

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

ROGER STEIN
CHRB License #103386
Respondent

CHRB Case #14SA161

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 hundred dollar (\$500.00) fine and setting the fifteen (15) calendar day suspension.

IT IS SO ORDERED ON October 23, 2014.

CALIFORNIA HORSE RACING BOARD

Chuck Winner, Chairman



Rick Baedeker
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	
)	
ROGER STEIN, trainer,)	Case No. 14SA161
RESPONDENT)	
)	
)	
)	
)	

PROPOSED DECISION

This matter was heard on August 20, 2014 by the Board of Stewards – C. Scott Chaney, Luis Jauregui and Kim Sawyer at Del Mar Race Track in Del Mar, CA.

Trainer Roger Stein (hereinafter “Stein” or “Respondent”) represented himself and appeared by telephone. The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) was represented by Supervising Investigator Rick Amieva.

This matter was filed on August 6, 2014. A record was kept by court reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Following the running of the fourth race at Santa Anita on May 1, 2014, trainer Roger Stein had “Luckbox Sam,” a horse in his care who finished second, allegedly test positive for norpseudoephedrine and O-desmethylpyrilamine—both metabolites of prohibited substances. Subsequent to the CHRB laboratory reporting of the alleged positive, the CHRB filed two complaints in this matter: (1) case number 14SA160 alleged violation of CHRB rule 1859.5 and is concerned with disqualification and purse redistribution (involving owner, trainer, and jockey); (2) case number 14SA160 is concerned with the trainer’s responsibility in the alleged positive. The matter was originally scheduled to be heard in July, but after considering Respondent’s motion for a continuance, a hearing date was set for August 20, 2014. Respondent also requested that he be permitted to appear by telephone, and with no objection by the CHRB, that request was granted. On August 20, the hearing was called to order, documentary evidence and oral testimony were taken, and the matter was closed.

LIST OF EXHIBITS

Complainant Exhibit A: Complaint packet which included, 2 face pages (one for each case number), positive test notification, report of investigation, memoranda from the CHRB regarding positive test, acknowledgement of test sample, official veterinarian's report, test sample shipping invoice, certificate of analysis (UC, Davis), final report (UC, Davis), official race results, memorandum from CHRB regarding split sample, copy of governing procedure for hearing before board of stewards, equibase printout regarding "Luckbox Sam," redacted veterinarian confidential, and CHRB license printouts for the connections of the horse.

FACTUAL FINDINGS

I

At all times herein mentioned, Roger Stein was licensed by the CHRB in the license category of trainer.

II

On May 1, 2014, the thoroughbred racehorse "Luckbox Sam" ran in the fourth race at Santa Anita Race Track.

III

Following the running of the race, blood and urine samples were obtained from "Luckbox Sam" 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, U.C. Davis laboratory reported that the post race urine sample #SA15904, which came from "Luckbox Sam" contained the prohibited drug substances Norpseudoephedrine, a metabolite of pseudoephedrine; and O-desmethylpyrilamine, a metabolite of pyrilamine.

V

The aforementioned drug substances are classified under the California Horse Racing Board rules and regulations as a class 3 substance in the penalty category B.

VI

Pursuant to the rules, Respondents did not request that the split sample be tested.

APPLICABLE RULES AND REGULATIONS

Rule No.	Rule Title
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 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 337 h, 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
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 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
1843.1	Prohibited Drug Substances.
Rule Text	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.

**Rule
No.**

Rule Title

1887 Trainer to Insure Condition of Horse.

**Rule
Text**

(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.

DISCUSSION OF ISSUES

Both the disqualification/purse redistribution and as well as trainer responsibility cases were combined in this hearing because they involved common issues of law and fact. The positive, if proven, requires a disqualification of the horse and redistribution of the purse (CHRB Rule 1859.5 Disqualification Upon Positive Test Finding). In fact there was no real dispute or challenge to the integrity of the drug testing and the resulting positive. In fact, Respondent believed that he knew the source of the positive – a treatment for hives that his assistant failed to discontinue in time. Therefore, the disqualification and purse redistribution ruling was published immediately:

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling

of the
Board of Stewards
Del Mar Thoroughbred Club
(Association)

August 23, 2014

(Date)

DMTD #033

Acting on a report from the University of California, Davis Kenneth L. Maddy Analytical Laboratory, the official testing laboratory for the California Horse Racing Board, that urine sample SA15904 obtained from the horse LUCKBOX SAM, the second place finisher in the fourth race at Santa Anita Race Track on May 1, 2014, contained the drugs Norpseudoephedrine and O-desmethyprilamine (class 3), it is ordered that LUCKBOX SAM be disqualified from all purse monies earned in said race in accordance with California Horse Racing Board rule 1859.5 (Disqualification Upon Positive Test Finding).

