

CALIFORNIA HORSE RACING BOARD  
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## REGULAR MEETING

of the **California Horse Racing Board (CHRB)** will be held **Thursday, February 23, 2017**, commencing at **9:30 a.m.**, in the **Baldwin Terrace Room** at the **Santa Anita Park Race Track, 285 West Huntington Drive, Arcadia, California**. The audio portion only of the California Horse Racing Board regular meeting will be available online through a link at the CHRB website ([www.chrb.ca.gov](http://www.chrb.ca.gov)) under "Webcasts."

### AGENDA

#### Action Items:

1. **Approval of the minutes of January 26, 2017.**
2. **Executive Director's Report.**
3. **Public Comment:** Communications, reports, requests for future actions of the Board. **Note:** Persons addressing the Board under this item will be restricted to **three (3) minutes** for their presentations.
4. Discussion and action by the Board regarding a report from the **California Marketing Committee (CMC) regarding its 2017 Marketing and promotion plans pursuant to Business and Professions Code section 19605.73(B).**
5. Public hearing and action by the Board regarding the **proposed amendment to CHRB Rule 1581, Racing Secretary to Establish Conditions**, to allow racing secretaries to write medication-based eligibility conditions as agreed to with the acknowledged horsemen's organization(s) and approved by the Board before entries are taken for the race, and **CHRB Rule 1843, Medication, Drugs and Other Substances**, to clarify that medication-based eligibility conditions, with authorized thresholds lower than what is authorized by the Board, are not to be deemed in conflict with the Board's intent and other regulations. (Note: This concludes the 45-day public comment period. The Board may adopt the proposal as presented.)
6. Public hearing and action by the Board regarding the **proposed amendment to CHRB Rule 1632, Jockey's Riding Fee**, to adjust the jockey riding fee scale pursuant to Business and Professions Code section 19501.
7. Report from the **Medication, Safety and Welfare Committee.**

8. Discussion and action by the Board regarding the **proposed amendment to CHRB Rule 1469, Safety of Race Course**, to prohibit an association from using the racing surface, (dirt or turf), for any purpose, other than renovation, maintenance, and training for at least 30 days prior to the start of a race meeting or at least 60 days prior to Breeders Cup Championship events at its race meeting.
9. Discussion and action by the Board regarding the **proposed amendment to CHRB Rule 1588, Horse Ineligible to Start in a Race**, to provide that a horse that has not raced for a specified number of consecutive days at a recognized race meeting is ineligible to enter a race until such horse has satisfactorily completed enhanced testing or evaluation and has been declared eligible to start by the Official Veterinarian.
10. Discussion and action by the Board regarding the **proposed amendments to CHRB Rules 1689, Safety Helmets Required; and Rule 1689.1, Safety Vest Required**, to require drivers' riding in a jog cart to wear a safety helmet and safety vest.
11. Discussion and action by the Board regarding the **proposed amendments to CHRB Rules 1858, Test Sample Required; 1859, Taking, Testing and Reporting of Samples; 1859.25, Split Sample Testing; 1867, Prohibited Veterinary Practices; and the proposed addition of CHRB Rules 1859.1, Out-of-Competition Testing Procedures and Requirements; and 1869, Prohibited Drug Substance in Out-of-Competition Testing**, to incorporate the Association of Racing Commissioners International (ARCI) model rule for out-of-competition testing into the CHRB's rules and regulations.
12. Discussion and action by the Board regarding the **proposed addition of CHRB Rule 1868, Authorized Medication During Workouts**, to establish threshold limits for the presence of certain drug substances and medication in official test samples taken from horses after they complete a timed workout.
13. Discussion and action by the Board regarding the **proposed amendment to CHRB Rule 1844, Authorized Medication**, to 1) provide that not more than one authorized corticosteroid anti-inflammatory drug substance may be administered to a horse that is entered to race and to; 2) identify the authorized drug substances.
14. **Closed Session:** For the purpose of receiving advice from counsel, considering pending litigation, reaching decisions on administrative licensing and disciplinary hearings, and personnel matters, as authorized by section 11126 of the Government Code.
  - A. The Board may convene a Closed Session to confer with and receive advice from its legal counsel regarding the pending litigation described in the attachment to this agenda captioned "Pending Litigation," and as authorized by Government Code section 11126(e).

- B. The Board may convene a Closed Session to confer with and receive advice from its legal counsel regarding the pending administrative licensing or disciplinary matters described in the attachment to this agenda captioned "Pending Administrative Adjudications," as authorized by Government Code section 11126(e).
- C. The Board may convene a Closed Session for the purposes of considering personnel matters as authorized by Government Code section 11126 (a).

Additional information regarding this meeting may be obtained from the CHRB Administrative Office, 1010 Hurley Way, Suite 300, Sacramento, CA 95825; telephone (916) 263-6000; fax (916) 263-6042. This notice is located on the CHRB website at [www.chrb.ca.gov](http://www.chrb.ca.gov). \*Information for requesting disability related accommodation for persons with a disability who require aid or services in order to participate in this public meeting, should contact Jacqueline Wagner.

**CALIFORNIA HORSE RACING BOARD**

Chuck Winner, Chairman  
George Krikorian, 1<sup>st</sup> Vice Chairman  
Madeline Auerbach, 2<sup>nd</sup> Vice Chairman  
Jesse H. Choper, Member  
Araceli Ruano, Member  
Alex Solis, Member  
Rick Baedeker, Executive Director  
Jacqueline Wagner, Assistant Executive Director

## Item 1

**PROCEEDINGS** of the Regular Meeting of the **California Horse Racing Board** held at the **Santa Anita Park Race Track**, 285 West Huntington Drive, Arcadia, California, on **January 26, 2017**.

Present:       Chuck Winner, Chairman  
                  Madeline Auerbach, Member  
                  George Krikorian, Member  
                  Jesse H. Choper, Member  
                  Araceli Ruano, Member  
                  Alex Solis, Member  
                  Rick Baedeker, Executive Director  
                  Jacqueline Wagner, Assistant Executive Director  
                  Robert Miller, General Counsel

Chairman Winner called the January 26, 2017 Regular Meeting of the California Horse Racing Board to order. He announced Commissioner Steve Beneto had resigned from the Board due to other business interests. Executive Director Rick Baedeker stated staff was alerted there was a deficiency in the electronic delivery and internet posting of the Board's January 2017 Notice of Meeting. The Bagley-Keene act required notices to be sent to those members of the public that requested a copy, and that the notice be posted on the Board's website at least 10 days in advance of any regular meeting. It was staff's understanding that due to a clerical error, the notice was not delivered to those members of the public that had requested electronic copies, nor was the notice posted to the Board's website until January 18, 2017, which was nine days prior to the meeting. Although the CHRB believed this has not unduly prejudiced any member of the public, the CHRB was committed to abiding by and upholding the standards and requirements set forth by the Bagley-Keene Act. Counsel advised, as a matter of precaution, only agenda items which required immediate action should be voted upon at the January 26, 2017 Regular Meeting. Government Code section 11125.3(a)(2) permitted the Board, when authorized by at least a two-thirds affirmative vote, to take immediate action on an agenda item not timely noticed. Given all Advance Deposit Wagering (ADW) provider's licenses on the agenda were

scheduled to expire January 31, 2017, staff recommended items 10 through 15, ADW applications, be considered and voted on at the January 26, 2017 Regular Meeting. Staff recommended item three regarding a first and second Vice-Chairman also be voted on to ensure the Board had a clear hierarchy in place should Chairman Winner be unavailable. Staff recommended item six be voted on to ensure the charitable organizations that relied on timely distribution of the proceeds were paid promptly. The Board would be able to engage in discussion-only items currently on the agenda. Chairman Winner said items 17, 18 and 19, concerning proposed amendments to and additions of CHRB rules, would be heard at the February 2017 Regular Meeting. Chairman Winner **motioned** to find that there existed a need to take immediate action on Agenda Item three concerning a first and second Vice-Chairman, Item six concerning race day charities and Agenda items 10 through 15 concerning the applications for ADW licenses. Commissioner Auerbach **seconded** the motion, which was **unanimously carried**. Roll call vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None. Motion carried.

**APPROVAL OF THE MINUTES OF DECEMBER 15, 2016**

Chairman Winner asked for approval of the minutes of the Regular Meeting of December 15, 2016. Commissioner Krikorian **motioned** to approve the minutes. Commissioner Auerbach **seconded** the motion, which was **passed** four to zero with two abstentions. Roll Call Vote: Aye: Krikorian, Auerbach, Solis, Winner. Nay: None. Abstain: Choper, Ruano. Motion carried.

**INTRODUCTION OF CHRB COMMISSIONER.**

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Chairman Winner stated Governor Brown recently appointed a new Commissioner to the Board, Ms. Araceli Ruano. He said the Board was delighted Ms. Ruano had been appointed to the Board. With her background and resume Ms. Ruano would be an asset to the industry.

**ELECTION OF 1ST AND 2ND VICE-CHAIRMAN.**

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Chairman Winner stated the Board previously had a 1<sup>st</sup> and 2<sup>nd</sup> Vice-Chairman, and it was time to fill each position. Commissioner Choper nominated Commissioner Krikorian for 1<sup>st</sup> Vice-Chairman. Chairman Winner seconded the nomination. Chairman Winner stated there were no other nominations for 1<sup>st</sup> Vice-Chairman. Commissioner Choper **motioned** to appoint Commissioner Krikorian 1<sup>st</sup> Vice-Chairman. Chairman Winner **seconded** the motion, which was **passed** five to zero with one abstention. Roll call vote: Aye: Ruano, Solis, Choper, Winner, Auerbach. Nay: None. Abstain: Krikorian. Motion carried. First Vice-Chairman Krikorian nominated Commissioner Auerbach for 2<sup>nd</sup> Vice-Chairman. Chairman Winner seconded the nomination. Chairman Winner stated there were no other nominations for 2<sup>nd</sup> Vice-Chairman. First Vice-Chairman Krikorian **motioned** to appoint Commissioner Auerbach 2<sup>nd</sup> Vice-Chairman. Chairman Winner **seconded** the motion, which was **unanimously carried**. Roll call vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None. Motion carried.

**EXECUTIVE DIRECTOR'S REPORT.**

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Executive Director Rick Baedeker reported on the financials for December 2016 and the end of the year. He stated December 2016 was a very good month due to Del Mar's fall meet which showed an increase in average daily handle of 4.67 percent; the Los Alamitos meet showed an

increase in average daily handle of 16 percent; the Golden Gate meet was down nominally 2.8 percent in average daily handle, but showed a nice increase in ADW handle of 9.4 percent. He said the average starters at Del Mar were up from 7.2 to 7.9; Los Alamitos were up from 8.1 to 8.5, and Golden Gate were up from 7.2 to 7.34, which were all positive signs. Executive Director Baedeker announced the retirement of Bill Westermann, Chief of Enforcement. Chief Westermann had a career spanning forty years, beginning with the California National Guard, the Los Angeles Police Department, and retiring with the California Horse Racing Board. He stated the Board and staff would miss Chief Westermann and his good work, and wished him well in his retirement.

#### **PUBLIC COMMENT**

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Evelyn Call, Arabian Racing Association of California (ARAC), stated she had questions regarding how the Board operated. She said she had concerns about communication and improving participation by the various horsemen's organizations. Ms. Call asked who received copies of the Notice of Meeting. Jacqueline Wagner, Assistant Executive Director, stated the Notice of Meeting was mailed to any individual or horsemen's organization representative that requested notification. Chairman Winner stated anyone could request to be added to the Notice of Meeting mailing list. Ms. Call said she did not believe many members of the public were aware they could make a request to be added to the mailing list. She asked if the Board's website contained updated contact information for the various organizations listed. The Board should ask each organization for updated contact information annually. Chairman Winner stated each organization was responsible for informing the Board of any changes to its contact information. Ms. Call said she wanted to request the Board to send email notices of the meeting

dates, locations, agendas and changes to the dates and locations to the horsemen's organizations. Ms. Wagner stated all the information Ms. Call requested was on the Board's website. Ms. Call said there was a lot of useful information on the Board's website; however sending information directly to organizations or licensees would help keep them involved. Mike Marten, CHRB staff, said the Board sent out an advisory of meetings once the Board package became available online. The advisory was sent to everyone on a distribution list, which had over 300 individuals and organizations. He said anyone could submit an email address with a request to be added to distribution list. Dorothy Burt, ARAC, stated she had printed the 2017 Meeting Schedule from the Board's website at the end of December 2016, and by mid-January 2017, the schedule had already changed; the original schedule had two meetings in Northern California, and the current schedule had only one. She said she spoke to Executive Director Rick Baedeker by phone and asked how much of the state's racing was in Northern California. She stated Mr. Baedeker had said about 40 percent of California racing was held in Northern California. She said equal representation would mean five meetings annually should be held in Northern California. Ms. Burt stated the Board acknowledged there was dissension in Northern California, and had not had good participation from Northern California organizations. She said the lack of Board meetings in Northern California made participation difficult. Executive Director Baedeker said he had also told Ms. Burt that 85 percent of the stakeholders were located in Southern California, and initially, the schedule included a Board meeting at Cal Expo. The March 2016 meeting held at Cal Expo was poorly attended; therefore staff recommended moving the 2017 meeting scheduled at Cal Expo to a different location that would be easier for more stakeholders to attend. Ms. Burt stated the public was not given a chance to provide input. She said ARAC planned to present an agenda item, which was only possible with the meeting scheduled in

Northern California. She said with all the dissension and turmoil over Pleasanton closing as a training facility for part of 2017, the Board meeting would have had more participation than the last one held at Cal Expo. Commissioner Choper stated he was the only Board member from Northern California. He said he sympathized with Ms. Burt; he personally would prefer holding more meetings in Northern California; however, it was more efficient to hold meetings in Southern California because the vast majority of people interested in the racing industry and meeting participants were from Southern California. Ms. Burt stated that the issue with closing Pleasanton for part of 2017 as a stabling facility affected anywhere between 100 and 300 people, and she expected more people like herself to attend a meeting at Cal Expo in 2017 as a result. Chairman Winner stated the Board did not close Pleasanton. Ms. Burt said Pacific Racing Association (PRA) caused Pleasanton to close. She stated individuals affected attended a meeting in Pleasanton, and many people said they could not attend a Board meeting in Southern California. Second Vice-Chairman Auerbach stated Board members gave up their time to attend Board meetings. She said it was not part of the Board's duty to make meetings convenient for a specific group; the Board had to be available to everybody represented. Other organizations took it upon themselves to attend Board meetings without special preference. Second Vice-Chairman Auerbach said ARAC should act more like a business. She said the Board could not fly to Northern California every time a particular group wanted a Board meeting held there. Ms. Burt stated the Board represented racing statewide; it was only fair to have at least two meetings in Northern California annually. Ms. Burt stated Golden Gate Fields (GGF) only accepted stakes-level Arabians that were expected to run at Santa Anita Park. GGF would not take maidens from any racing breed, and there was nowhere else in Northern California to train. Ms. Burt said PRA denied that it could run up to six Arabian races annually. Executive Director Baedeker said a

thoroughbred association could run up to six non-thoroughbred events per year, so long as the races either did not conflict with fair schedules, or had the conflicting fair's permission. Ms. Burt said ARAC wanted PRA to run Arabian races between April and June 2017, before fairs began for the year. Second Vice-Chairman Auerbach stated the Board could not make a decision on the request; the issue was between ARAC and PRA. Chairman Winner said the Board determined GGF had enough stalls for the December 26, 2016 PRA race meet. He said the Board was sympathetic with ARAC and the other emerging breeds; however, the request had to be made to PRA. Ms. Burt said she would like the Board to reconsider a Board meeting at Cal Expo. Chairman Winner said Ms. Burt had previously requested a second Northern California meeting, and now she was requesting Cal Expo specifically. Ms. Burt said the second meeting could be at GGF, she did not care where it was held in Northern California.

**DISCUSSION AND ACTION BY THE BOARD REGARDING THE DISTRIBUTION OF RACE DAY CHARITY PROCEEDS OF THE LOS ANGELES TURF CLUB II IN THE AMOUNT OF \$30,682, TO TEN BENEFICIARIES.**

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Eric Sindler, Los Angeles Turf Club (LATC), said LATC requested approval to distribute race day charity proceeds in the amount of \$30,682 from its September 30, 2016 to November 6, 2016 race meeting to ten horse racing related organizations. Commissioner Ruano asked about the Racetrack Chaplaincy of America of Southern California and how it related to individuals and its specific impact. Mr. Sindler stated it helped backstretch workers. Commissioner Ruano said in the future it would be helpful to provide specifications on each charity. Chairman Winner stated that was a good point. Not everyone was familiar with all of the organizations and how they benefited individuals. Going forward, requests for distribution of race day charity proceeds should provide an outline of what each organization did. First Vice-Chairman Krikorian

**motioned** to approve the distribution of race day charity proceeds of LATC in the amount of \$30,682 to ten beneficiaries. Second Vice-Chairman Auerbach **seconded** the motion, which was **unanimously carried**. Roll Call Vote: Aye: Ruano, Solis, Choper, Krikorian, Auerbach, Winner. Nay: None. Motion carried.

**DISCUSSION BY THE BOARD REGARDING AN UPDATE FROM THE CALIFORNIA MARKETING COMMITTEE (CMC) CONCERNING CHANGES TO LIVE STREAMING OF RACES ON THE CALRACING.COM WEBSITE.**

Second Vice-Chairman Auerbach stated the California Marketing Committee (CMC) changed its www.calracing.com website to require a paid subscription at the beginning of January 2017. The change was not well publicized or acknowledged. Second Vice-Chairman Auerbach said she first came across the change when TVG Network (TVG) was unable to air a live race with one of her horses running, and she decided to watch the race on the CMC website. She was unable to watch the race after a failed login attempt. Second Vice-Chairman Auerbach stated the CMC had mandated funding by the State of California, and she wanted to know why CMC thought it had the authority to get rid of free live racing on its website, and why it thought the change was appropriate. First Vice-Chairman Krikorian stated he had the same issue and was disappointed the website no longer provided free live racing video. Greg Avioli, CMC, stated he apologized to both 1<sup>st</sup> Vice-Chairman Krikorian and 2<sup>nd</sup> Vice-Chairman Auerbach. He said CMC had a limited budget, which had been diminished by roughly one third in the last ten years to under \$2 million annually. The CMC Board determined the \$80,000 annual cost to maintain the www.calracing.com website was not in its best interest. The CMC Board decided to follow a new model for the website where patrons using the website to watch live racing made modest payments. Customers had plenty of other ways to watch live racing, including on TVG and

through accounts with Advance Deposit Wagering (ADW) providers. CMC received complaints from only a small fraction of website users; however reconsidering the change was worthwhile. Mr. Avioli said he invited 1<sup>st</sup> Vice-Chairman Krikorian and 2<sup>nd</sup> Vice-Chairman Auerbach to attend the next CMC Board meeting and review the information used to make this decision, as well as work with the CMC Board to find a satisfactory solution. Second Vice-Chairman Auerbach said she appreciated the invitation. She stated NewCo Ventures North America, LLC dba NYRABets (NYRA) made changes January 1, 2017. Unlike CMC, NYRA communicated the change to customers two weeks in advance, aired free live racing on its website and spent \$500,000. She said the money funded to CMC was not an individual group's money; it was meant to showcase California horse racing. Mr. Avioli stated piracy was the single-largest reason the CMC Board made the change. He said CMC had definitive evidence that [www.calracing.com](http://www.calracing.com) was pirated daily by entities in Mexico and South America. Second Vice-Chairman Auerbach stated she did not know piracy was an issue for CMC. She said piracy did not appear to be a problem for NYRA. First Vice-Chairman Krikorian said [www.calracing.com](http://www.calracing.com) was important to the California racing industry. The website contained schedules and other useful racing information. He said he wanted to meet with the CMC Board to determine how to make the website more worthwhile and resolve piracy issues. Second Vice-Chairman Auerbach stated she wanted to know the remaining budget allocations for CMC as well. Mr. Avioli said the budget was on the February 2017 CMC Board meeting agenda. Chairman Winner asked if the signal was pirated in Asia as well. Mr. Avioli said the main focus was piracy in South America and Mexico because Monarch Content Management had agreements in the regions.

