

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

ROBERTO DEDIOS
Owner, CHRB License #302731
Respondent

CHRB Case No. 19LA0044

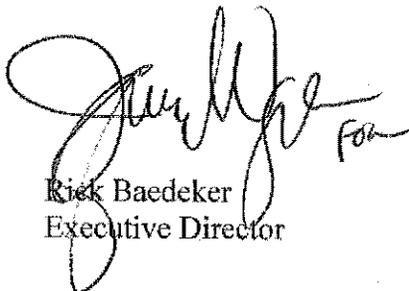
DECISION

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

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order for payment of the five thousand (\$5,000.00) fine and setting the suspension.

IT IS SO ORDERED ON July 18, 2019.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

that the owner of record at the time the race was run was Javier Lopez. The CHRB then filed a complaint against Respondent, Nunez, as well as the owner of record Lopez alleging several CHRB rule violations. All three complaints were combined into one formal hearing that was heard June 7, 2019. Before that hearing took place, the Board of Stewards at Los Alamitos disqualified the horse because of the positive test finding and ordered the purse money to be redistributed in accordance with Ruling #67 dated March 15, 2019 at Los Alamitos. Case numbers 19LA0018, 19LA0019 and 19LA0044 are concerned with the owners' and trainer's responsibility in the alleged positive. These three complaints were heard during one day of testimony. The Board of Stewards—C. Scott Chaney, James Dreyer and David Nuesch heard oral evidence from several witnesses and documentary evidence was also marked for identification and entered into evidence. The hearing was then brought to a close.

LIST OF EXHIBITS

CHRB Exhibit 3: CHRB Investigative Report which included cover pages; Freedom of Information Summary—Original New Animal Drug Application Zilmax plus Rumensin; Journal of Animal Science Dietary zilpaterol hydrochloride.II.Carcass composition and meat palatability of beef cattle; CHRB rules 1843, 1887, 1843.1 and 1859.5, and 1902; Report of Investigation; Certificate of Analysis: CA-POS-014881; Memorandum re CHRB Official Test Sample #LA43037; Positive Test Notifications; Request to Release Evidence; Canceled check for split sample; UC Davis letters to the CHRB dated February 15, 2019 and March 12, 2019; Split Sample Memorandum dated March 7, 2019; University of Florida lab positive confirmation; Past Performances/Official Program for the first race January 12, 2019 at Los Alamitos; Equibase chart for the race; redacted Veterinarian Confidential Report; Bleeder Treatment Report; Acknowledgment of Test Sample; Official Veterinarian's Report; Test Sample Shipping Invoice; Horse Medication History; Los Alamitos Arrival/Departure Forms; CHRB Receipt for Property; Photograph of feed sample; CHRB Evidence Description; CHRB of Equine Drug Evidence Collected, Purchased or Seized; Selection of Administrative Adjudication; CHRB Investigative File; Positive Test Barn Inspection; Inspection Report; Barn Inspection Report; CHRB Trainer's Backstretch Workers List; Jockey Club Foal Papers; Declaration of Test Barn Sample Custodian; Declaration of Test Barn sample collector; and CHRB License histories of Jesus Nunez, Javier Lopez, Robert Dedios, Peggy Lighthill and Byron Aguilar.

FACTUAL FINDINGS

I

At all times herein mentioned, Roberto Dedios was licensed by the CHRB in the license category of owner.

II

On January 12, 2019, the thoroughbred racehorse "Somethingaboutnick" finished first in the first race at Los Alamitos Race Track.

III

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

IV

After testing the samples, UC. Davis laboratory reported that the post race urine sample #LA43037, which came from "Somethingaboutnick" contained zilpaterol which is a prohibited drug substance under CHRB Rules and Regulations.

V

Zilpaterol is classified under the California Horse Racing Board rules and regulations as a class 2 substance in the penalty category A.

VI

While Respondent was not the owner of record on the program or on the registration papers, he believed that he was the true owner of "Somethingaboutnick," because he had signed a purchase agreement with respect to the horse prior to the race.

VII

Respondent had the racehorse at his ranch prior to the race and inadvertently fed the horse a livestock supplement that contained the prohibited drug zilpaterol.

VII

Respondent transported the horse to Los Alamitos the day before the race and took the horse back to his ranch after the race.

APPLICABLE RULES AND REGULATIONS

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

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

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

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

HISTORY:

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

California Horse Racing Board rule 1843.1. Prohibited Drug Substances.

For purposes of this division, prohibited drug substance means:

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

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

HISTORY:

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

California Horse Racing Board Rule 1859.5 Disqualification Upon Positive Test Finding.

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 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 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.

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

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

charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off.