It is further ordered that the purse money earned in said race (\$3,200.00) be returned by owner Stein Stables Inc. (\$3,020.00) and jockey Julien Couton (\$85.00) to the Paymaster of Purses at Santa Anita Race Track by September 23, 2014 for redistribution in accordance with the revised order of finish.

All records are ordered changed to reflect this ruling. In accordance with California Horse Racing Board rule #1956 (Race Declared Official) neither pari-mutuel payoffs nor the distribution of any pari-mutuel pool shall be affected.

The revised order of finish is as follows:

- 1st Northern Force
- 2nd Meringue Pie (GB)
- 3rd Shackbamalama
- 4th Tiz Futurity
- 5th Ekahi

CASE# 14SA161

LIC#: 237051 exp. 01/2015; Roger Stein 103386 exp. 01/2015; 295587 exp. 02/2016 Julien Couton

BY ORDER OF THE
BOARD OF STEWARDS

The remaining issue, therefore, centers around trainer responsibility for the post race 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. For many years, that rule, coupled with CHRB rule 1887 (Trainer to Condition of Horse) created a strict liability framework for trainer responsibility 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 and 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." Mr. Stein has only one medication issue on his record in the recent history (bute overage for which he received a warning). This factor is *mitigating*.
2. "The potential of the drug(s) to influence a horse's racing performance." While there was no evidence on this factor, medication and drugs that are classified as class I, II or III have the potential to influence a horse's performance. This factor is *aggravating*.
3. "The legal availability of the drug." No credible evidence. *Neutral*.
4. "Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug." The only evidence as to the source of this drug came from the Respondent. In other the words, the CHRB offered no theory as to where the positive originated or what medication caused it. There was no scientific evidence as to the origin of these metabolites. This factor is *neutral*.
5. "The steps taken by the trainer to safeguard the horse." There was no evidence on this factor. *Neutral*.
6. "The steps taken by the owner to safeguard against subsequent medication violations..." There was no evidence on this factor. *Neutral*.
7. "The probability of environmental contamination or inadvertent exposure due to human drug use or other factors." There is no evidence on this factor. *Neutral*.

8. The purse of the race." This factor does not apply because the purse was not particularly high or low. *Neutral.*
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." There is no evidence that a veterinarian was treating this horse. If we take Respondent's testimony as face value, this factor would be *neutral.*
10. "Whether there was any suspicious wagering pattern on the race." There was no evidence of wagering irregularities. *Neutral.*
11. "Whether the licensed trainer was acting under the advice of a licensed veterinarian." No evidence on this factor; *neutral.*

Frankly, there was scant evidence provided on any of these factors, making our decision in some ways easier and in some ways more difficult. At the end of the day, however, evidence showed that a trainer with a very good medication history had a horse test positive for a class 3 drug substance.

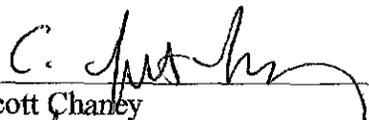
Complainant requested a 30 day suspension and \$500.00 fine for this alleged violation which is the minimum under the penalty guidelines absent mitigating circumstances. On balance, we find that the mitigating circumstances slightly outweigh the aggravating ones and therefore require a departure from the minimum penalties described under the guidelines. As a result, pursuant to those guidelines and factors, we believe that a 15 day suspension and \$500.00 fine are appropriate.

CONCLUSION/PROPOSED DECISION

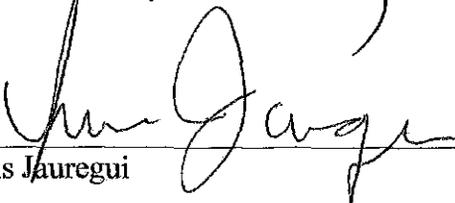
Given the foregoing, we recommend that the CHRB suspend Mr. Stein for a period of 15 calendar days, and levy a fine of \$500.00.

DATED: October 5, 2014.

BOARD OF STEWARDS



 C. Scott Chaney



 Luis Jauregui



 P. Kim Sawyer

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