**DISCUSSION BY THE BOARD REGARDING A PRESENTATION BY PLUSMIC CORPORATION USA OF THE DIGITAL PHOTO FINISH PROCESS.**

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Jim Anderson, Plusmic Corporation (Plusmic), stated Plusmic did the photo finish for all of the race tracks in California. He said photo finish began as a film camera, also known as a strip or slit camera. A slit camera recorded a race onto a moving film strip through a tiny vertical slit that was 1/100<sup>th</sup> of an inch wide, and allowed the film to see an area about two inches wide from rail to rail. When horses would pass through the leading edge of the slit, their images would be recorded continuously. A horse arriving first could only be recorded first; a horse arriving second could only be recorded second, and so on. He said current technology was a digital photo finish. The photo finish cameras at every track in the state were positioned high above the race course, and the image was viewed in real time, with no waiting and no hazardous chemicals like there were with film photography. He stated the digital photo finish camera was the only camera directly aligned on the finish line. The digital camera recorded the race on a vertical electronic sensor taking up to 10,000 individual pictures per second. He said a mirror was used at the finish line to allow judges to see the horses from the opposite side of the track. Even though the mirror was six inches wide, the camera would see right down the middle of the mirror. Mr. Anderson stated the cameras were bolted down, and were in a position surveyed as the official finish line at any race track in California. Executive Director Baedeker said as an example, if he was standing in the middle of the race track and he was three inches to the left of the finish line he would not be in the photo. Mr. Anderson stated that was correct, it was not until he would pass in front of the slit of the camera that his image would be captured. Commissioner Choper asked about an issue regarding a picture shown by TVG of a photo finish that was different than what the actual photo finish line showed. Mr. Anderson said it was a picture that someone had taken at an angle. He stated one of the most important things to understand was that the only cameras that were on

the finish line were the photo finish cameras. When people looked at the TV screen, the pan camera and other cameras were at different positions and were not exactly on the finish line which could result in deceiving angles. Second Vice-Chairman Auerbach asked if TVG would be willing to put on this kind of presentation for the general wagering public. Kip Levin, TVG, said TVG would be happy to air a segment to show how the technology worked. Mike Wellman, owner and breeder, stated he never questioned the technology, but it was the other part of the process and the protocol that concerned him in terms of viewing and how the stewards ultimately made a decision. He ran a horse at Del Mar that was involved in a dead heat. He said what made the dead heat unusual was the controversy that ensued due to Del Mar releasing a photo on its website that clearly showed his horse the winner. He stated a meeting was held between he and his partner, the stewards, and other concerned parties. While the meeting was informative, he was convinced his horse should have been declared the sole winner. He said his partnership decided not to file a formal complaint due to the understanding that it would be extremely difficult to get the placing changed, but he hoped the process could be improved for the future. He asked what the protocol was for the placing judges - how they judged and how decisions were made. Darrell McHargue, CHRB Chief Steward, stated in Southern California there were three placing judges with the primary job of placing the horses. Stewards affirmed what the placing judges determined, and once the stewards made a majority or unanimous decision, then the placing was posted. He said a steward would look at a photo and see where the nose was in relation to the other noses, and if a Board of Stewards could not find separation in the horses, then it would be a dead heat. Mr. Wellman asked about the margin of tolerance in terms of the thickness of the finish line. He understood there was no tolerance at all. Mr. McHargue said he believed there was a standard used for the line; however, if the horses could not be separated it

did not matter what the tolerance was and therefore was a dead heat. Mr. Wellman said in his case there was a horse with a white nose, and the line was white and to be able to determine with the naked eye whether that horse was butting the line or into the line compared to his horse was difficult. He said the horse was butting the line that had thickness to it, and if there wasn't a margin of tolerance for dead heats or calling dead heats, his horse was into the line and the other horse was butting up to the line. He asked with the current technology if there was really a need for placing judges and stewards. Mr. Anderson said there was a need for placing judges and stewards – everything needed to be confirmed, and it was beneficial to have multiple sets of eyes to look and verify. Mr. Wellman asked if in his particular case Plusmic's technology would say which horse hit the line first. Mr. Anderson said it could not separate them so it would be a dead heat. Commissioner Choper asked if the images taken were immediately transmitted to the placing judges and stewards. Mr. Anderson said yes, the images were transmitted and had to be affirmed by the placing judges and stewards. Cliff Goodrich, member of general public, said some had suggested the finish line could be a different color, such as red or green or blue. Mr. Anderson said currently the finish line was white, which was the standard, but he would refer the suggestion back to his company.

**DISCUSSION AND ACTION BY THE BOARD REGARDING THE STAFF REPORT ON PROPOSED AUDITS OF CALIFORNIA LICENSED ADVANCE DEPOSIT WAGERING (ADW) PROVIDERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 19604(D) (2) (D) AND SUBSECTION (G) OF CHRB RULES 2071, LICENSE TO CONDUCT ADVANCE DEPOSIT WAGERING BY A CALIFORNIA APPLICANT AND 2072, APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING BY AN OUT-OF-STATE APPLICANT; AND THE SUBMISSION OF ADDITIONAL INFORMATION, TO INCLUDE PROFIT AND LOSS STATEMENTS, FROM ADW APPLICANTS, AS AUTHORIZED PURSUANT TO SUBSECTION (F) OF CHRB'S RULES 2071 AND 2072.**

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Executive Director Rick Baedeker stated the staff analysis for the agenda item stated the Board may require Advance Deposit Wagering (ADW) providers to submit a profit and loss statement of its ADW system operations in California annually in U.S. currency. Francisco Gonzalez, CHRB staff, said at its December 2016 meeting, the Board directed staff to look at possible audits that could be performed for ADW providers. He said a profit and loss statement for the ADW providers' California operations would determine whether or not the ADW providers generated a profit in California. One option was to provide an audit on the allocation used for expenses and revenues related to operations in California. Staff could also audit interest-bearing accounts. ADW providers submitted interest earned on the interest-bearing accounts; however staff could not confirm the submissions were accurate without an audit. Mr. Gonzalez stated staff was not provided with documentation regarding each ADW provider's procedures for suspended or closed accounts. He said some ADW providers charged fees for inactive accounts, which drained the funds, rather than ensuring the funds went to the proper beneficiaries. Chairman Winner said if an ADW provider required a fee for an inactive account, the account would be drained to \$0 at some point. Mr. Gonzalez said staff was interested in determining what happened after six months of inactivity on an account. Executive Director Baedeker said the account holder should be sent the account balance after six months of inactivity. An audit would give staff the ability to establish whether account holders received their account balances

in those cases. Chairman Winner said he needed clarification on how ADW providers handled an account if the account holder passed away and their heirs were unaware the account existed. Executive Director Baedeker asked if ADW providers were required to close inactive accounts after six months. Philip Laird, CHRB Staff Counsel, stated the Business and Professions Code provided only that an inactive account may be closed at the end of six months; the ADW provider was not required to close an inactive account. Chairman Winner said the ADW provider could refund the money or charge the account holder to keep the account open continuously. Statutes did not require ADW providers to return the money to the account holder or to the state. First Vice-Chairman Krikorian asked if ADW providers were violating consumer protection statutes. Mr. Laird said he had to review the applicable laws. First Vice-Chairman Krikorian said laws prevented companies from draining escrow or inactive bank accounts and required the funds to be sent to the state. Mr. Laird stated he would need to look into the escheatment provisions for California to see if ADW accounts had the same requirements. Chairman Winner said profit and loss statements could be required annually, however the statements would not provide the Board with information regarding the dormant accounts. Mr. Gonzalez stated another audit staff wanted to discuss was testing procedures that ensured wagers placed by California residents benefitted California stakeholders. For instance, outdated account information for customers that moved from another state to California, would result in lost funds for California stakeholders. Mr. Gonzalez stated the California Horse Racing Information Management System (CHRIMS) received a procedures audit outlining the results of each California race meet pursuant to Business and Professions Code 19604(d)(2)(D). Staff recommended CHRIMS provide the results to CHRB, including agreed-upon procedures performed on the audits. First Vice-Chairman Krikorian asked if staff had received any such

reports since ADW's inception. Mr. Gonzalez said staff audited pension plans and confirmed beneficiaries received funds. However, the amounts were reported by the ADW providers without a check and balance in place. Second Vice-Chairman Auerbach stated an ADW provider was expected to provide the Board, horsemen's organizations and the host racing association with an annual pari-mutuel audit of the financial transactions with respect to wagers authorized. All reasonable costs associated with the annual audit would be borne by the ADW provider pursuant to Business and Professions Code. She said the Board had to decide whether it accepted the audit submitted by the ADW provider or if the Board wanted to bring in an outside firm to review the audit and then charge the ADW provider for the work. She said the Board had to keep the statute in mind when it established protocols regarding staff's recommended auditing practices. Executive Director Baedeker said the motion to approve each ADW provider could include a clause to say any such reasonable costs associated with auditing procedures shall be reimbursed by the ADW provider. Second Vice-Chairman Auerbach stated it was not necessary since the statute already included the requirement. First Vice-Chairman Krikorian asked if any audits had taken place in the past. Second Vice-Chairman Auerbach said the Board had never performed its own audits on the ADW providers. Executive Director Baedeker said staff brought the item before the Board because no audits had been conducted in recent memory; however, daily reconciliations of all ADW providers were performed by CHRIMS as required by the Business and Professions Code. Mr. Gonzalez said CHRIMS took care of the daily reconciliation process, and ADW providers paid different rates directly to CHRIMS. Chairman Winner said the Business and Professions Code stated annual; not daily audits had to be paid for by the ADW providers. First Vice-Chairman Krikorian said the Board received reports; not audits. Chairman Winner said the lack of auditing was the reason for so many discussions with

the ADW providers over the past few months; the Board had to determine what to do going forward regarding auditing the ADW providers. Mr. Laird said the Business and Professions Code required ADW providers to provide an annual audit to the Board. The ADW providers must provide the Board with audits annually, and they should facilitate paying for the audit without staff involvement. The reimbursement clause only applied to the annual pari-mutuel audits the ADW provided; not any other audits conducted. Chairman Winner asked if ADW providers could be required to reimburse CHRB for other audits conducted. Mr. Laird said research had to be conducted; it could be a complex licensing fee issue. Commissioner Choper said a certified audit determined whether and how much profit and loss was made out of California, and he wanted to know how much was made in California annually by each ADW provider. Cliff Goodrich, California Thoroughbred Horsemen's Foundation, Inc. (CTHF), said CTHF and the California Thoroughbred Trainers Pension Fund received interest monies from ADW providers. He said smaller and newer ADW providers lacked awareness that CHRB Rule 2082, Interest Bearing Accounts, existed, until Mr. Gonzalez assisted CTHF and informed the ADW providers they were obligated to transfer their interest earned annually. He said the Board should look into the ADW policies and procedures and remind the ADW providers they had obligations. Chairman Winner stated the Board extended the ADW provider's licenses for the short-term in order to resolve some issues while allowing them to continue daily California operations. The licenses were expiring January 31, 2017; therefore the Board had to make a motion on the applications to conduct ADW. The Board could include a motion that embodied some of the language discussed. Second Vice-Chairman Auerbach said the Board should extend the licenses for six months, rather than continue requiring the ADW providers to return every couple months. Six months would provide sufficient opportunity to resolve any issues.

Executive Director Baedeker said the motion would include the requirement that each ADW provider would submit an annual profit and loss financial statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by staff. First Vice-Chairman Krikorian stated the motion should include audits from the past five years since audits had not been received, unless the Board decided to forget the past. Second Vice-Chairman Auerbach stated she did not think requiring the past statements would be helpful to the Board. Executive Director Baedeker said the motion included any additional information, rather than specify everything in the motion. He said ODS Technologies, L.P., dba TVG (TVG) informed staff it did not have a profit and loss statement for its California operations; all numbers were included in the global financial statements for its parent company, Betfair. TVG did not have statements for any of the last five years, but that did not mean the Board could not require the information moving forward.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF NEWCO VENTURES NORTH AMERICA, LLC, DBA NYRABETS.COM, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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Second Vice-Chairman Auerbach asked about the NYRABets mobile device application (app). Tony Allevato, NYRABets, said the app would be launched during the latter part of the first quarter of the year. The app was free, and NYRABets wanted to make it available to as many people as possible. NYRABets weighed the concerns regarding piracy, and it was determined there was greater reward than risk in terms of reaching out to new fans. In order to get the app, a

person had to register with an address and pertinent information. The app would stream races, and provide information that would educate new fans. The app would be available on Iphone, Android, Xbox, Playstation, Apple TV, Roku, and wherever possible. Second Vice-Chairman Auerbach said NYRABets believed it could not have too much exposure. Mr. Allevato stated NYRABets believed the app was an opportunity to reach a new audience as well as fans. John Valenzuela, Local 280, stated Local 280 requested that the Board deny any long term license to the Advance Deposit Wagering (ADW) providers in California, and instead grant a several month extension of existing licenses. He said Local 280 believed it could reach an agreement with the ADW providers regarding jobs for Local 280 members in California. However, if the Board granted long term licenses, any opportunities to resolves the issues would be lost. He said no jobs had been created while the ADW's generated over \$600 million in handle every year, and retained over \$42 million. No workers, including members of Local 280 in California, received any benefit from the substantial handle and the direct profit to the ADW providers. He stated Local 280 proposed the creation of some dedicated jobs paid by the ADW industry. Chairman Winner stated Mr. Valenzuela provided the Board with information regarding the number of jobs lost between 2002 and 2015 due to ADW. The data showed a reduction of close to half of the pari-mutual jobs in California. Mr. Valenzuela said that was correct. Chairman Winner asked if Local 280 was in discussions with the ADW companies regarding the number of jobs Local 280 was recommending. Mr. Valenzuela stated he had not been approached directly by any of the ADW companies, but there was conversation about creating some jobs. Chairman Winner **motioned** to approve the application for approval to conduct Advance Deposit Wagering of NYRABets for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that NYRABets submit an annual profit and loss statement for its California

operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. Second Vice-Chairman Auerbach **seconded** the motion, which was which was **unanimously carried**. Roll Call Vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None. Motion Carried.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF LIEN GAMES RACING, LLC, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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John Ford, Lien Games Racing, LLC (BetAmerica), said he was happy to answer any questions regarding the application for approval to conduct advance deposit wagering (ADW) of BetAmerica for an out-of-state multi-jurisdictional wagering hub. Second Vice-Chairman Auerbach **motioned** to approve the application for approval to conduct Advance Deposit Wagering of Lien Games Racing, LLC for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that Lien Games Racing, LLC submit an annual profit and loss statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. First Vice-Chairman Krikorian

seconded the motion, which was **unanimously carried**. Roll Call Vote: Aye: Ruano, Solis, Choper, Winner, Auerbach, Krikorian. Nay: None. Motion Carried.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF CHURCHILL DOWNS TECHNOLOGY INITIATIVES COMPANY, DBA TWINSPIRES.COM, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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Commissioner Ruano **motioned** to approve the application for approval to conduct Advance Deposit Wagering of Twinspires for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that Twinspires shall submit an annual profit and loss statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. Commissioner Choper **seconded** the motion, which was **unanimously carried**. Roll Call Vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None. Motion carried.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF WATCH AND WAGER.COM, LLC, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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Ed Cummings, Watch and Wager.com, LLC (WAW), stated the Board should be aware that Monarch Content Management (Monarch) had not granted WAW rights for California customers to wager on Monarch content. WAW owned the harness racing association and held its race

meetings at Cal Expo. In June 2016, WAW signed a long-term deal through 2022 with Cal-Expo as a good-faith gesture. He said if the situation with Monarch continued, WAW would review its entire business strategy for California. In the meantime, he hoped to reach an agreement with Monarch. Chairman Winner stated WAW was committed to California and saved standardbred racing in California. He said WAW was one of the first ADW providers to commit to charitable contributions. Chairman Winner stated the Board could not dictate negotiations between WAW and Monarch. Philip Laird, CHRB Staff Counsel, said the Board could not partake in private negotiation; however the Board should be made aware of any law violations. Second Vice-Chairman Auerbach stated the parties involved with Monarch were interconnected to the point that the lack of negotiation between WAW and Monarch seemed suspicious. 1 Vice-Chairman Krikorian said Monarch appeared to have a conflict of interest with the Stronach Group and Xpressbet, LLC and should be reviewed. Commissioner Solis **motioned** to approve the application for approval to conduct Advance Deposit Wagering of Watch and Wager.com, LLC for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that WAW submit an annual profit and loss statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. Commissioner Choper **seconded** the motion, which was **unanimously carried**. Roll Call Vote: Aye: Ruano, Solis, Choper, Winner, Auerbach, Krikorian. Nay: None. Motion Carried.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF XPRESSBET, LLC, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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Commissioner Krikorian **motioned** to approve the application to conduct Advance Deposit Wagering of Xpressbet for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that Xpressbet submit an annual profit and loss statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. Second Vice-Chairman Auerbach **seconded** the motion, which was **unanimously carried**. Roll Call Vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None. Motion carried.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR APPROVAL TO CONDUCT ADVANCE DEPOSIT WAGERING (ADW) OF ODS TECHNOLOGIES, L.P., DBA TVG, FOR AN OUT-OF-STATE MULTI-JURISDICTIONAL WAGERING HUB, FOR A PERIOD OF UP TO TWO YEARS.**

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John Hindman, ODS Technologies, L.P., dba TVG (TVG), stated TVG was concerned about the proposed six month approval term for TVG to conduct advance deposit wagering (ADW) as an out-of-state multijurisdictional wagering hub. TVG had to plan its television activities according to its racing association agreements. Chairman Winner said the license would be extended for six months, with the understanding that if the conditions were met, the Board could grant the license at any time. Chairman Winner stated TVG committed to make a charitable contribution to the Winners Foundation on an annual basis, which was appreciated. Second Vice-Chairman

Auerbach said the Board was not trying to harm the ADW providers. The Board had to follow regulations and procedures, which should have been done previously. Chairman Winner said the only way an ADW provider could have a problem is if it disagreed with the Board's motion. Second Vice-Chairman Auerbach said everything in the motion was within the Business and Professions Code. Chairman Winner stated the profit and loss statement for California had not been required, and the Business and Professions Code did not clarify that any audit would be paid for by the ADW provider. First Vice-Chairman Krikorian said the Del Mar Thoroughbred Club (DMTC) had a race meeting scheduled very near the six-month extension period. He said the Board had to determine whether or not it was unreasonable to grant TVG's request to extend the license through the end of the DMTC race meeting. Second Vice-Chairman Auerbach stated all the ADW providers had to be treated equally and the ADW licensing should be taken care of prior to the DMTC race meeting. Chairman Winner said TVG was different from the other ADW providers because it also had a television network, however, the Board should not give preference to one ADW provider over the others. Second Vice-Chairman Auerbach **motioned** to approve the application for approval to conduct Advance Deposit Wagering of ODS Technologies, L.P., dba TVG for an out-of-state multi-jurisdictional wagering hub, through July 31, 2017, on the condition that TVG submit an annual profit and loss statement for its California operations and any additional information the Board may deem appropriate within 90 days of the conclusion of its business cycle. Such financial statements, along with any related documents, would remain confidential and would be subject to audit by the Board as recommended by CHRB staff. Any and all reasonable costs associated with this requirement would be borne by the ADW provider. Commissioner Ruano **seconded** the motion, which was **unanimously**

**carried.** Roll Call Vote: Aye: Krikorian, Auerbach, Winner, Choper, Solis, Ruano. Nay: None.

Motion Carried.

