sixth race at Cal Expo on December 21, 2012, which is not a large purse.
27 Therefore, this is considered to be a factor in mitigation for Respondent Petrelli.
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2 The next factor is whether there was any suspicious wagering pattern on the
3 race. There is no evidence of such a wagering pattern. Therefore, this is considered to
4 be a factor in mitigation for Respondent Petrelli.
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6 The next factor is whether the drug found to be present in the official test
7 sample was one for which the horse was receiving treatment as determined through
8 the process described in Rule 1842. The testimony of Dr. Schloeder was that he
9 prescribed Levamisole because he agreed with the prior diagnosis of another
10 veterinarian that Summer's Overtime had EPM. The credibility of Dr. Schloeder is
11 questionable whether he in fact purely ratified the alleged prior veterinarian's
12 diagnosis of EPM for Summer's Overtime, as related by Respondent Petrelli to Dr.
13 Schloeder, or in fact he conducted his own physical examination of Summer's
14 Overtime. In a balancing of factors, the hearing officer will consider this as a factor
15 in mitigation in favor of Respondent Petrelli.
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18 The next factor to be considered is whether any steps were taken by an owner
19 (Respondent Petrelli) to safeguard against subsequent medication violations
20 including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer.
21 There is no evidence that Respondent Petrelli took any safeguards after his prior
22 medication violations to safeguard against any such medication violations. In fact,
23 Respondent admitted to CHRB Investigator Nolan on January 10, 2013 that "...[he]
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1 has used Levamisole for the past four (4) years as an "immune stimulant" for all his
2 horses..."¹³ Therefore, this is a factor in aggravation against Respondent Petrelli.

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4 The factors in aggravation outweigh the factors in mitigation against
5 Respondent Petrelli. Therefore, it is hereby the opinion of the hearing officer that the
6 minimum penalty, 90-day suspension and a \$2,500 fine, be imposed. Respondent
7 Petrelli was on probation for a prior Class 1 medication violation at the time, and the
8 violation triggers the remainder of the suspension for the previous violation.
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12 CONCLUSION/PROPOSED DECISION

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14 For the foregoing reasons, and evidence presented against Respondent Petrelli, it is the hearing
15 officer's proposed ruling that the minimum penalty, a ninety (90) day suspension and a \$2,500 fine, be
16 imposed against Respondent.

17
18 DATED: 6/19/13

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22 RICHARD P. MARGARITA, ESQ.
23 Hearing Officer
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25 ¹³ Reference is made to Complainant's Exhibit 1, the interview of Respondent Petrelli by CHRBR Investigator Carol
26 Nolan on January 10, 2013.
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