- (b) A ship-in horse is defined as any horse entered to race that has not been in the care of a Board-licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.
- (c) Notwithstanding the above, if the Board or its agent fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under the rules unless it is shown by the preponderance of the evidence that the trainer or the owner of a ship-in horse administered the drug or other prohibited substance defined in ship-in horse administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

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

HISTORY:

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

California Horse Racing Board rule 1902. Conduct Detrimental to Horse Racing.

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

- (a) knowing association with any known bookmaker, known tout, or known felon.
- (b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged.
- (c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

NOTE: Authority cited: Sections 19440 and 19460, Business and Professions Code. Reference: Sections 19440 and 19460 and 19572, Business and Professions Code.

HISTORY: 1. Amendment filed 2-22-93; effective 3-24-93.

DISCUSSION OF ISSUES

Class I, II and III medication positives (under CHRB Rules and Regulations), if proven, require a disqualification of the horse and redistribution of the purse (CHRB Rule 1859.5 Disqualification Upon Positive Test Finding). In the instant matter, the actual positive test was not contested, the horse was disqualified and the purse was redistributed. Here we must determine whether the owner is subject to any penalty for the underlying medication positive. 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. We further 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 regarding zilpaterol here. We do note that the factors were originally written to apply to trainers and that owners have since been added to the rules regarding medication violations, all of the factors do not neatly apply.

- (1) "*The past record of the licensee regarding violations of Business and Professions Code section 19581.*" This factor is mitigating because Respondent has no prior violations.
- (2) "*The potential of the drug(s) to influence a horse's racing performance.*" Zilpaterol is used to increase muscle mass in livestock. Therefore this factor is aggravating.
- (3) "*The legal availability of the drug.*" Zilpaterol is legal but not in horse racing. Therefore, this factor is aggravating.
- (4) "*Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug.*" This factor is mitigating because Respondent accidentally administered the drug.
- (5) "*The steps taken by the [owner] to safeguard the horse.*" This factor is aggravating because evidence showed that Respondent made a mistake with respect to the feed supplement by his own admission and left much of the responsibility for the care of his horses to his employees.

(6) *"The steps taken by the owner to safeguard against subsequent medication violations..."* There was no evidence with respect to this factor at hearing. Neutral.

(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 is mitigating because the purse was 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."* This factor is aggravating because no evidence exists that the horse was receiving treatment under rule 1842 for zilpaterol.

(10) *"Whether there was any suspicious wagering pattern on the race."* There was no evidence of wagering irregularities and therefore this is a mitigating factor.

(11) *"Whether the licensed trainer was acting under the advice of a licensed veterinarian."* Respondent was not acting under the advice of a veterinarian regarding zilpaterol and therefore this factor is 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, both of which are mitigating. That is the fact that Mr. Dedios was not the owner of record when the race was run and the fact that he was not the trainer of record when the horse ran. Ultimately the rules and regulations endeavor to hold the trainer principally responsible because the trainer is generally the person in the best position to prevent positives. While the owner has been added to the rules and regulations regarding culpability, the trainer still remains in the best position for prevention. In this case, Mr. Nunez simply could have refused to run the horse given the circumstances and his lack of custody and control. These factors would greatly mitigate any penalty. On balance, we find that the mitigating circumstances outweigh the aggravating ones and therefore require a departure from the minimum penalties described under the guidelines which call for a one year suspension and ten thousand dollar fine.

CONCLUSION/PROPOSED DECISION

Given the foregoing, we recommend that Respondent be suspended for a period of 90 days (45 days of which will be stayed if Mr. Dedios does not incur any Class I, II or III positives for a period of one year from the date of the ruling), and that Respondent be fined five thousand dollars (\$5,000.00). We recommend that this decision be memorialized in the following ruling:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

OWNER ROBERTO DEDIOS, 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. DEDIOS 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. DEDIOS 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 ROBERTO DEDIOS ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS TO SUSPEND OR FINE) ROBERTO DEDIOS IS DENIED ACCESS TO ALL PREMISES IN THIS JURISDICTION.

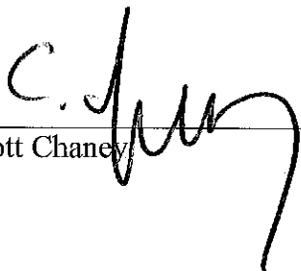
*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 302731 exp. 6/2021

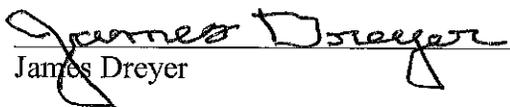
Case# 19LA0044

DATED: July 7, 2019.

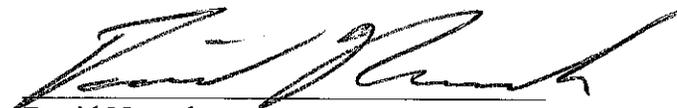
BOARD OF STEWARDS



C. Scott Chaney



James Dreyer



David Nuesch