REPORT FROM THE MEDICATION, SAFETY AND WELFARE COMMITTEE.

Second Vice-Chairman Auerbach stated because the Board meeting ran long and her report from the Medication, Safety and Welfare Committee meeting was long, the report from the Committee meeting would be given at the February 2017 Regular Board meeting.

**DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENT TO CHRB RULE 1588, HORSE INELIGIBLE TO START IN A RACE, TO PROVIDE THAT A HORSE THAT HAS NOT RACED FOR A SPECIFIED NUMBER OF CONSECUTIVE DAYS AT A RECOGNIZED RACE MEETING IS INELIGIBLE TO ENTER A RACE UNTIL SUCH HORSE HAS SATISFACTORILY COMPLETED ENHANCED TESTING OR EVALUATION AND HAS BEEN DECLARED ELIGIBLE TO START BY THE OFFICIAL VETERINARIAN.**

This item was moved to the February 2017 Regular Board Meeting Agenda.

**DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENTS TO CHRB RULES 1689, SAFETY HELMETS REQUIRED; AND RULE 1689.1, SAFETY VEST REQUIRED, TO REQUIRE DRIVERS' RIDING IN A JOG CART TO WEAR A SAFETY HELMET AND SAFETY VEST.**

This item was moved to the February 2017 Regular Board Meeting Agenda.

**DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENTS TO CHRB RULES 1858, TEST SAMPLE REQUIRED; 1859, TAKING, TESTING AND REPORTING OF SAMPLES; 1859.25, SPLIT SAMPLE TESTING; 1867, PROHIBITED VETERINARY PRACTICES; AND THE PROPOSED ADDITION OF CHRB RULES 1859.1, OUT-OF-COMPETITION TESTING PROCEDURES AND REQUIREMENTS; AND 1868, PROHIBITED DRUG SUBSTANCE IN OUT-OF-COMPETITION TESTING, TO INCORPORATE THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL (ARCI) MODEL RULE FOR OUT-OF-COMPETITION TESTING INTO THE CHRB'S RULES AND REGULATIONS.**

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This item was moved to the February 2017 Regular Board Meeting Agenda.

**MEETING ADJOURNED AT 12:42 P.M.**

A full and complete transcript of the aforesaid proceedings are on file at the office of the California Horse Racing Board, 1010 Hurley Way, Suite 300, Sacramento, California, and therefore made a part hereof.

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Chairman

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Executive Director

California Horse Racing Board

FEBRUARY 23, 2017  
REGULAR BOARD MEETING

There is no board package material for Item 2

**CALIFORNIA HORSE RACING BOARD**

**FEBRUARY 23, 2017**  
**REGULAR BOARD MEETING**

**There is no board package material for Item 3**

Item 4

STAFF ANALYSIS  
DISCUSSION AND ACTION BY THE BOARD REGARDING A REPORT FROM THE  
CALIFORNIA MARKETING COMMITTEE (CMC) REGARDING ITS 2017 MARKETING  
AND PROMOTION PLANS PURSUANT TO BUSINESS AND PROFESSIONS CODE  
SECTION 19605.73(B)

Regular Board Meeting  
February 23, 2017

ISSUE

The California Marketing Committee (CMC) is presenting to the Board its proposed 2017 Budget Summary, which discusses CMC's marketing and promotion plans for the year.

BACKGROUND

Business and Professions Code section 19605.73(a) states Thoroughbred racing associations, fairs, and the organization responsible for contracting with thoroughbred racing associations and fairs with respect to the conduct of racing meetings, may form a private, statewide marketing organization to market and promote thoroughbred and fair horse racing, including, but not limited to, the establishment and maintenance of an Internet Website featuring California thoroughbred and fair racing, the establishment and administration of players incentive programs for those who wager on thoroughbred association and fair races, and promotional activities at satellite wagering facilities to increase their attendance and handle. While the promotional activities at satellite wagering facilities shall be funded by the marketing organization, they shall be implemented and coordinated by representatives of the satellite wagering facilities and the thoroughbred racing associations or fairs then conducting a live race meet. The CMC is the private organization formed pursuant to the statute.

Business and Professions Code section 19605.73(b) requires the CMC to annually, by October 1, submit a written report to the Board on a statewide marketing and promotion plan for the upcoming calendar year. In addition, the organization shall annually present to the Board at the Board's November meeting a verbal report on the statewide marketing and promotion plan for the upcoming year. The plan shall be implemented as determined by the organization. Business and Professions Code section 19605.73(c) states that from the amount that would normally be available for commissions and purses, an amount not to exceed 0.25 percent of the total amount handled by each satellite wagering facility shall be distributed to the CMC. The amounts initially distributed to the CMC shall be 0.2 percent of the total amount handled by satellite wagering facilities for thoroughbred and fair meetings only. However, the adjusted amounts may not exceed an aggregate of 0.25 percent of the total amount handled by satellite wagering facilities for thoroughbred and fair meetings only. The promotion funds that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any one year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount. In addition, Business and Professions Code section 19605.73(c) also requires the CMC on a quarterly basis, to submit to the Board a

written report that accounts for all receipts and expenditures of the promotion funds for the previous three months.

## ANALYSIS

Table 1. below shows the details of the 2016-2017 budget years as follows:

- Increase on the *Significant Player Program* by 283 percent. The Significant Player Program provides a rebate of one percent to qualifying players.
- Eliminate funding for *Satellite Marketing*. Staff notes that 40 percent of handle generated in California during racing year 2016 came from off track satellite locations and six satellite locations have closed over the past four years.
- Staff notes that historically larger field sizes tend to generate more handle. Reducing *Horse Recruitment* by 64 percent has the potential to reduce field sizes, which in turn may reduce handle.
- The CMC proposes to begin funding for the *We Care Horse Campaign* which raises awareness of the industry's commitment to equine welfare and safety.
- A significant decrease in *Administration* by 68 percent and a decrease in funding for the Cal Racing Website by 88 percent.

Table 1. Comparison of 2016-2017 CMC's Budget Years

	2016	2017	Difference	Change
Significant Player Program	190,000	727,812	537,812	283%
Satellite Marketing	120,000	-	-120,000	-100%
Horse Recruitment	910,000	327,188	-582,812	-64%
Golden State Series	250,000	250,000	-	-
We Care Horse Campaign	-	200,000	200,000	100%
Cal Racing Website	85,000	10,000	-75,000	-88%
Administration	190,000	60,000	-130,000	-68%
TOTAL	1,745,000	1,575,000	-170,000	-10%

## RECOMMENDATION

Staff recommends the Board hear from the CMC representatives on its marketing and promotion, and its receipts and expenditures plans.



California Marketing Committee  
2017 Budget Summary  
February 13, 2017

## OVERVIEW

The California Marketing Committee (CMC) is a statewide organization formed to market and promote Thoroughbred horse racing pursuant to Business and Professions Code Section 19605.73. The CMC is funded by 0.25 percent of the total amount handled by each satellite wagering facility. Statute requires that CMC members include two representatives each from Thoroughbred racing associations, Thoroughbred horseman and from Fairs. The current board members of the CMC are as follows:

- Greg Avioli, Chairman and Thoroughbred Owners of California representative
- Terry Lovingier, Thoroughbred Owners of California representative
  
- Craig Dado, Thoroughbred track representative
- Eric Sindler, Thoroughbred track representative
  
- Heather Haviland, California Authority of Racing Fairs representative
- Richard Scheidt, California Authority of Racing Fairs representative

The CMC meets regularly and encourages industry participation. The CMC has established marketing and racing subcommittees that include members from various racing associations and Fairs as well as horseman groups. In addition, the CMC works collaboratively with many additional industry representatives to solicit ideas and concepts that will promote California Thoroughbred racing and enhance our product. These groups and representatives include all Thoroughbred racing associations, California Authority of Racing Fairs (CARF), Thoroughbred Owners of California (TOC), California Thoroughbred Trainers (CTT), California Thoroughbred Breeders' Association (CTBA), racing executives and facility marketing personnel, CHRIMS, SCOTWinc, NCOTWinc.

Since its inception in 1999, the CMC has served as an industry forum and funding source for a wide variety of statewide marketing initiatives and programs designed to promote and enhance Thoroughbred racing in California.

It is important to note that changes in legislation substantially reduced the funding available to CMC. For example, in 2004, the CMC received funding of over \$5.7 million; the 2017 budget reflects projected funding of approximately \$1.5 million.

The reductions in funding have made it increasingly important that CMC use available funds for targeted programs designed to have specific impacts.



## 2017 PROGRAM SUMMARIES

### Significant Player Programs

The Significant Player Program is a statewide incentive reward program for players who wager a minimum of \$20,000 per calendar month. Qualifying players receive a 1% reward of their total monthly play. Players can participate at all California facilities.

Santa Anita and Del Mar expand upon the 1% reward by offering raised rewards that are tiered strategically and targeted specifically to their high volume on-track wagering patrons. Rewarding high volume players at these raised levels allows our industry to stay competitive against rebate companies, including offshore groups.

Both programs allow us to identify and stay connected with our most valuable players as well as attract new players to our pools who may be wagering elsewhere. These programs also have the added merit of having the most direct return benefit to the industry per dollar wagered. For example, Santa Anita's on-track handle by their high volume players who wagered \$50,000 and above per month registered \$8.6 million in 2016, which was an increase of 14% from prior year. This figure accounted for 6% of Santa Anita's total on-track handle in 2016. This same group of high volume players at Santa Anita generated \$698,300 in purses in 2016. It should be further noted that in 2016 Santa Anita was able to attract 12 new high volume players previously unknown to them as a direct result of this program.

From January, through December 31, 2016, 859 players participated statewide in the programs with over \$22.1 million in participating wagers. This correlates to approximately \$971,000 generated in track commissions and \$955,000 generated in purses. In addition, approximately \$915,000 is generated for other industry programs such as stabling and vanning, workers' compensation support, and CHRB support.

### Horse Recruitment

A clear correlation exists between field size and handle. CMC supported programs work collaboratively in an effort to stabilize and increase field sizes, while striving to deliver the best possible racing product to our fans.

For 2017, the board agreed that individual associations could tailor their recruitment programs based on their unique market environment and racing product needs. Proposals have been requested on how each association will achieve their individual recruitment goals and measure their results. It is expected that several components will be established in the forthcoming proposals and will include stakes and stable recruitment and starter and retention bonuses.

### **Golden State Series**

The Golden State Series was launched in 2012 as a long-term initiative to encourage California breeding by introducing new stakes and offering purse enhancements. Now in its sixth year, the Golden State Series has expanded to 40 stakes and over \$5 million in total purses. Roughly \$750,000 of the purses are supplemented by breeder nomination fees, stallion nomination fees and a contribution by the CMC. As a result of the Golden State Series and other programs recently implemented by CTBA, TOC and the tracks, the breeding industry is trending upward. The number of mares bred has stabilized the past few years which will produce a foal crop next year expected to approach 2,000. This would equal the largest California foal crop since 2009. With California-breds making up 50% of the field sizes, north and south, it is vital that these positive trends continue.

A total of 945 two-year-olds were nominated in 2016, up from 2015. This figure represents nearly 60% of the 2014 registered foal crop.

The CMC continues to work closely with the CTBA to provide input on the program year-to-year and track the results.

### **We Care Horse Campaign**

A need was recognized to raise public awareness of our industry's firm commitment to equine welfare and safety, both on- and off-track and in retirement. In collaboration with industry leaders and groups, a campaign will be developed and launched to respond to some of the recent negative media regarding horse injuries. It is hoped that CMC funding will be joined with other sources to create a larger impact.

The TOC Owner's Committee has begun developing video vignettes communicating the 'We Care' theme. As an example below, one script in development also highlights our California breeding industry. Other themes include transitioning our horses into their second careers and personal interaction with our horses.

#### **Script: Birth of a Foal**

Video: Vignettes showing a mare in foal in a meadow/pasture, partial labor and delivery, the foal imprinting, the foal standing and nursing, running with mare in the pasture, running with other foals, ending with a racing shot.

Voice over: "We're there with them from the moment they are born. We care."

### **CalRacing Website**

CalRacing.com is considered one of the most useful websites in racing. Highlights of the site include a statewide carryover alert status; an interactive statewide facility map with direct links to California tracks, satellites, mini satellites and casinos; a California trainer database; and a statewide searchable stakes schedule. The site continues to receive positive feedback as the centralized source for California racing. The board is currently in discussion to embark on an overall upgrade to the existing site. Funding would come from CMC reserves in 2017 and/or 2018.

Free race replays continue to be offered on CalRacing on a next day basis, while live video streaming is now being offered through Roberts Television Network (RTN) via a link on CalRacing. A variety of streaming packages are available to customers including a base package for \$12 per year for standard definition live streaming of California thoroughbred races. For \$60 per year a customer receives high definition live streaming of California thoroughbred races and immediate replays of all California thoroughbred races. Other packages are available.

### **Administration**

Administrative expenses include Directors and Officers insurance, Accounting services and Auditing, Operating expenses, Legal expenses, and Staff Salary and Benefits.

Staff responsibilities include:

- Consult with and manage agencies and firms on marketing, advertising and other projects.
- Manage all billings, budgets, forecasts and reconciliation.
- Coordinate with tracks, horseman, Fairs and industry organizations on CMC budgets and programs.
- Work with CHRIMS on significant player program and database management.
- Work with SCOTWinc. on accounts payable/receivable and year-end accounting and tax requirements.
- Monitor, maintain and update all aspects of CalRacing.com and respond to technical support messages and other inquiries.

## Item 5

## STAFF ANALYSIS

PUBLIC HEARING AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENT TO CHRB RULE 1581, RACING SECRETARY TO ESTABLISH CONDITIONS, TO ALLOW RACING SECRETARIES TO WRITE MEDICATION-BASED ELIGIBILITY CONDITIONS AS AGREED TO WITH THE ACKNOWLEDGED HORSEMEN'S ORGANIZATION(S) AND APPROVED BY THE BOARD BEFORE ENTRIES ARE TAKEN FOR THE RACE, AND CHRB RULE 1843, MEDICATION, DRUGS AND OTHER SUBSTANCES, TO CLARIFY THAT MEDICATION-BASED ELIGIBILITY CONDITIONS, WITH AUTHORIZED THRESHOLDS LOWER THAN WHAT IS AUTHORIZED BY THE BOARD, ARE NOT TO BE DEEMED IN CONFLICT WITH THE BOARD'S INTENT AND OTHER REGULATIONS. (NOTE: THIS CONCLUDES THE 45-DAY PUBLIC COMMENT PERIOD. THE BOARD MAY ADOPT THE PROPOSAL AS PRESENTED.)

Regular Board Meeting  
February 23, 2017

## ISSUE

At its July 14, 2016 regular meeting, the California Horse Racing Board (CHRB or Board) approved for submission to the Office of Administrative Law (OAL) an emergency rulemaking file which would amend Rule 1581, Racing Secretary to Establish Conditions, and Rule 1843, Medication, Drugs and Other Substances, to clarify the Board's intent, and specify a process, for approving a racing association or fair's implementation of an eligibility drug testing program. On July 25, 2016, OAL approved these emergency regulations, making them effective immediately. Pursuant to the Administrative Procedures Act (APA), the Board now has until April 2017 to adopt these regulatory changes through the regular rulemaking process in order for them to become permanent CHRB regulations.

## BACKGROUND

On April 21, 2016, the Honorable James C. Chalfant of the Los Angeles County Superior Court signed a judgment in the matter of *Gustavo De La Torre v. California Horse Racing Board and Los Alamitos Quarter Horse Racing Association*, ordering the CHRB to set aside approval of the Los Alamitos Quarter Horse Racing Association (LAQHRA) "house rule," which provided for eligibility testing based on the presence of Clenbuterol, Albuterol, Zilpaterol, and Ractopamine in hair samples.

Upon issuing his Order, Judge Chalfant made it clear that if the CHRB wished to allow for the LAQHRA to continue with its eligibility testing program, it would need to implement new regulations which remove current conflicts that exist between their testing program and CHRB rules. If such regulations were not established and the Board continued to approve LAQHRA's testing program, the CHRB could be found in contempt of court.

At that time, CHRB staff determined that the court's ruling had created an emergency situation that called for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Specifically, the Judge's Order had created two options for the CHRB:

withdraw approval of LAQHRA's eligibility conditions, or risk being found in contempt of court.

LAQHRA's eligibility testing program—which operates separate from, and in addition to, the CHRB's official testing program—sought to further prevent public harm by declaring horses that test positive for Clenbuterol, Albuterol, Zilpaterol, or Ractopamine ineligible to participate in races held at their track. Based on the widespread overuse and abuse of these medications in the quarter horse racing industry, and the potential they have to enhance performance, all four of these medications are presently not authorized by the Board to be present in any post-race official quarter horse test sample. By implementing their eligibility testing program, LAQHRA was furthering the intent of the Board's medication regulations by helping prevent unfair performance enhancement (and the resulting CHRB violations) from ever occurring.

Additionally, by conducting pre-race testing, LAQHRA was further enhancing the safety for participating horses and jockeys. By preventing horses that test positive for these unauthorized medications from ever entering races, LAQHRA was decreasing the likelihood that an injury could occur as a result of an unauthorized medication being present in a horse's system during a race.

Nevertheless, because the Los Angeles Superior Court had found such efforts by the LAQHRA to be in conflict with existing Board regulations, the program had been ordered to cease until new regulations explicitly authorizing its implementation were enacted. Accordingly, at its July 14, 2016 regular meeting, the Board voted to submit emergency amendments to Rules 1581, Racing Secretary to Establish Conditions, and 1843, Medication, Drugs and Other Substances, to remove the court-determined conflict.

The emergency amendment to Rule 1843, Medication, Drugs and Other Substances, clarifies the intent of the Board in its authorization of certain medications to be present in official post-race test samples. Specifically, it explains that despite such authorization, nothing in Article 15, Veterinary Practices, shall prohibit a racing association or fair from setting eligibility standards which require lower detection levels of a drug substance or medication in privately conducted pre-race testing than what the Board has authorized, if done in conformity with Rule 1581, Racing Secretary to Establish Conditions.

The emergency amendment to Rule 1581 explains that if an association or fair sets a race condition based on the participating horse's use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication in a biological test sample taken from that horse, that it shall be first agreed to by the acknowledged horsemen's association, and then approved by the Board. Furthermore, if the association or fair intends to use biological test samples other than the official test samples collected by the CHRB, a description of the testing methods and procedures the racing association or fair will use to collect and analyze the samples shall be submitted to the Board for approval as well.

On July 25, 2016, OAL approved these emergency regulations, making them effective immediately.

## ANALYSIS

The emergency amendments to Rule 1581, Racing Secretary to Establish Conditions, and Rule 1843, Medication, Drugs and Other Substances, will remain in effect as emergency regulations until April 2017. If the Board wishes these changes to become permanent regulations, it must vote to adopt these amendments, and then obtain approval from OAL.

This item was discussed by the Medication and Track Safety Committee at its August 24, 2016 meeting, and then by the full Board at its September 22, 2016 regular meeting. At the September meeting, the Board considered proposed language which would require a thoroughbred racing association wanting to establish an eligibility testing program to first obtain written consent from both the Thoroughbred Owners of California (TOC) and the California Thoroughbred Trainers (CTT). The Board put the item over until its October 20, 2016 regular meeting, where it decided to amend the language so that written consent would only be required from TOC. The Board then published the notice for public comment on December 30, 2016.

During the public comment period, staff received written comments in support of the proposed regulatory amendments from Craig Fravel on behalf of Breeders' Cup, and Dominic Alessio on behalf of the Pacific Coast Quarter Horse Racing Association. Staff also received comments opposing the regulatory amendments from attorneys Carlo Fisco and Darrel Vienna. All comments have been included as attachments in this packet.

## RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 6. ENTRIES AND DECLARATIONS  
PROPOSED AMENDMENT OF  
RULE 1581. RACING SECRETARY TO ESTABLISH CONDITIONS.

1581. Racing Secretary to Establish Conditions.

The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the association's race meeting. Any conditions that are based on a participating horse's use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication in a biological test sample taken from a participating horse, shall be agreed to in advance in writing by the acknowledged horsemen's organization, which, in the case of Thoroughbreds, shall be the owner's organization, and approved by the Board before entries are taken for the race. If such conditions are based on the results of a biological test sample other than an official test sample collected by the CHRB, a description of the testing methods and procedures the racing association or fair will use to collect and analyze the biological test samples shall be submitted to the Board for approval. For purposes of this section, "biological test sample" refers to any biological sample, including but not limited to, blood, urine, hair, tissue, or saliva, that is taken from a horse.

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

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1843. MEDICATION, DRUGS AND OTHER SUBSTANCES.

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.

(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(s), 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.



**CRAIG R. FRAVEL**

*President and  
Chief Executive Officer*

February 10, 2017

Mr. Harold Coburn, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Email: [haroldc@chrb.ca.gov](mailto:haroldc@chrb.ca.gov)

**RE: House Rule Making**

Dear Mr. Coburn,

On behalf of Breeders' Cup Limited, I write in support of the proposed amendments to CHRB (1) Rule 1581 – Racing Secretary to Establish Conditions and (2) Rule 1843 – Medication, Drugs and Other Substances. We believe that the proposed amendments are positive directions with respect to medication regulations and proper thresholds.

We believe that the continued safety and integrity of the horse is critical to our business. Enacting the proposed amendments which furthers our mission of promoting safety and integrity in racing is a critical component of Breeders' Cup in selecting future host sites and we urge adoption.

We look forward to conducting the Breeders' Cup World Championships in California at Del Mar in 2017 and in future years to come.

Very truly yours,

Craig Fravel  
President and CEO  
Breeders' Cup Limited



## Pacific Coast Quarter Horse Racing Association

February 7, 2017

Philip Laird, Staff Counsel  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825

Dear Phillip,

I am writing this letter on behalf of the Pacific Coast Quarter Horse Racing Association (PCQHRA) Board of Directors. As the statutory designated representative of racing quarter horse horsemen and women of California we strongly support the amendment to CHRB Rule 1581, Racing Secretary to Establish Conditions and Rule 1843, Medication, Drugs and other Substances.

The PCQHRA Board feels these amendments are extremely important in making sure that the quarter horse racing industry continues on the path of fair and clean racing. We have seen great support from horsemen around the country and want to continue with this trend. Our futurities and derbies have increased in nominations and the support from these amendments will continue to benefit quarter horse racing in California.

If you have any comments or questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dominic Alessio". The signature is fluid and cursive, with a prominent initial "D" and "A".

Dominic Alessio  
President

**MEMORANDUM/PUBLIC COMMENT**

To: California Horse Racing Board

From: Carlo Fisco, Esq.

Re: California Horse Racing Board Adoption of Permanent Regulations (2) seeking to Amend CHRB Rules 1581 and 1843

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*"Get your facts first, then you can distort them as you please." - Mark Twain*

**Introduction:**

To say that the CHRB Initial Statement of Reasons ("ISOR") contains plenty of distortion would be an understatement of significant proportion. Nevertheless, the subject regulations seek to make permanent two emergency regulations amending Rules 1581 and 1843. The proposed permanent regulations are substantively identical to the emergency regulations. The emergency regulations were submitted by the CHRB for the sole purpose of defying a standing court order reached by Judge James C. Chalfant of the Los Angeles County Superior Court in the matter, *De La Torre v. California Horse Racing Board and Los Alamitos Racing Association*, LASC Case No. BS154412. Because the proposed amendments suffer from the same fatal flaws as the emergency regulations, they should be rescinded by the CHRB or disapproved by the OAL for failure to address, as set forth below, the issues raised by the Court order or the requisite statutory standards of Necessity, Authority and Consistency.

**Factual Background:**

On March 10, 2016, Judge Chalfant rendered his decision in the above-referenced case which became a Judgment on April 21, 2016. The two main substantive holdings of Judge Chalfant's decision were: (1) hair follicle testing is not allowed in a private house rule because hair follicle testing does not appear anywhere in CHRB Rules or the enabling statutes; and (2) a private horse racing association cannot demand in a contract with its participant horsemen terms and conditions, such as hair follicle testing or medication levels, which conflict with CHRB Rules.

In response thereto, the CHRB adopted the emergency regulations and, thereafter, approved, as its first implementation of the emergency regulations, the outlawed house rule at Los Alamitos which allows for pre-race hair testing, disqualification and contractual waiver. Now, the CHRB initiates this rulemaking process to make the emergency regulations permanent. It should be noted that the emergency regulations will expire, as a matter of law, within the next couple of months. In order to continue the present implementation of the Los Alamitos house rule, it is necessary, therefore, for the CHRB to adopt and register the proposed permanent regulations. The proposed amendments are, however, invalid, as set forth below.

The Proposed Amendments:

The proposed regulation amendments change nothing. They are little more than CHRB's unabashed attempt to circumvent a court order in favor of a private racetrack owner engaging in illegal activity. The proposed amendments allow for or contain the very items, to wit, hair testing, disqualification and contractual waiver, which were ruled invalid in Superior Court. Just as importantly, they run contrary to the enabling statutes which specifically define the scope of authority of the CHRB. The misrepresentation and distortion contained in the ISOR is shocking. These regulations do not protect the public interest. The public interest is protected by the Administrative Procedure Act ("APA"). The CHRB has shown a contemptible disregard for the APA. To that end, the proposed regulations are just a further effort by the CHRB to avoid the APA while covering to the destructive private interests of a certain racetrack owner. The proposed amendments are, simply put, illegal. For the reasons set forth below, these amendments must be stopped since they are in direct conflict with the Horse Racing Law, Judge Chalfant's decision and the CHRB's own regulations.

Proposed Rule 1581 seeks to base race eligibility on a "biological test sample" and a contractual agreement between the racetrack and the horsemen's association. "Biological test sample" *includes hair follicle testing*, under this regulation. The sole implementation of the emergency regulation **presently** allows for pre-race hair testing and contractual waiver at Los Alamitos. This is exactly what was outlawed by Judge Chalfant and is one of the reasons this regulation must be denied. The CHRB cannot make legal what was ruled to be illegal and in conflict with its own Rules 1436, 1437 and 2045, as well as Business and Professions Code sections 19420, 19440 and 19577. It must be noted that the "Racing Secretary" mentioned in Rule 1581 and

endowed with these new illegal powers under the proposed regulation, is a private employee of the racetrack and not an agent, delegate or member of the CHRB. There is no existing authority which permits the delegation of power to set medication rules to a private individual. Not surprisingly, the CHRB even fails, in its ISOR, to set forth the full language of Rule 1437 which only allows such a private employee or private racetrack to impose conditions “*provided, however, that such conditions may not conflict with the rules, regulations or orders of the Board.*” Simply put, setting a private medication level or testing procedure which is different than what is used by the CHRB is in conflict with CHRB rules. The power to set medication rules and to delegate jurisdiction has been specifically carved out by the Legislature as belonging exclusively to the CHRB and not any private actor with a vested interest in the implementation of a new medication rule.

Proposed Rule 1843 seeks to do much of the same thing by attempting to legitimize the contractual waiver of eligibility conditions based on medication levels other than what exists in CHRB Rules. Again, this is exactly what Judge Chalfant ruled to be illegal. The CHRB cannot have one permissible level for an authorized medication and allow a private association to have another level. Moreover, the CHRB cannot validate, as it attempts to do here, a condition which is in conflict with its own rules. [Rule 2045] As understood by Judge Chalfant, a licensee could be in full compliance with CHRB medication rules and still be punished with *pre-race* disqualification by a private racetrack owner who has a different set of medication rules or requires a contractual waiver of CHRB rules as a condition of participation. The conflict could not be more obvious.

It is very easy to see, therefore, that these proposed regulations do nothing to remove the conflicts stated by Judge Chalfant. Chalfant ruled that pre-race hair testing is illegal and cannot be included in any horsemen’s contract. Thus, you need only ask yourself the following questions, to wit, (1) is pre-race hair testing still allowed under the proposed amendments, and (2) do the proposed amendments still allow for horsemen to contract away their right to be governed by CHRB medication rules? Unfortunately, the answer to both questions is “yes.” For this reason, nothing has changed. The proposed regulations remain as flawed as the Los Alamitos house rule which was ruled illegal by Judge Chalfant. This entire charade was meant solely to accommodate the owner of Los Alamitos. Since the emergency regulations were

adopted, the only instance where they have been used has been to uphold the Los Alamitos house rule and contract waiver. No other association has made application for a change in medication rules. CHRB's lack of regulatory courage and illegal abdication of its authority is obvious. It should voluntarily remedy this situation before the OAL or the Courts inevitably do so.

#### OAL STANDARDS.

The two proposed amendments should be rejected since each fails to comply with the statutorily required standards of Necessity, Authority and Consistency.

a. Necessity. CHRB has not submitted any evidence or information as to why the regulations would be necessary for any of the authorized medications listed in its Rule 1844. In fact, CHRB admits in its ISOR that it relied on no study or information to prepare these proposed regulations. Specifically, for example, the authorized medication, Lasix, would come under the purview of these regulations allowing a level different than that found in CHRB rules. However, there is no information in the ISOR as to why there is a need to alter the official level of Lasix or any other authorized medication found in Rule 1844.

b. Authority. Neither regulation is authorized because the CHRB is prohibited from implementing or enforcing regulations which conflict with the Horse Racing Law, judicial decisions or its own CHRB Rules. Here, the attempt to (1) change testing procedures and medication levels; and (2) legitimize a horsemen's contract which contains invalid terms and conditions is legally impermissible and in conflict with the enabling statutes in the Horse Racing Law (Business and Professions Code sections 19400, *et seq.*), CHRB Rules; and Judge James C. Chalfant's decision in *De La Torre v. California Horse Racing Board and Los Alamitos Racing Association*, LASC Case No. BS154412;

c. Consistency. For the same reasons, the regulations are not consistent with the Horse Racing Law, the CHRB Rules or Judge Chalfant's Judgment.

#### Necessity.

The standard of "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to *effectuate the purpose of the statute, court*

*decision*, or other provision of law that the regulation implements, interprets, or makes specific taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to facts, studies, and expert opinion. Government Code Section 11349(a). Such evidence shall include, without limitation, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information.

In the instant case, the Board's rulemaking record includes an ISOR but "*the Board did not rely on any technical, theoretical, and/or empirical study, reports, or documents in proposing the amendment of the regulation.*" (ISOR) Further, statements included under the heading "Benefits Anticipated From Regulatory Action" are largely irrelevant or simply false. For example the Board's intent becomes irrelevant, for all practical purposes, if it fails to comply with the APA and the enabling statutes. Moreover, it is simply false to state that the proposed regulations will remove the conflict delineated by Judge Chalfant when, in fact, the proposed amendments contain the very terms and conditions found objectionable by Chalfant. Other statements are similarly false, namely, that hair testing can expose performance enhancement when, in fact, it can do nothing of the sort. A hair test result is merely a historical record going back one year or more. It cannot support a conclusion that a horse is under the influence of a certain drug at a certain time. One would have expected the CHRB to provide some scientific study or report to substantiate such a provocatively false claim. Instead, it provided nothing.

As a result, the ISOR in the record is of little value.

In addition, neither amendment is necessary because they do not comply with the law, are overly broad so as to pertain to different breeds and authorized medications not involved in the present dispute and include terms which are legally impermissible. The CHRB concedes that there are no scientific studies upon which these regulations are based. Further, the description of facts does not demonstrate by substantial evidence the need for the proposed regulations to effectuate the statutes being implemented, interpreted, or made specific. To the contrary, all the pertinent statutes and regulations stand against the adoption of these regulations as does the referenced court order.

The question presented for analysis is whether the Board may adopt a regulation establishing (1) private medication rules and testing techniques and (2) the private right to contract away the protections of CHRB rules. It must be concluded that CHRB may not do so.

Preliminarily, we note that sections 19420, 19440, and 19580 provide broad authorization to the Board in the promulgation of administrative regulations. The task at hand is to determine whether other statutes may be applicable that would preclude an affirmative response to the question posed. As found by the Supreme Court, "Administrative regulations that violate acts of the Legislature are void." *Morris v. Williams* (1967) 67 Cal.2d 733, 737.

Specifically, Section 19420 vests jurisdiction in the CHRB, not a private actor.

Section 19440(b) specifically limits delegation of authority to CHRB Stewards, only, and not a private racetrack owner.

Section 19577 defines an official "post-race" sample as urine or blood. The phrase "biological test sample" appears nowhere in the Horse Racing Law.

CHRB Rules 1436 and 1437 prohibit conditions which conflict with its rules. Rule 1844 sets medication levels for authorized medications and does not allow a private actor to set different levels. Rule 1859 involves testing of official samples, only. Rule 2045 prohibits contracts which contain terms and conditions that conflict with CHRB rules, such as pre-race hair testing. On top of all this, Judge Chalfant said as much when he ruled that the private medication and contract waiver rules found in the Los Alamitos house rule and now re-appearing under the auspices of the emergency regulations and the proposed amendments are in conflict with CHRB Rules and California statutes.

The specificity of the statutes granting jurisdiction over medication rules exclusively to the CHRB will not allow, therefore, the CHRB, under the guise of interpretation, to construe the Horse Racing Law otherwise and in effect rewrite it in so complex and important an area such as equine medication and licensing activity. Rather, it is for the Legislature to determine any change in jurisdiction and any such change in the law should come from it after the full investigation and debate which legislative methods permit. In plain language, the law does not say or allow what the CHRB is trying to do with the proposed amendments to the regulations.

On the other hand, CHRB cites Sections 19401, 19440, 19580, 19581 and 19582 as the statutes it is implementing via the permanent regulations. CHRB is terribly mistaken.

Section 19401 is a *general* statute relating to jurisdiction which says nothing about adopting regulations which are in conflict with other laws or delegates jurisdiction. Moreover, it is elementary law that a general statute must give way to a specific statute on any issue.

Section 19440(b) *specifically* limits delegation of CHRB authority to its Stewards. It does not allow for delegation of its authority to a private racetrack or horsemen's association.

Section 19580 is the law that allows the CHRB, and only the CHRB, to set medication rules and levels. That is exactly what it has done when it approved clenbuterol and albuterol, among others, as authorized medications. CHRB has an entire set of regulations dealing with authorized medications. Clenbuterol is still an authorized medication for most racing breeds. Under CHRB rules, it can still be possessed and administered to quarter horses. The CHRB has published a 21 day withdrawal period for its use. It tests for its use in post race official samples of urine and blood. However, it now wants to allow private racetracks to set levels and testing procedures other than what has been authorized by the CHRB. This is clearly in conflict with this statute and the court decision.

Section 19581 limits administration of medications to levels specifically authorized by the Board, and, once again, only the Board. The proposed amendments seek to defy these specific laws by allowing private racetracks to set their own levels. Such authority is not found anywhere in the law and certainly not in the statutes that the CHRB claims it is implementing. Again, a licensee can be in full compliance with CHRB medication rules and still be punished by a set of private and changing medication rules. Under the proposed regulations, every racing association (there are approximately ten (10) associations in California) could make its own medication rules. Such a possibility is as absurd as it is harmful.

Section 19582 limits penalty decisions to the sole jurisdiction of the CHRB. There is nothing in this statute which allows a delegation of authority to a private racetrack or contractual agreement. Again, under the proposed amendments, every association could have its own medication penalties, different from the next.

In sum, it seems that the CHRB just picked these statutes out of thin air without any meaningful review or analysis designed to support its proposed amendments. Just because the CHRB may have plenary jurisdiction over horse racing in California does not mean it can ignore the specific statutes mandating and defining the extent and parameters of its jurisdiction.

"Administrative regulations that alter or amend the statute or enlarge or impair its scope are void ..." *Henning v. Division of Occupational Saf. & Health (1990) 219 Cal.App.3d 747, 758*. The only way CHRB can present these amendments is to alter the statutes and enlarge or impair their scope. But that is plainly illegal.

Authority.

OAL must review regulations for compliance with the Authority standard of the APA, as required by Government Code section 11349.1.

With regards to reviewing these "authority" citations, California Code of Regulations, Title 1, section 14, subdivision (c), adds:

"OAL shall use the same analytical approach employed by the California Supreme Court and the California Court of Appeal, as evidenced in published opinions of those courts. (1) For purposes of this analysis, an agency's interpretation of its regulatory power, as indicated by the proposed citations to "authority" or "reference" or any supporting documents contained in the rulemaking record, shall be conclusive unless:

- (A) the agency's interpretations alters, amends, or enlarges the scope of the power conferred upon it;
- (B) a public comment challenges the agency's "authority"; or
- (C) a judicial interpretation of a provision of law cited as "authority" or "reference" contradicts the agency's interpretation."

Because (a) the CHRB seeks to alter or amend the scope of power conferred upon it; (b) this public comment challenges the CHRB authority to delegate its jurisdiction to a private entity or group of private actors; and (c) Judge Chalfant's decision contradicts the CHRB interpretation of the pertinent statutes and regulations, the proposed authority citations are, as a result, not conclusive.

Unfortunately, the CHRB engages in a shocking amount of misrepresentation in alleging that the proposed regulations “implement” sections 19401, 19440, 19580-82. None of these statutes can be reasonably read to allow for private rulemaking in the area of equine medication, which, in turn, conflicts with CHRB rules. Where do these statutes specifically provide for the abdication of medication rulemaking to private entities? Where do these statutes allow a contractual avoidance of CHRB rules? No law allows the CHRB to abdicate or delegate its duty to set medication rules. To the contrary, California law orders the CHRB, and only the CHRB, to set medication rules while other specific laws and/or rules define official test samples and testing procedures. The CHRB cannot now attempt to construe a general statute such as 19440 to allow it to do as it pleases when a specific statute or specific CHRB rule sets forth the specific parameters of its jurisdiction. Nowhere in the law is a private entity or private actor allowed to substitute itself for the CHRB or use foreign concepts such as “biological test sample” when it comes to medication rules established and enforced solely by the CHRB. As to contractual waiver, for example, CHRB Rule 2045 specifically prohibits such a practice. It is inescapable that the proposed amendment of Rule 1843 conflicts with Rule 2045, among others. The Chalfant decision was very detailed on this issue.

Although the CHRB has wide power to adopt regulations related to horse racing, that authority is significantly circumscribed by statute and decisional law. A regulation contradicts state law when it is inimical to or cannot be reconciled with state law. *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068. When a state law contains a specific provision, the regulation or ordinance may not contradict that provision in any way. *Ex Parte Daniels* (1920) 183 Cal. 636, 641-648 (*emphasis added*). Thus, an administrative regulation may not alter or amend a statute or enlarge or impair its scope. Such a regulation is void and must be stricken. Here, the CHRB is duty bound to comply with all laws including the Horse Racing Law. As set forth hereinabove, it has not even remotely done so. All the relevant statutes, regulations and court order stand against the approval of these regulations since they specifically do not allow for any delegation of CHRB jurisdiction to a private entity or actor when dealing with medication testing techniques and levels or contracts related to those private testing techniques and levels.

In response, CHRB now seeks to amend Rule 1843 which says, in essence, that it no longer deems any previous conflict to be a conflict. That is nonsensical. The CHRB is, as a state agency, merely a creature of statute. It can make these stupid and ridiculous proclamations all it wants, but if it does not accurately implement or interpret a statute, then the proposed regulation is null and void.

Factually speaking, it is not understood how the proposed regulations can be based on a very narrow situation at Los Alamitos and yet written to apply to all facets of the industry. The ISOR is vague on what medications might be involved since many authorized medications are not implicated in the agency's explanation. The ISOR only references events involving Los Alamitos, *De La Torre*, Chalfant and clenbuterol. To be sure, the litigation before Judge Chalfant dealt only with the authorized medications, Clenbuterol and Albuterol, and no others. Does the agency contend, therefore, that a private association could set, pursuant to the proposed regulations, different levels for the authorized medications, Phenylbutazone and Furosemide? Failure to be clear on this issue, among others, creates a conflict with the agency's description of the effect of the regulation. Does the agency imply that it is trying to protect the wagering public from the effects of the authorized medications, Phenylbutazone and Furosemide? Such reasoning is absurd. The CHRB provides absolutely no evidence in the ISOR that these authorized medications, along with many others, require the kind of oversight and restraint envisioned by the proposed amendments. In addition, Judge Chalfant's directive had nothing to do with other authorized medications. It was narrowly tailored to stop the illegal conduct by a private actor with regards to Clenbuterol and Albuterol, only. Thus, if we are to believe that the CHRB is concerned with resolving the conflicts arising out of the Chalfant decision, then why would it write an overbroad regulation that could involve medication not considered in the Chalfant decision?

Also, the term "*biological test sample*" has no meaning under CHRB rules or Horse Racing Law. Only "*official sample*" or "*split sample*" are defined and exist for purposes of enforcement actions. Thus, CHRB cannot, as a matter of law, be implementing or making specific any law. More importantly, the proposed amendment of Rule 1581 does not confer "official sample" status on the "biological test sample." In fact, it differentiates it. Because "biological test sample" is not an "official" sample, the proposed amendment of Rule 1581 is in conflict with Section 19577 and CHRB Rule 1859. It must, therefore, be disapproved.

### Consistency.

OAL is mandated by Government Code section 11349.1, subdivision (a)(4), to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the "consistency" standard. Government Code section 11349, subdivision (d), defines "consistency" to mean "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law."

Remarkably, CHRFB asserts only a half-hearted statement in hopes of meeting its "Consistency" requirement by stating that, "[t]he proposed regulations are not inconsistent or incompatible with existing state regulations." ("Consistency Evaluation") Nothing could be further from the truth. CHRFB Rules 1436, 1437, 1844, 1859 and 2045 are all clear obstacles to adopting the proposed amendments. CHRFB rules are derived from the enabling statutes in the Horse Racing Laws. These proposed regulations, on the other hand, are not. Thus, it is not surprising to see the CHRFB unable to provide any legal support for its illegal amendments. As set forth hereinabove, these proposed regulations are in direct conflict and, therefore, inconsistent with the enabling statutes, CHRFB Rules and Judge Chalfant's decision.

### Conclusion.

The CHRFB should be most concerned with the integrity of the regulatory system over which it governs. It must demonstrate a more sincere allegiance to the APA. If, however, the CHRFB continues to pander to the personal whims of a private track owner, the entire industry will be worse off because illegitimate considerations will have affected the exercise of its power. The mere notion that the CHRFB would use governmental power to further private rather than public interests is as disturbing as it is fatal. Compliance with the APA should be the cornerstone of everything the CHRFB considers and it should remain ever mindful of the rule that delegation of its *legislative* power is invalid.

Because the instant rulemaking submission is in violation of the APA, the proposed amendments to the regulations should be voluntarily rescinded by the CHRFB, or disapproved by the OAL.

*Nobody has a more sacred obligation to obey the law than those who make the law.—Sophocles*

MEMBER  
ARIZONA BAR  
CALIFORNIA BAR

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February 13, 2016

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California Horse Racing Board  
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SENT VIA US MAIL & EMAIL

Re: Proposal to Amend Rules 1581 and 1843

Dear Mr. Laird:

The following comments are submitted to the California Horse Racing Board ("Board") regarding its proposed amendments to Rule 1581 Racing Secretary to Establish Conditions and Rule 1843 Medication, Drugs and Other Substances. Those amendments are summarized as follows:

A. Rule 1581

The proposed amendment of rule 1581 provides that race conditions can be set by any racing association or fair based upon participating horses' use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication in a biological test sample other than official test samples collected by the CHRB, so long as such conditions are agreed to by the acknowledged horsemen's association and approved by the Board. The modification further provides that if the racing association or fair intends to use biological test samples other than the official test sample, a description of the testing methods and procedures that will be used to collect and analyze the biological test samples shall be submitted to the Board for approval. Lastly, the modification defines biological test sample to include, but not be limited to blood, urine, hair, tissue, or saliva that is taken from a horse.

B. Rule 1843

The proposed amendment of rule 1843 provides, notwithstanding CHRB rules which authorize the presence of certain medications to be present in official post-race test samples, that nothing shall prohibit a racing association or fair from setting eligibility standards which require lower detection levels of a drug substance or medication in

privately conducted pre-race testing than what the Board has authorized, if done in conformity with Rule 1581.

## 1. INTRODUCTION

The objective or purpose of the proposed amendments is to authorize the implementation of medication conditions by racing associations and to resolve any conflict between Board medication rules and Racing Association medication rules.<sup>1</sup> In fact, these amendments do neither.

Horse Racing Law was created to allow pari-mutuel wagering on horse races while assuring protection of the public and providing uniformity of regulation.<sup>2</sup> The proposed amendments to the Board's rules promote neither of these goals. The protection of the public is not assured by the Board's abdication or sharing of its rule-making powers with self-interested private entities. Nor is uniformity of regulation provided in an environment where every racing association can devise its own rules potentially conflicting with Board rules and with the rules of other racing associations.

More importantly, **the Board lacks the authority to delegate the adoption and implementation of medication policy to any other entity**, and certainly not to private entities controlled by participants in the actual events being regulated.<sup>3</sup>

Lastly, even if such delegation was permissible, the conflicts between Board medication rules and Racing Association medication rules are not resolved through the inclusion in a regulation of a provision stating that the Board deems any such conflict not to exist.

## 2. STATEMENT OF THE OBJECTIVES AND ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS.

The Board has set forth the objective, purpose and benefits of the proposed regulatory action in the section titled Policy Statement Overview of Anticipated Benefits of Proposal in the Board's Notice of Proposal to Amend Rules 1581 and 1843. The following is a summary of those items.

### A. Objective and/or Purpose of the Proposed Amendments

- (1) To reestablish and preserve licensed racing associations and fairs' rights and abilities to implement medication-based conditions.

<sup>1</sup> Policy Statement Overview of Anticipated Benefits of Proposal, Notice of Proposal to Amend Rule 1581, Racing Secretary to Establish Conditions and Rule 1843, Medication, Drugs and Other Substances.

<sup>2</sup> Business & Professions Code § 19401 (a) (d).

<sup>3</sup> See *State Board v. Thrift-D-Lux Cleaners* (1953) 40 Cal.2d 436.

- (2) To resolve the conflict between the Board's medication requirements and a Racing Secretary's ability to write medication based race conditions which involve pre-race testing.
- (3) To clarify the Board's intent to permit private pre-race eligibility testing equal to, or stricter than, those established by the Board.

B. Benefits of Pre-race Testing

- (1) To prevent horses from racing with medications prohibited by a racing secretary.
- (2) To avoid physical injuries to both horse and rider caused by medication prohibited by a racing secretary being present in the horse's system.
- (3) To protect the public by reducing the chance that a horse will have its performance enhanced during a race by an unauthorized medication.

3. ANALYSIS OF THE STATED OBJECTIVE AND PURPOSE OF THE PROPOSED AMENDMENTS

Notwithstanding the Board's implication that racing associations have the established right to implement medication-based race conditions, **no such right now exists or ever has existed.** Further, the intent of the Board to permit private pre-race medication testing does not alter the fact that the Board lacks the authority, *regardless of the Board's intent*, to delegate the adoption and implementation of medication regulation and testing to private entities.

A. There is No Basis for the Board's Assertion that Racing Associations have the Right and Ability to Adopt and Implement Medication Rules

Nowhere in Horse Racing Law or in Board rules, can be found a provision for the adoption or implementation of medication rules by racing associations. Horse Racing Law specifically provides that *the Board* "shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication."<sup>4</sup> There is nary a mention that provides for licensees to likewise have the right and/or ability to adopt and implement medication regulations.

B. The Board Cannot Delegate its Power to Private Entities

The Board, under color of Business & Professions Code §§ 19440 and 19580, labors

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<sup>4</sup> Business & Professions Code § 19580

under the notion that it has the ability to delegate its authority to adopt regulations to private entities, namely, racing associations. When the legislature delegated to the Board the power and responsibility to adopt medication regulations **it did not grant the Board the authority to delegate its rulemaking powers to anyone**, much less a private entity.<sup>5</sup>

C. The Delegation to Private Entities of the Board's Regulatory Authority would Vitiating the Protections of the Administrative Procedures Act.

The combined effect of the proposed amendment would permit the establishment of rules impacting entire classes of horsemen without requiring those rules to be adopted in compliance with the Administrative Procedures Act ("APA"). The APA was designed to allow the public to participate in the adoption of regulations in order to ensure that the regulations are clear, necessary, and legally valid. The delegation to Racing Associations of the Board's medication regulatory functions would, in fact, subvert the APA.

The Board cannot delegate its rulemaking authority to private parties, especially those possessing a pecuniary interest in the formulation and application of the rules, any more than the legislature can delegate absolute legislative discretion to an administrative agency.<sup>6</sup>

D. The Proposed Amendments Would Constitute a Delegation by the Board of Powers and Authorities which the Board Itself Does not Possess.

Under the proposed amendments, a racing association, some of which are controlled by private parties with a pecuniary interest in the implementation of the rules, could disqualify a horse based on medication conditions simply by getting approval from the Board and the horsemen. On the other hand, if the Board wanted to impose those very same conditions, it would have to adopt those rules in compliance with the APA.

For example, if the Board wished to modify Rule 1844 so as to lower the permissible urinary level of albuterol from 1.0 nanogram per milliliter to 0.5 nanogram per milliliter, it would be required to adopt that modification in compliance with the APA. However under the proposed amendments, a racing association could adopt medication conditions prohibiting **any detectable urinary level** of albuterol without complying with the APA. Thus, adoption of the proposed amendments would allow a private entity to implement its own medication rule simply by obtaining the consent of the Board and the horsemen's organization, while the Board itself could only adopt the very same medication rule through complete compliance with APA.

Under the proposed amendments, the Board would be bestowing powers upon racing

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<sup>5</sup> Business & Professions Code § 19440 (b) contains the only provision for delegation of Board powers and that delegation is limited to Stewards appointed pursuant to Article 5 (commencing with Business & Professions Code § 19510).

<sup>6</sup> *State Board v. Thrift-D-Lux Cleaners* (1953) 40 Cal.2d 436, 448.

associations that the Board itself does not possess -- *i.e.*, to promulgate binding medication rules without complying with the APA.

E. The Proposed Amendments Fail to Resolve the Conflict between Board rules and Racing Association rules.

In its decision in *De La Torre v. California Horse Racing Board and Los Alamitos Racing Association*, LASC Case No. BS154412, the court held found the following conflicts between Board rules and the “house rules” (association rules):

- (1) A horse qualified under Board rules could be disqualified under an association rule;
- (2) Association rules could ban Board-authorized medications;
- (3) Association rules based upon the detection of medications in hair would conflict with Horse Racing Law and Board rules which provide for disqualification solely on the basis of blood and/or urine testing.
- (4) Because medications can be detected in hair up to a year or more, the detection of medications in hair does not prove that the horse raced or would race under the drug’s influence.

Through its proposed amendment to Rules 1581 and 1843, the Board seeks to resolve the conflict between Board medication regulations and racing association medication rules by *clarifying the Board’s intent to permit private pre-race eligibility testing* equal to, or stricter than, those the Board itself established. **The Board has misinterpreted the ruling of the Court.** The Court was not confused about the Board’s intent nor did it seek clarification of the Board’s intent. The Court held that the Board’s approval of association medication rules was not consistent with the Board’s professed intent to protect the integrity of horse racing, the health of horses, and the interests of the public.

The adoption by the Board of regulatory language stating that an apparent conflict between Board regulations and an association rule will not be deemed a conflict does nothing to resolve the underlying, obvious conflict. Clearly, **these proposed amendments not only fail to resolve the conflict noted in the *De La Torre* decision, they serve to reinstate the conflict.**

4. ANALYSIS OF THE ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS.

In its Policy Statement Overview of Anticipated Benefits of Proposal, the Board stated that permitting racing associations to implement medication-based racing

conditions involving pre-race testing with medication requirement equal to or stricter than those established by the Board would benefit the health, safety, and welfare of horses, licensees, and the wagering public. That statement is not supported by any study or relevant facts. In fact, under the proposed regulations, association medication rules could ban authorized and/or therapeutic medications intended and necessary to promote the health of horses entered to race.

A. Permitting Racing Association to Establish Medication Rules Does not Benefit the Health, Safety, and Welfare of Horses.

The Board is required to adopt medication regulations in compliance with the Administrative Procedures Act. The adoption of these regulations is supported by scientific research and/or validated and published scientific papers. A proposed adoption or amendment to a medication rule must be adopted in compliance with the APA – a process which includes: (1) noticed public discussion; (2) issuance of the complete text of the proposed regulation with a statement of reasons; (3) the provision for public comment; (4) written response to public comment; (5) filing with the Office of Administrative Law; and, (6) review by the Office of Administrative Law for consistency with the law, clarity, and necessity.

To short circuit the administrative process and to allow racing associations, some of which are controlled by active participants in the very races they seek to regulate, to promulgate medication regulations, is not only inappropriate and illegal, it provides no guarantee that the medication conditions promoted by the racing association are rationally based and consistent with established principles of veterinary medicines. Recent events have demonstrated that a racing association has already adopted a “house rule” effectively banning the administration of therapeutic and Board authorized medications. The health and safety of horses are not promoted when the administration of Board-authorized therapeutic medication intended to protect the health of the horse are banned by racing associations.

B. Pre-race Hair Testing Does not Demonstrate the Presence of Drugs in a Horse’s System and the Public is not Protected by the Disqualification of Horses through Hair Testing

No benefit is provided by the disqualification of a horse when such disqualification is based upon pre-race hair testing where such testing is not probative of performance enhancement. Validated, published scientific studies have proven that substances can be detected in hair for up to a year after administration or contact. **Hair testing does not demonstrate the presence of a substance in a horse’s system but simply is a biological record of prior contact with the substance.**

California statute provides for the disqualification of a horse when subsequent to the horse’s entry in a race a prohibited substance or an authorized substance in excess

of the permitted level is detected in an official blood or urine sample.<sup>7</sup> **There is neither a provision in the statute or Board rules for disqualification of a horse based upon hair testing** nor is any benefit derived from the application of unlawful and unsupported regulations.

## 5. CONCLUSION

The Board, and only the Board, was empowered by the state legislature to adopt regulations relating to horse racing medication. There is no statutory provision for the Board to delegate this power. Racing associations are prohibited by Board rules from imposing conditions that conflict with Board rules.<sup>8</sup> In the *De La Torre* decision, the Court has ruled that regardless of the Board's intent it cannot countenance association rules that conflict with its own rules.

There is no threat to the preservation of the public peace, health, safety, welfare of the racing industry, or general welfare that cannot be addressed through adherence to the established rulemaking procedures and existing law. Nor has any evidence been offered to show that, even if it were lawful, the delegation of medication rulemaking authority to racing association would provide any benefits to the racing industry.

If the Board determines that new medication regulations are called for, then it should move forward to adopt appropriate, well-deliberated regulations consistent with its obligation to the racing industry to lawfully promulgate any needed regulations. Under the circumstances presented herein, the Board's legislative mandate and California law prohibit the delegation of the Board's authority to private self-interested entities.

In *Carter v. Carter Coal Co.*<sup>9</sup>, the United States Supreme Court dealt with the delegation of legislative authority to private industry. The Court held that “[t]his is legislative delegation in its most obnoxious form, for it is not even delegation to an official or an official body . . . but to private persons. . . .”

Given the foregoing, it is respectfully requested that the Board withdraw its support for the proposed amendments to rules 1581 and 1843.

Sincerely,

*Darrell Vienna*

Darrell Vienna

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<sup>7</sup> Business & Professions Code §§ 19577, 19581, and 19582,

<sup>8</sup> CHRB Rule 1437

<sup>9</sup> *Carter v. Carter Coal Co.*, 298 U.S. 238.

## Item 6

STAFF ANALYSIS  
 PUBLIC HEARING AND ACTION BY THE BOARD REGARDING THE PROPOSED  
 AMENDMENT TO CHRB RULE 1632, JOCKEY'S RIDING FEE, TO ADJUST THE  
 JOCKEY RIDING FEE SCALE PURSUANT TO BUSINESS AND PROFESSIONS CODE  
 SECTION 19501

Regular Board Meeting  
 February 23, 2017

## ISSUE

On January 1, 2017, California's minimum wage was increased by five percent. The increase in the minimum wage necessitated the amendment of Rule 1632, Jockey's Riding Fee. In anticipation of the riding fee increase, the Board directed staff to initiate an amendment to Rule 1632. The 45-day comment period for the proposed rule amendment ended in December 2016, and the regulation was submitted to the Office of Administrative Law (OAL) for review. The proposed regulation amended subsection 1632(b), which provides the non-winning jockey riding fee chart. The second and third mount fees were deleted from the chart, leaving only the losing mount fees which were increased by 5 percent. This was done due to the minimum wage increases over the past several years which caused the fees paid to losing mounts to encroach upon the sums paid to second and third place mounts, with the result that the formula for second and third place mount fees (5 percent plus \$10) no longer worked under all circumstances. In some instances the losing mount jockey riding fee could be equal to or greater than the third place mount. When the third place mount fee was adjusted, it could be equal to the second place mount fee. To provide direction for calculating riding fees for second and third place mounts, the proposed amendment added new subsections 1632(b)(3) through 1632(b)(5). The OAL disapproved the rulemaking action based on the Clarity and Necessity standard of Government Code section 11349.1. One of OAL's concerns was the fact that the proposed amendment stated the dollar amount for losing mounts with gross purses between \$5,000 and \$9,999 but did not include the riding fees for second and third place mounts in the same category. To address the OAL's concerns, subsection 1632(b) of the proposed text (**Text A**) has been modified to specify the dollar amount for second and third place mounts for races with gross purses between \$5,000 and \$9,999. OAL was also concerned that subsection 1632(b)(4) did not provide for second and third place mounts in races over \$100,000. To address the OAL concern, subsection 1632(b)(4) has been modified to include the methodology for calculating the minimum jockey riding fees for races with gross purses over \$100,000. Finally, OAL commented that subsection 1632(a) needed to be consistent with subsection 1632(b) in that the categories for gross purses below \$5,000 were eliminated from subsection 1632(b) but not from 1632(a). To address the concern, subsection 1632(a) has been modified to remove gross purses below \$5,000 to maintain consistency with subsection 1632(b). A 15-day public comment period for the proposed amendment was initiated on February 7, 2017, and closed February 21, 2017. During the 15-day public comment period one comment was received on behalf of the Jockey's Guild, Inc. The comment included an alternate text, the proposed **Text B**. The Jockey Guild text would amend subsection 1632(a) to state "*(a) Winning jockey riding fees in the absence of a contract or special agreement are 10% of the Win Purse.*" This would replace the current subsection 1632(a) chart with a single narrative sentence; however, it would not change current practice.

The Jockey Guild proposal also amended subsection 1632(b) to remove gross purses \$5,000 to \$9,999, and instead state "Less than \$10,000." The riding fees listed under the "Less than \$10,000" category would apply to all fees for second place, third place and losing mounts in races where the gross purse is less than \$10,000. This is a change to current practice as the same fees would apply to all races with gross purses under \$10,000.

The 15-day public comment period for **Text A** ended February 21, 2017. The Board may readopt the proposed amendment [**Text A**] as presented. However, if the Board endorses the Jockey Guild's proposal (**Text B**), the Board may direct staff to initiate a new 15-day public comment period for **Text B**.

## ANALYSIS

The proposed amendment to Rule 1632 addresses the mount fee disparities by changing the non-winning jockey riding fee chart under subsection 1632(b) to reflect only the dollar sums to be paid jockeys riding losing mounts, and by adding new subsections 1632(b)(3) through 1632(b)(5) to provide direction for calculating jockey riding fees for second and third place mounts. The 1632 rulemaking file was submitted to OAL for review in December 2016. The file was disapproved based on the Clarity and Necessity standard, as the proposed subdivision 1632(b) was unclear because the language of subdivision 1632(b)(4) only provided the methodology for calculating the minimum jockey riding fees for second and third place mounts for races with gross purses between \$10,000 and \$100,000, and did not include races with gross purses over \$100,000. The OAL also stated subdivision 1632(b) was unclear because it removed the minimum jockey riding fee for second and third place mounts for races with a gross purse between \$5,000 and \$9,999 while increasing the minimum jockey riding fee for losing mounts for the same races, and did not include the amount or methodology for calculating the jockey riding fees for second and third place mounts at this purse level. The OAL stated subdivision 1632(b) removed the second mount, third mount and losing mount minimum jockey riding fees for races with gross purses between \$1,500 and \$4,999 without discussing or providing the purpose and necessity for the removal. To address the OAL's concerns, the proposed **Text A** of subsection 1632(b) has been modified to specify the dollar amount for second and third place mounts for races with gross purses between \$5,000 and \$9,999. Subsection 1632(b)(4) has been modified to include the methodology for calculating the minimum jockey riding fees for races with gross purses over \$100,000. Subsection 1632(a) has been modified to remove gross purses below \$5,000 to maintain consistency with subsection 1632(b).

During the 15-day public comment period one comment was received on behalf of the Jockey's Guild, Inc. The comment included an alternate text, the proposed **Text B**. The Jockey Guild text would amend subsection 1632(a) to state "*(a) Winning jockey riding fees in the absence of a contract or special agreement are 10% of the Win Purse.*" This would replace the current subsection 1632(a) chart with a single narrative sentence; however, it could not change current practice. The Jockey Guild proposal also amended subsection 1632(b) to remove gross purses \$5,000 to \$9,999, and instead state "Less than \$10,000." The riding fees listed under the "Less than \$10,000" category would apply to all fees for second place, third place and losing mounts in races where the gross purse is less than \$10,000. This is a change to current practice as the same fees would apply to all races with gross purses under \$10,000.

## BACKGROUND

Business and Professions Code section 19401(a) and (d) provides that the intent of Chapter 4 is to allow pari-mutuel wagering on horse races, while assuring protection of the public and providing uniformity of regulation for each type of horse racing. Business and Professions Code section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in California. Assembly Bill (AB) 649, Chapter 605, Statutes of 2007, added section 19501 to the Business and Professions Code. Subsection 19501(b)(1) states that the scale of minimum jockey riding fees for losing mounts shall be increased whenever the State minimum wage is increased by the percentage of that increase.

Board Rule 1632, Jockey's Riding Fee, provides a scale of jockey riding fees to be used in the absence of a contract or special agreement.

Senate Bill (SB) 3, Chapter 4, Statutes of 2016, amended section 1182.12 of the Labor Code, to increase California's minimum hourly wage. January 1, 2017, the minimum hourly wage increased 5 percent from \$10.00 to \$10.50 an hour. Under SB 3, the minimum hourly wage will continue to increase each year by \$1.00 per hour through January 1, 2022, when the minimum wage will reach \$15.00 per hour.

The proposed amendment to Rule 1632 was submitted to the OAL for review in December 2016. In January 2017, the OAL disapproved the regulatory action based on the Clarity and Necessity standard of Government Code section 11349.1. The text of the proposed amendment was modified to address the OAL's concerns, and staff initiated a 15-day public comment period. The 15-day comment period ended February 21, 2017. One comment was received on February 13, 2017, on behalf of the Jockey's Guild, Inc. The comment included the proposal to amend subsection 1632(a) to state "(a) Winning jockey riding fees in the absence of a contract or special agreement are **10% of the Win Purse.**" The proposal also amended subsection 1632(b) to remove gross purses \$5,000 to \$9,999, and instead state "**Less than \$10,000.**"

## RECOMMENDATION

This item is presented for Board discussion and action.

**Text A**

CALIFORNIA HORSE RACING BOARD  
 TITLE 4. CALIFORNIA CODE OF REGULATIONS  
 ARTICLE 6. ENTRIES AND DECLARATIONS  
 PROPOSED AMENDMENT TO  
 RULE 1632. JOCKEY'S RIDING FEE

Single underlined text represents the original language noticed to the public from September 9, 2016 to October 24, 2016.

Deletions to the original noticed text appear as ~~bold double strikethrough~~ and new and revised text appears as **bold double underlined**.

1632. Jockey's Riding Fee.

(a) Winning jockey riding fees in the absence of a contract or special agreement are:

GROSS PURSE	Winning Mount
\$100,000 and up: . . . .	10% of Win Purse
50,000-99,999: . . . .	10% of Win Purse
25,000-49,999: . . . .	10% of Win Purse
15,000-24,999: . . . .	10% of Win Purse
10,000-14,999: . . . .	10% of Win Purse
5,000-9,999: . . . .	10% of Win Purse
<del>3,500-4,999: . . . .</del>	<del>10% of Win Purse</del>
<del>2,000-3,499: . . . .</del>	<del>10% of Win Purse</del>
<del>1,500-1,999: . . . .</del>	<del>10% of Win Purse</del>

(1) The purpose of subsection (a) is not to set a minimum or maximum fee. It provides a fee if the parties have not made a written agreement to the contrary.

(2) All fees pursuant to subsection (a) are payable in the lower purse range until the next higher purse range is reached, unless there is a written agreement to the contrary.

(b) ~~Non-winning jockey~~ Jockey riding fees for losing mounts are:

GROSS PURSE	2nd Mount	3rd Mount	Losing Mount
\$100,000 and up: . . . .	5% of Place Purse, plus \$10.00	5% of Show Purse, plus \$10.00	\$168.74 <u>177.18</u>
50,000-99,999: . . . .	5% of Place Purse, plus \$10.00	5% of Show Purse, plus \$10.00	137.49 <u>144.37</u>
25,000-49,999: . . . .	5% of Place Purse, plus \$10.00	5% of Show Purse, plus \$10.00	118.74 <u>124.68</u>
15,000-24,999: . . . .	5% of Place Purse, plus \$10.00	5% of Show Purse, plus \$10.00	106.24 <u>111.55</u>
10,000-14,999: . . . .	5% of Place Purse,	5% of Show Purse,	99.99 <u>104.99</u>

	plus \$10.00	plus \$10.00		
5,000-9,999: . . . . .	<del>\$112.49</del> <u>\$118.12</u>	<del>\$96.25</del> <u>\$101.06</u>	93.75	98.44
3,500-4,999: . . . . .	-99.99	-87.49	81.25	
2,000-3,499: . . . . .	-87.49	-81.25	78.75	
1,500-1,999: . . . . .	-74.99	-72.49	72.49	

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(1) The purpose of subsection (b) is to set a minimum, but not a maximum riding fee. No non-winning jockey shall be paid less than the riding fee set forth in subsection (b).

(2) All fees pursuant to subsection (b) are payable in the lower purse range until the next higher purse range is reached unless there is a written agreement to the contrary. However, no such written agreement shall reduce the minimum required by subsection (b).

(3) To determine the horse owner's place purse or show purse when calculating non-winning jockey riding fees, the Paymaster of Purses shall use the purse agreement provided in the Horsemen's Agreement for the race meeting at which the jockeys earned such fees. The losing mount fee shall be paid as provided under subsection (b) of this rule.

(4) For horse races with gross purses between \$10,000 and \$100,000 and up, a minimum of five percent of the horse owner's place purse or show purse plus \$10.00 shall be used when calculating the second place and third place non-winning jockey riding fees.

(5) If the losing mount fee is equal to or greater than the third place mount fee, the Paymaster of Purses shall adjust the mount fees so that the third place mount shall earn \$2 more than the losing mount, and the second place mount shall earn \$2 more than the third place mount.

(c) A jockey's fee is considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned if the jockey elects to take himself off of his mount. If there is a substitution of jockeys, no additional jockey fee or double jockey fee need be paid except when ordered by the stewards.

(d) In this rule "Win Purse" means the amount paid the winning horse less the fees paid

exclusively by the owner to enter the horse in the race;

(1) Entry, nomination or other fees paid shall not be deducted from a jockey riding fee if such fees are paid or reimbursed by any person or entity other than the owner.

(e) If the parties agree on the fee to be paid the jockey, a contract or agreement in writing signed by the jockey or his agent and the owner or his authorized agent specifying the agreed upon fee if a winning mount, second place mount, third place mount and losing mount shall be delivered to the paymaster of purses before the running of the race in question. The paymaster of purses shall debit the owner's purse account under the contract or written agreement. If no contract or written agreement is submitted before the running of the race in question, the paymaster of purses shall debit the owner's purse account under the fee scale set forth in this rule.

(f) A jockey may not share in the fees of another jockey.

Authority: Sections 19440, 19501 and 19562,  
Business and Professions Code.

Reference: Sections 19401 (a), 19401(d), 19420, 19440, 19501, and 19502,  
Business and Professions Code.

**Text B**

CALIFORNIA HORSE RACING BOARD  
 TITLE 4. CALIFORNIA CODE OF REGULATIONS  
 ARTICLE 6. ENTRIES AND DECLARATIONS  
 PROPOSED AMENDMENT TO  
 RULE 1632. JOCKEY'S RIDING FEE

Single underlined text represents the original language noticed to the public from September 9, 2016 to October 24, 2016.

Deletions to the original noticed text appear as ~~bold double strikethrough~~ and new and revised text appears as bold double underlined.

1632. Jockey's Riding Fee.

(a) Winning jockey riding fees in the absence of a contract or special agreement are: 10% of the Win Purse.

<u>GROSS PURSE</u>	<u>Winning Mount</u>
<u>\$100,000 and up: . . . . .</u>	<u>10% of Win Purse</u>
<del>50,000-99,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>25,000-49,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>15,000-24,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>10,000-14,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>5,000-9,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>3,500-4,999: . . . . .</del>	<del>10% of Win Purse</del>
<del>2,000-3,499: . . . . .</del>	<del>10% of Win Purse</del>
<del>1,500-1,999: . . . . .</del>	<del>10% of Win Purse</del>

(1) The purpose of subsection (a) is not to set a minimum or maximum fee. It provides a fee if the parties have not made a written agreement to the contrary.

(2) All fees pursuant to subsection (a) are payable in the lower purse range until the next higher purse range is reached, unless there is a written agreement to the contrary.

(b) Non-winning jockey Jockey riding fees for losing mounts are:

<u>GROSS PURSE</u>	<u>2nd Mount</u>	<u>3rd Mount</u>	<u>Losing Mount</u>
<u>\$100,000 and up: . . . . .</u>	<u>5% of Place Purse,</u> <u>plus \$10.00</u>	<u>5% of Show Purse,</u> <u>plus \$10.00</u>	<u>\$168.74 <u>177.18</u></u>
<u>50,000-99,999: . . . . .</u>	<u>5% of Place Purse,</u> <u>plus \$10.00</u>	<u>5% of Show Purse,</u> <u>plus \$10.00</u>	<u>137.49 <u>144.37</u></u>
<u>25,000-49,999: . . . . .</u>	<u>5% of Place Purse,</u> <u>plus \$10.00</u>	<u>5% of Show Purse,</u> <u>plus \$10.00</u>	<u>118.74 <u>124.68</u></u>
<u>15,000-24,999: . . . . .</u>	<u>5% of Place Purse,</u> <u>plus \$10.00</u>	<u>5% of Show Purse,</u> <u>plus \$10.00</u>	<u>106.24 <u>111.55</u></u>

**Text B**

10,000-14,999: . . . .	5% of Place Purse, plus \$10.00	5% of Show Purse, plus \$10.00	99.99	104.99
<del>5,000-9,999</del> <u>Less than</u> <u>\$10,000</u> : . . . . .	<del>\$112.49</del> <u>\$118.12</u>	<del>\$96.25</del> <u>\$101.06</u>	93.75	98.44
3,500-4,999: . . . . .	-99.99	-87.49	81.25	
2,000-3,499: . . . . .	-87.49	-81.25	78.75	
1,500-1,999: . . . . .	-74.99	-72.49	72.49	

---

(1) The purpose of subsection (b) is to set a minimum, but not a maximum riding fee. No non-winning jockey shall be paid less than the riding fee set forth in subsection (b).

(2) All fees pursuant to subsection (b) are payable in the lower purse range until the next higher purse range is reached unless there is a written agreement to the contrary. However, no such written agreement shall reduce the minimum required by subsection (b).

(3) To determine the horse owner's place purse or show purse when calculating non-winning jockey riding fees, the Paymaster of Purses shall use the purse agreement provided in the Horsemen's Agreement for the race meeting at which the jockeys earned such fees. The losing mount fee shall be paid as provided under subsection (b) of this rule.

(4) For horse races with gross purses between \$10,000 and \$100,000 and up, a minimum of five percent of the horse owner's place purse or show purse plus \$10.00 shall be used when calculating the second place and third place non-winning jockey riding fees.

(5) If the losing mount fee is equal to or greater than the third place mount fee, the Paymaster of Purses shall adjust the mount fees so that the third place mount shall earn \$2 more than the losing mount, and the second place mount shall earn \$2 more than the third place mount.

(c) A jockey's fee is considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned if the jockey elects to take himself off of his mount. If there is a substitution of jockeys, no additional jockey fee or double jockey fee need be paid except when ordered by the stewards.

(d) In this rule "Win Purse" means the amount paid the winning horse less the fees paid exclusively by the owner to enter the horse in the race;

(1) Entry, nomination or other fees paid shall not be deducted from a jockey riding fee if such fees are paid or reimbursed by any person or entity other than the owner.

(e) If the parties agree on the fee to be paid the jockey, a contract or agreement in writing signed by the jockey or his agent and the owner or his authorized agent specifying the agreed upon fee if a winning mount, second place mount, third place mount and losing mount shall be delivered to the paymaster of purses before the running of the race in question. The paymaster of purses shall debit the owner's purse account under the contract or written agreement. If no contract or written agreement is submitted before the running of the race in question, the paymaster of purses shall debit the owner's purse account under the fee scale set forth in this rule.

(f) A jockey may not share in the fees of another jockey.

Authority: Sections 19440, 19501 and 19562,  
Business and Professions Code.

Reference: Sections 19401 (a), 19401(d), 19420, 19440, 19501, and 19502,  
Business and Professions Code.

BROAD & GUSMAN, LLP  
ATTORNEYS AT LAW

February 13, 2017

Nicole Lopes-Gravely  
Regulations Analyst  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825

**RE: Modification of the Text of Proposed Rule 1632, Jockey Riding Fee**

Dear Ms. Lopes-Gravely,

I am writing on behalf of the Jockeys' Guild, Inc., which represents licensed jockeys who race at California racetracks. It goes without saying that mount fees are a critical issue for our members.

Proposed section 1632(a) provides that the winning jockey fee is 10% of the win purse over \$5,000. However, as drafted, if a purse is lower than \$5,000, no winning mount fee is paid. This appears to be based on the assumption that there are no purses lower than \$5,000. We do not believe this is the case. Therefore, we would propose that the current chart (which contains duplicative language) in section 1632(a) be deleted and the rule be modified as follows:

“(a) Winning jockey riding fees in the absence of a contract or special agreement are 10% of the Win Purse.”

Similarly, proposed section 1632(b) provides for losing mount fees for races where the winning purse is greater than \$5,000. However, as drafted, if a purse is lower than \$5,000, no mount fee would be paid. Again, this appears to be based on the assumption that there are no purses lower than \$5,000 at any California racetrack. We do not think this is the case. Therefore, we would propose that the current language in chart in proposed section 1632(b) be changed from:

“GROSS PURSE	2 <sup>nd</sup> Mount	3 <sup>rd</sup> Mount	Losing Mount
[.....]			
“5,000-9,999.....”	\$118.12	\$101.06	\$98.44”

To:

“GROSS PURSE	2 <sup>nd</sup> Mount	3 <sup>rd</sup> Mount	Losing Mount
--------------	-----------------------	-----------------------	--------------

1127 11<sup>TH</sup> Street, Suite 512  
Sacramento, CA 95814  
(916) 442-5999.....  
Fax (916) 442-3209

**CALIFORNIA HORSE RACING BOARD**

**FEBRUARY 23, 2017**  
**REGULAR BOARD MEETING**

**There is no board package material for Item 7**

## STAFF ANALYSIS

Item 8

DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENT TO CHRB RULE 1469, SAFETY OF RACE COURSE, TO PROHIBIT AN ASSOCIATION FROM USING THE RACING SURFACE, (DIRT OR TURF), FOR ANY PURPOSE, OTHER THAN RENOVATION, MAINTENANCE, AND TRAINING FOR AT LEAST 30 DAYS PRIOR TO THE START OF A RACE MEETING OR AT LEAST 60 DAYS PRIOR TO BREEDERS CUP CHAMPIONSHIP EVENTS AT ITS RACE MEETING.

Regular Board Meeting  
February 23, 2017

## ISSUE

Safety at racetrack facilities continues to be a major priority for the California Horse Racing Board (CHRB or Board). An important component of the Board's various safety programs is its attention to, and regulation of, racing surfaces. Given the extreme sensitivity of both dirt and turf racetracks, staff has grown concerned about the overuse of these surfaces immediately prior to the start of a race meet. Accordingly, staff has prepared this proposed regulatory amendment to restrict the uses of racing surfaces to renovation, maintenance, and training purposes only prior to the start of a licensed race meeting.

## BACKGROUND

In California, every racetrack except Golden Gate Fields has an organic dirt track, and the majority of thoroughbred facilities have turf courses as well. These racing surfaces require constant maintenance, and they are easily affected by weather and overuse, which can cause track conditions to deteriorate over time. The potential inconsistency in organic dirt and turf racetracks is seen as a contributing factor for injuries and breakdowns in racehorses. This is also a concern for jockeys and other racing participants who face the possibility of serious injury when a horse goes wrong or breaks down during a race.

While daily fluctuations in track surfaces can be managed by constant tractor and water maintenance, staff has grown concerned about the potential long-term effects of heavy stress from non-racing activities occurring on racetracks immediately prior to the start of a race meet. Currently, several racing facilities use their tracks to host a variety of events between race meetings, exposing these surfaces to constant foot traffic and heavy machinery. When such events occur just before the start of a meet, there is concern that there is not sufficient time for the integrity of the racing surface to be fully restored before racing commences.

## ANALYSIS

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which

all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19481 provides that the Board shall establish safety standards governing the uniformity and content of the track base and racing surface, amongst other responsibilities. Finally, Business and Professions Code section 19481.5 requires that no license be issued to conduct a horse racing meeting upon a track unless the track has been inspected and approved by the Board within 30 days of the start of the meet.

In order to avoid potential damage to racetracks prior to the start of a race meet, as described above, staff has drafted the attached proposed amendment to Rule 1469, Safety of Race Course. Specifically, the amendment prohibits a racing association from using racing surfaces for any other purpose except renovation, maintenance, and training for at least thirty (30) days prior to the start of its race meeting. Additionally, the amendment requires that the restriction apply for sixty (60) days prior to the start of the meet if a Breeders' Cup Championship event will be conducted during the course of the race meeting.

#### RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 3. RACING ASSOCIATION  
PROPOSED AMENDMENT OF  
RULE 1469. SAFETY OF RACECOURSE.

1469. Safety of Race Course.

(a) The association shall take cognizance of any complaint regarding the safety of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

(b) No association shall use any racing surface, including turf courses, for any other purpose except renovation, maintenance, and training for at least thirty (30) days prior to the start of its race meeting.

(1) If an association is to host a Breeders' Cup Championship event at its race meeting, it shall not use any racing surface, including turf courses, for any other purpose except renovation, maintenance, training, and racing for at least sixty (60) days prior to the start of its race meeting.

Authority: Sections 19420, 19440, 19480, 19481 and 19481.5,

Business and Professions Code.

Reference: 19480, 19481 and 19481.5,

Business and Professions Code.

Item 9

STAFF ANALYSIS  
DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED  
AMENDMENT TO CHRB RULE 1588, HORSE INELIGIBLE TO START IN A RACE, TO  
PROVIDE THAT A HORSE THAT HAS NOT RACED FOR A SPECIFIED NUMBER OF  
CONSECUTIVE DAYS AT A RECOGNIZED RACE MEETING IS INELIGIBLE TO ENTER  
A RACE UNTIL SUCH HORSE HAS SATISFACTORILY COMPLETED ENHANCED  
TESTING OR EVALUATION AND HAS BEEN DECLARED ELIGIBLE TO START BY  
THE OFFICIAL VETERINARIAN.

Regular Board Meeting  
February 23, 2017

#### ISSUE

CHRB staff has recently discovered that nearly a fifth of all horses that suffer racing fatalities at California racetracks break down in one of their first three races back after coming off of an extended layoff. The proposed amendment to Rule 1588, Horse Ineligible to Start in a Race, is intended to help prevent such fatalities from occurring by requiring horses that come off of a layoff of a 120-days or more to undergo a special examination by either the Official Veterinarian or the Racing Veterinarian to verify that the horse is physically sound and able to safely and lawfully compete in a race.

#### BACKGROUND

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California.

#### ANALYSIS

This year CHRB staff discovered that of the fatalities that occurred between 2013 and 2016, approximately 20% were suffered by horses that were racing after being laid up for 120 days or more. This statistic can be attributed to a variety of factors; however, many of these horses were shown to have had pre-existing conditions, veterinary treatments, or other injuries or illnesses necessitating the time off. Regardless the cause, it has become clear that horses which require a 120-day or greater break from racing should undergo an enhanced examination to verify that the horse is both raceably sound and in fit physical condition to exert its best effort before it is allowed to enter a race in California.

Accordingly, the proposed amendment to Rule 1588, Horse Ineligible to Start in a Race, would make a horse that has not raced at a recognized race meeting in 120 or more consecutive days ineligible to start until it has undergone an examination by the Official Veterinarian or the Racing Veterinarian prior to being entered into a race. Furthermore, the proposed amendment would give the Official Veterinarian the ability to have a horse returning from an extended layoff

to perform satisfactorily in a workout or qualifying race to demonstrate its physical fitness and then be tested in blood and/or urine.

#### RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 6. ENTRIES AND DECLARATIONS  
PROPOSED AMENDMENT OF  
RULE 1588. HORSE INELIGIBLE TO START IN A RACE.

1588. Horse Ineligible to Start in a Race.

In addition to any other valid ground or reason, a horse is ineligible to start in any race:

(a) if such horse is not registered by the Jockey Club if a thoroughbred, the United States Trotting Association if a standardbred, the American Quarter Horse Association if a quarter horse, the Appaloosa Horse Club if an appaloosa horse, the Arabian Horse Registry of America if an Arabian horse, or the American Paint Horse Association if a paint horse;

(b) if the parentage verification to both the sire and the dam of all horses foaled in 1992 and thereafter has not been certified by the Jockey Club if a thoroughbred, the United States Trotting Association if a standardbred, the American Quarter Horse Association if a quarter horse, the Appaloosa Horse Club if an appaloosa horse, the Arabian Horse Registry of America if an Arabian horse, or the American Paint Horse Association if a paint horse;

(c) if, unless the stewards permit otherwise, the certificate of foal registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary at the time of entry;

(d) if such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry;

(e) if the certificate of foal registration, eligibility papers or other registration issued by the official registry has been altered, erased, or forged;

(f) if the identification markings of the horse do not agree with the identification markings as set forth in the registration of such horse;

(g) unless he is eligible to enter said race and is duly entered for such race;

(h) when such horse is owned in whole or in part by an unlicensed person or is in the care of an unlicensed trainer;

(i) when such horse is on the Steward's List, the Starter's List or the Veterinarian's List;

(j) when, except with prior approval of the stewards for good cause, such horse is on the Veterinarian's List in another racing jurisdiction. Good cause includes:

(1) unforeseen administrative issues in removing the horse from the Veterinarian's List of another racing jurisdiction;

(2) the location of the horse prevents it from being evaluated by the official veterinarian of another racing jurisdiction and cleared from that jurisdiction's Veterinarian's List, and the horse is approved to race by a California official veterinarian; or

(3) any other unforeseen event or reason that would prevent a horse that would otherwise not be on a Veterinarian's List from being cleared from the Veterinarian's List of another racing jurisdiction.

(k) when, except with prior approval of the stewards, such horse has not been on the grounds of the association or its approved auxiliary stable area for at least 24 hours prior to the time the race is to be run.

(l) if such horse has not raced at any recognized race meeting in 120 or more consecutive days and has not raced in California since the conclusion of that absence, unless such horse has been examined prior to entry by the Official Veterinarian or the Racing Veterinarian and declared raceably sound and in fit physical condition to exert its best effort in a race. The Official Veterinarian may require such horse to perform satisfactorily in a workout or qualifying race to demonstrate its physical fitness, and if so a blood and/or urine post-work test sample shall be taken from the horse and the provisions of this article shall apply to such official workout in the same manner as to a scheduled race.

(1) For the purpose of this regulation, "workout" means an exercise session near full speed, or close to full speed.

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

Item 10

## STAFF ANALYSIS

DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED  
AMENDMENTS TO CHRB RULE 1689, SAFETY HELMETS REQUIRED; AND RULE  
1689.1, SAFETY VEST REQUIRED, TO REQUIRE DRIVERS RIDING IN A JOG CART TO  
WEAR A SAFETY HELMET AND SAFETY VEST.Regular Board Meeting  
February 23, 2017

## ISSUE

CHRB Rule 1689, Safety Helmets Required, and Rule 1689.1, Safety Vest Required, both indicate that drivers shall wear a helmet and vest when mounted in or riding on a sulky; however, the rule does not include the same requirements when a driver is in a jog cart. Accordingly, the proposed amendments to Rules 1689 and 1689.1 are intended to close this loophole so that drivers are required to wear a safety vest and helmet at all times when mounted on or riding in a sulky or jog cart.

## BACKGROUND

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19481 states that the Board shall establish safety standards governing the equipment for horse and rider, amongst other responsibilities.

## ANALYSIS

It was recently brought to the attention of CHRB staff that there is a loophole in current regulations which allows drivers to ride in jog carts without wearing safety vests and helmets. A "jog cart" is distinctive from a "sulky" both in construction and use. Jog carts are used solely for training purposes and are never used for racing. Because CHRB Rule 1420(y), Definitions, defines "sulky" as a "racing vehicle," a jog cart could not be considered a sulky under our current regulations.

Accordingly, staff is proposing that Rule 1689, Safety Helmets Required, and Rule 1689.1, Safety Vest Required, be amended to require use of helmets and vests when a person is mounted in or riding on a "sulky or jog cart." This would ensure that all persons riding behind a horse in a jog cart abide by the same safety standards established for drivers in sulkies.

## RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 8. RUNNING THE RACE  
PROPOSED AMENDMENT OF  
RULE 1689. SAFETY HELMETS REQUIRED

1689. Safety Helmets Required.

(a) A racing association, fair, or authorized training facility may not permit any person to be mounted on a horse on the racetrack, be mounted in or riding on a sulky or jog cart, or work as a member of the gate crew unless the person is wearing a properly fastened safety helmet.

(1) For purposes of this regulation, a member of the gate crew means any person licensed as an assistant starter or any person who handles a horse at the starting gate.

(2) For purposes of this regulation, "racetrack" means the surface of the racing or training track.

(b) Safety helmets required under subsection (a) of this rule shall comply with one of the following product standards:

- (1) American Society for Testing Materials (ASTM) standard F-1163-04a, or
- (2) European Standard (EN) 1384:1996, or
- (3) Australian and New Zealand Racing Boards (AS/NZS) standard 3838:2006, or
- (4) Snell Memorial Foundation (Snell) Standard for Protective Headgear H2000.

NOTE: Authority cited: Sections 19420 and 19440, Business and Professions Code. Reference: Sections 19481 and 19460, Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 8. RUNNING THE RACE  
PROPOSED AMENDMENT OF  
RULE 1689.1. SAFETY VEST REQUIRED

1689.1. Safety Vest Required.

(a) No jockey or apprentice jockey shall ride in a race unless wearing a safety vest, nor shall a jockey, apprentice jockey, or exercise rider, train or exercise any horse on the grounds of a racing association, racing fair, or authorized training facility unless wearing a safety vest.

(1) Any person licensed by the Board mounted on a horse on a track of a racing association, racing fair, or authorized training facility shall wear a safety vest.

(b) No driver shall be mounted in or riding on a sulky or jog cart, nor shall an assistant starter handle any horse on the grounds of a racing association, racing fair, or authorized training facility unless wearing a safety vest.

(c) Safety vests required to be worn in accordance with this regulation shall:

(1) Provide a minimum of shock absorbing protection to the upper body, as evidenced by a label indicating that the safety vest meets one of the following standards:

(A) "Level 1" under the British Equestrian Trade Association (BETA) 2009 Standard for Horse Riders' Body and Shoulder Protectors, or

(B) American Society for Testing Materials (ASTM) standard F2681-08, or

(C) Shoe and Allied Trades Research Association (SATRA) (1999) Jockey Vest Standard, Document M6 Issue 3, Australian Racing Board (ARB) 3.

(2) Cover the entire torso from the collarbone to a line level with the hip bone allowing a vee opening in the front neckline;

(3) Weigh no more than 2 pounds.

(4) No vest shall be altered from its original manufactured design. This includes, but is not limited to:

(A) Cutting the vest to customize fit.

(B) Removal of manufacturer's labels.

(C) Removal of protective padding.

(d) The weight of a safety vest shall not be included in the weight of a jockey or apprentice jockey when weighing out or weighing in or when adding weight to make up a weight assignment.

NOTE: Authority cited: Sections 19420, 19481 and 19562, Business and Professions Code.

Reference: Section 19481, Business and Professions Code.

## STAFF ANALYSIS

Item 11

DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED AMENDMENTS TO CHRB RULES 1858, TEST SAMPLE REQUIRED; 1859, TAKING, TESTING AND REPORTING OF TEST SAMPLES; 1859.25, SPLIT SAMPLE TESTING; 1867, PROHIBITED VETERINARY PRACTICES; AND THE PROPOSED ADDITION OF CHRB RULES 1859.1, OUT-OF-COMPETITION TESTING PROCEDURES AND REQUIREMENTS; AND 1869, PROHIBITED DRUG SUBSTANCE IN OUT-OF-COMPETITION TESTING, TO INCORPORATE THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL (ARCI) MODEL RULE FOR OUT-OF-COMPETITION TESTING INTO THE CHRB'S RULES AND REGULATIONS.

Regular Board Meeting  
February 23, 2017

## ISSUE

In December 2016 the Association of Racing Commissioners International (ARCI) adopted a robust Model Rule that establishes a uniform set of procedures and guidelines for out-of-competition testing. Additionally, the Model Rule introduced a broad set of prohibitions and restrictions regarding the use of certain medications, drugs, and other substances for horses that are engaged in racing but currently out-of-competition.

The proposed rule amendments and additions are intended to incorporate the substance of these Model Rules into the California Horse Racing Board's (CHRB or Board) existing regulatory scheme, and otherwise enhance the Board's current out-of-competition testing efforts.

## BACKGROUND

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California.

Although the CHRB has been conducting out-of-competition testing for years now, there has been little occasion to use the results of those tests for anything beyond informational and research purposes. Upon discovering the presence of certain substances in an out-of-competition test, staff has only conducted follow-up investigations in those instances where it appeared the administration of a certain medication had not been properly reported. To date, however, the only drugs and medications that would trigger a complaint if found in an out-of-competition test sample, are those listed currently in CHRB Rule 1867, Prohibited Veterinary Practices (e.g. zilpaterol, ractopamine, snake venom, etc.).

## ANALYSIS

The out-of-competition testing Model Rules adopted by the ARCI have been in development for several years by the Racing Medication and Testing Consortium (RMTC), and are based on the knowledge, expertise, and input of horse racing stakeholders throughout the country. In short, they accomplish two things: 1) a transparent and uniform process to be followed by racing commissions when collecting out-of-competition samples, and 2) an enhanced list of prohibited and/or restricted medications and drug substances for horses that are engaged in horse racing but not currently entered in any particular race (i.e. horses that are “out-of-competition”).

The proposed regulatory amendments and additions implement the substance of these Model Rules, and create a more effective mechanism for the CHRB to monitor and control the use of medications, drugs, and other substances in horses that will race in this State. This not only will enhance the safety and welfare of the horse, but will also ensure greater integrity in California racing.

The proposed amendment to Rule 1858, Test Sample Required, clarifies the Board’s authority to collect official blood, urine, and other biological test samples, as well as describes specifically which horses are eligible for out-of-competition testing. Additionally, the proposed amendment makes it a condition of a trainer and owner’s license that the Board be given consent to collect out-of-competition test samples at any location where an eligible horse is present.

The proposed amendment to Rule 1859, Taking, Testing and Reporting of Samples, makes minor technical changes to existing language to ensure out-of-competition testing does not conflict with existing official test sample collection processes.

The proposed addition of Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, describes in detail the procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. In practice, out-of-competition testing conducted pursuant to this regulation will be substantially similar to how it is currently done in California.

The proposed amendment to Rule 1859.25, Split Sample Testing, extends the same split sample process and rights currently in place for post-race testing to licensees who have a horse in their custody test positive for a prohibited substance in an out-of-competition sample.

The proposed amendment to Rule 1867, Prohibited Veterinary Practices, adds a number of medications and drug substances to the current prohibited list, and extends its application to substances detected in out-of-competition test samples.

The proposed addition of Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, lists all medications, drugs, and other substances that are prohibited from being present in an out-of-competition test sample. Additionally, the proposed rule includes exceptions for certain therapeutic medications in cases where specific procedural and reporting requirements are followed. Finally the proposed rule describes the liability and rights of trainers, owners, and other licensees who have the care and custody of a horse that tests positive for a prohibited substance in an out-of-competition test sample.

RECOMMENDATION

This item is presented to the Board for discussion and action.

**CRAIG R. FRAVEL***President and  
Chief Executive Officer*

February 9, 2017

Mr. Harold Coburn, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Email: [haroldc@chrb.ca.gov](mailto:haroldc@chrb.ca.gov)

**RE: Out-of-Competition Testing**

Dear Mr. Coburn,

On behalf of Breeders' Cup Limited, I write in support of the proposed amendments to CHRB (1) Rule 1859.1 – Out of Competition Testing Procedures and Requirements and (2) Rule 1869 – Prohibited Drug Substances in Out-of-Competition Testing. We believe that the proposed amendments will bring the CHRB's rules further in line with the national and international movement towards out-of-competition testing and medication.

We believe that the continued safety and integrity of the horse is critical to our business. Enacting the proposed amendments which incorporates the Association of Racing Commissioners International's model rule for out-of-competition testing and medication is a critical component of Breeders' Cup in selecting future host sites and we urge adoption.

We look forward to conducting the Breeders' Cup World Championships in California at Del Mar in 2017 and in future years to come.

Very truly yours,

Craig Fravel  
President and CEO  
Breeders' Cup Limited

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1858. TEST SAMPLE REQUIRED.

1858. Test Sample Required.

(a) Blood and urine test samples shall be taken daily from the winner of every race, from horses finishing second and third in any stakes race with a gross purse of \$75,000 or more, and from not less than six other horses designated for testing by the Equine Medical Director, the stewards or the official veterinarian.

(b) The Board may at any time on any date take official blood, urine or other biological samples, in accordance with Rules 1859 and 1859.1, from a horse to enhance the ability of the Board to enforce its medication and anti-doping rules.

(b)c) Every horse within the inclosure, every horse registered to race at an inclosure, every horse under the care or control of a licensed trainer, or owned by a licensed owner, or nominated, pre-entered or entered in any race that will be held within a licensed inclosure is subject to pre-race, post-race, and out-of-competition testing by the Board. and ~~n~~No owner, trainer or other person having the care of a horse shall refuse to submit it for testing when directed by the Equine Medical Director, the Executive Director, the stewards or the official veterinarian.

(1) For the purposes of this regulation, a horse is "registered to race at an inclosure" when the horse's registration papers are on file with a racing association under the jurisdiction of the Board, and/or the horse has raced at a licensed inclosure within the previous 12 months.

(2) A horse is "out-of-competition" when it is not entered in a race as defined in this Article. This regulation does not permit out-of-competition testing outside of a licensed inclosure on weanlings, yearlings, or any horse proven to be no longer engaged in horse racing unless such

horse is entered in a horse sale authorized by the Board pursuant to Rule 1807.

(3) Persons who apply for and are granted a trainer or owner license shall be deemed to have given their consent, as a condition of licensure, for the Board and its representatives to access any location, whether inside or outside of a licensed inclosure, where a horse eligible for testing may be found for the purpose of collecting official out-of-competition test samples. Such consent, however, does not permit the Board or its representatives to search the surrounding premises when collecting a test sample from a horse not within a licensed inclosure. Licensees shall take any steps necessary to authorize access by Board representatives to any location where a horse eligible for testing is present, and no person shall knowingly interfere with or obstruct the collection of an official test sample.

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

Reference: Section 19580(b), Business and Professions Code; and Sections 337f, 337g and 337h, Penal Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1859. TAKING, TESTING AND REPORTING OF SAMPLES.

1859. Taking, Testing and Reporting of Samples.

(a) Urine, blood or other biological official test samples shall be taken under the direction of the official veterinarian, the Equine Medical Director or a person designated by the official veterinarian. All samples shall be taken in a detention area approved by the Board, unless it is an official out-of-competition test sample taken in accordance with Rule 1859.1, or the official veterinarian or the Equine Medical Director approves otherwise. The taking of any test sample shall be witnessed, confirmed or acknowledged by the owner or trainer of the horse being tested or his or her agent or employee, and may be witnessed by the owner, trainer or other person designated by them. All official test samples shall be sent to the official laboratory approved and designated by the Board, in such manner as the Board may direct. All required samples shall be in the custody of the official veterinarian, his or her assistants or other persons approved by the official veterinarian, from the time they are taken until they are delivered to the custody of the official laboratory.

(b) The Executive Director and the Equine Medical Director shall immediately be notified by the official laboratory of each finding that an official test sample contains a prohibited drug substance, as defined in this article. The official laboratory shall further provide all information and data on which the finding is based to the Equine Medical Director, and shall transmit its official report of the finding to the Executive Director within five working days after the initial notification is made.

(c) The Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis.

(d) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no drug substance prohibited by this article has been administered, in violation of these rules, to the horse earning such purse money.

NOTE: Authority cited: Sections 19420, 19440, 19562 and 19577, Business and Professions Code. Reference: Sections 19401, 19440 and 19577, Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED ADDITION OF  
RULE 1859.1. OUT-OF-COMPETITION TESTING PROCEDURES AND REQUIREMENTS.

1859.1. Out-of-Competition Testing Procedures and Requirements

(a) Official out-of-competition test samples shall be collected under the supervision and direction of the official veterinarian, the Equine Medical Director, or a person designated by the official veterinarian or Equine Medical Director. All blood samples shall be collected by a veterinarian licensed by the Board, or by a veterinary technician licensed by the Board who is acting under the supervision of the official veterinarian or Equine Medical Director.

(b) Upon request of the Equine Medical Director, the Executive Director, the stewards or the official veterinarian, the trainer, owner, or their specified designee shall disclose the location of their horses eligible for out-of-competition testing as described in Rule 1858.

(c) The Board need not provide advance notice to the trainer or owner before arriving at any location, whether or not the location is within a licensed inclosure, to collect official out-of-competition test samples. However, if the trainer, owner, or their specified designee requests that the sample be collected in an alternative location, the Board may, in its sole discretion, collect the sample at an alternative time and location designated by the Board.

(d) The trainer, owner, or their specified designee shall cooperate with the person who collects official out-of-competition test samples on behalf of the Board, which shall include without limitation:

(1) Assisting in the immediate location and identification of the horse;

(2) Making the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;

(3) Providing a stall or other safe location to collect the samples;

(4) Assisting the person who is collecting samples in controlling the horse; and

(5) Witnessing the taking of samples, including sealing of sample collection containers.

(e) The management and employees of a licensed racetrack or training facility where a horse is located shall cooperate fully with any person collecting official out-of-competition test samples on behalf of the Board. The person who collects samples for the Board may require that the collection be done at a specified location on such premises.

(f) The Board may arrange to have test samples collected from a horse that is physically located outside of California, but otherwise subject to out-of-competition testing pursuant to Rule 1858. Such test samples may be collected by the racing commission or racing authority that regulates the jurisdiction in which the horse is physically located, or by any other person that the Board designates. Such racing commission or other designated person shall follow the collection procedures described in this regulation in order for the sample to be designated an official out-of-competition test sample.

(1) The test results of an official out-of-competition test sample collected outside of California may be made available, at the discretion of the Board, to each racing commission that participates in the process of collecting the sample.

(2) The Board, if requested and in its sole discretion, may permit the trainer, owner or their designee to transport their horse into California for out-of-competition testing at a time and place designated by the Board instead of having the horse tested outside of California.

(g) The person who collects official out-of-competition test samples for the Board shall, at the time of sample collection, provide their CHRB identification and disclose to the owner and/or trainer of the horse that the purpose of the sampling is for out-of-competition testing.

(h) If the trainer or any other person having care and custody of a horse selected for out-of-competition testing refuses or declines to make the horse available for test sample collection, the Board shall attempt to notify the owner and give them the opportunity to make the horse available for immediate testing.

(i) All available records demonstrating the chain of custody for an official out-of-competition test sample shall be made available to the trainer, owner, or their designee, at their request, when a complaint results from an out-of-competition test.

(j) Any licensee who willfully fails to make a horse available for out-of-competition testing, or commits other willfully deceptive acts in connection with out-of-competition testing, or causes interference or obstruction to the sampling process, shall receive a minimum penalty of a one-year license suspension.

(k) A horse that is not made available for out-of-competition testing when requested by the Board in accordance with this regulation shall be placed on the Steward's List for a minimum of 180 days. If the trainer, owner, or their designee refuses to submit their horse for out-of-competition testing based on their assertion that the horse is no longer engaged in horse racing activities, the horse shall be placed on the Steward's List for a minimum of 180 days.

NOTE: Authority cited: Sections 19420, 19440, 19562, and 19580, Business and Professions Code. Reference: Sections 19401, 19440, 19580, and 19583, Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1859.25. SPLIT SAMPLE TESTING.

1859.25. Split Sample Testing.

(a) In addition to the blood, ~~and urine,~~ and other biological official test samples transmitted to the official laboratory for testing as provided in Rules 1859 and 1859.1 of this Article, the Board shall maintain a portion of the official test sample for each horse tested if sufficient sample is available after the official test samples are taken. That portion shall be designated the split sample. The Board makes no guarantee as to the amount of sample which will be available for the split sample. All samples taken by representatives of the Board are under the jurisdiction of and shall remain the property of the Board at all times. The Board shall ensure the security and storage of the split sample.

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

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

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

(2) The owner or trainer requesting to have the split sample tested shall be responsible for all charges and costs incurred in transporting and testing the split sample. By signing CHRB-56, the owner or trainer certifies he or she has made arrangements for payment to the 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 released or shipped to the Board-approved laboratory designated by the owner or trainer to test the split sample and the owner and trainer will have relinquished his/her right to have the split sample tested. If a complaint issues, the only test results that will be considered will be the results from the Board's official laboratory.

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

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

(2) If the findings by the independent Board-approved laboratory confirm the findings of

the prohibited drug substance as reported by the official laboratory, the Executive Director shall report these findings to the Board within 24 hours after receiving confirmation of the prohibited drug substance in the split sample.

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

(f) Results of the official test sample and the split sample shall be, and shall remain, confidential and shall be provided only to the Executive Director or the Executive Director's designee, the Board, the Equine Medical Director or the Equine Medical Director's designee, and to the owner and trainer, unless or until the Board files an official complaint or accusation.

NOTE: Authority cited: Sections 19420, 19440 and 19577, Business and Professions Code.  
Reference: Sections 19420, 19440 and 19577, Business and Professions Code; and Section 603, Evidence Code.

CALIFORNIA HORSE RACING BOARD  
 TITLE 4. CALIFORNIA CODE OF REGULATIONS  
 ARTICLE 15. VETERINARY PRACTICES  
 PROPOSED AMENDMENT OF  
 RULE 1867. PROHIBITED VETERINARY PRACTICES.

1867. Prohibited Veterinary Practices.

For purposes of this division, prohibited veterinary practices means:

(a) The possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance, doping agent, or medication specified below for which a recognized analytical method has not been developed to detect and confirm its administration; or the use of which may endanger the health and welfare of the horse, or the safety of the rider or driver, or alter equine performance.

(1) Erythropoietin (EPO) and analogs;

(2) Darbepoietin and analogs;

(3) Venoms or derivatives thereof~~Snake venom~~;

(4) ~~Snail venom~~;

(45) Growth hormone and analogs, except platelet rich plasma and autologous conditioned plasma are permitted provided such treatment is pursuant to a valid veterinary prescription made in accordance with all rules and regulations in this division, and the treatment is reported to the Official Veterinarian on form CHRB-60 (Rev. 7/15) (Trainer Medication Report), regardless of whether or not the horse is treated within or outside of a licensed inclosure;

(56) Ractopamine and ractopamine metabolites or analogs;

(67) Zilpaterol and zilpaterol metabolites or analogs;

(7) Aminoimidazole carboxamide ribonucleotide (AICAR);

(8) Hemopure;

(9) Myo-Inositol Trispyrophosphate (ITPP);

(10) Oxyglobin;

(11) Thymosin beta;

(b) The possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

(c) The presence of any drug, substance or medication described in subsections (a)(1) through (a)(~~5~~13), and subsection (b) of this regulation in any test sample obtained consistent with Rules 1858, 1859, 1859.1, and 1859.25 of this article, and the provisions of this article, shall apply to such sample in the same manner as if the horse were entered to race (See Title 4, California Code of Regulations, section 1843.3). The Board may grant an exception to this subsection if the person or persons seeking the exemption submits written documentation that demonstrates an FDA exemption has been obtained pursuant to Guide 1240.3025 of the FDA Center for Veterinary Medicine (CVM) Program Policy and Procedures Manual, which is hereby incorporated by reference. Guide 1240.3025 of the FDA CVM Program Policy and Procedures Manual may be obtained at the California Horse Racing Board's headquarters office.

NOTE: Authority cited: Sections 19440, 19562, 19580, and 19582, Business and Professions Code. Reference: Sections 19580, 19581, and 19582, Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED ADDITION OF  
RULE 1869. PROHIBITED DRUG SUBSTANCES IN OUT-OF-COMPETITION TESTING.

1869. Prohibited Drug Substances in Out-of-Competition Testing

(a) In addition to those drugs, substances, doping agents, and medications described in Rule 1867(a), the following substances are prohibited from being present in any official out-of-competition test sample collected in accordance with Rules 1859, 1859.1, and 1859.25:

(1) Anabolic androgenic steroids and their metabolites and isomers, except naturally occurring endogenous anabolic steroids as authorized in Rule 1844;

(A) Notwithstanding the foregoing, anabolic androgenic steroids may be used in a horse that is out-of-competition, provided that:

(i) The anabolic agent has been approved by the United States Food and Drug Administration (FDA) for use in the United States;

(ii) The administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division;

(iii) The administration is reported to an Official Veterinarian on form CHRB-60 (Rev. 7/15 (Trainer Medication Report), regardless of whether or not the horse is treated within or outside of a licensed inclosure;

(iv) The horse remains on the Veterinarian's List for a minimum of six months following the administration of the anabolic androgenic steroids, and shall be removed from the list only after the horse demonstrates, to the satisfaction of the official veterinarian or the racing veterinarian, that it is raceably sound and in fit physical condition to exert its best effort in a race

by performing satisfactorily in a workout or qualifying race. Additionally, a blood, urine and/or other biological test sample taken after such workout or qualifying race shall be free of all prohibited substances described in Rule 1843 before the horse can be removed from the Veterinarian's List.

(2) The following anabolic agents: selective androgen receptor modulators, tibolone, and zeranol;

(3) Erythropoietin-Receptor agonists;

(4) Hypoxia-inducible factor stabilizers, except out-of-competition blood samples may contain cobalt in an amount that does not exceed 50 nanograms per milliliter;

(5) Chorionic G  
onadotropin and Luteinizing Hormone and their releasing factors;

(6) Corticotrophins and their releasing factors;

(A) Notwithstanding the foregoing, adrenocorticotrophic hormone (ACTH) may be used in a horse that is out-of-competition, provided that:

(i) The substance has been approved by the FDA for use in the United States;

(ii) The administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division;

(iii) The administration is reported to an Official Veterinarian on form CHRB-60 (Rev. 7/15 (Trainer Medication Report), regardless of whether or not the horse is treated within or outside of a licensed inclosure.

(7) Beta-2 agonists, including all optical isomers;

(A) Notwithstanding the foregoing, clenbuterol and albuterol may be used in a horse that

is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division.

(8) The following aromatase inhibitors: aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, testolactone;

(9) The following selective estrogen receptor modulators: raloxifene, tamoxifen, toremifene;

(10) The following anti-estrogenic substances: clomiphene, cyclofenil, fulvestrant;

(11) The following agents modifying myostatin function(s): myostatin inhibitors;

(12) The following metabolic modulators: activators of the AMP-activated protein kinase, Peroxisome Proliferator Activated Receptor  $\delta$  (PPAR $\delta$ ) agonists, insulins, trimetazidine, Thyroxine, and thyroid modulators/hormones containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(A) Notwithstanding the foregoing, Thyroxine (T4) shall not be considered a prohibited substance provided that such treatment is made pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division.

(B) Additionally, notwithstanding the foregoing, altrenogest shall not be considered a prohibited substance in fillies and mares, provided that such treatment is made pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division.

(13) The following diuretics and masking agents: desmopressin, furosemide , plasma

expanders, probenecid, torsemide, acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, indapamide, metolazone, spironolactone, thiazides, triamterene, trichlormethiazide, vasopressin receptor antagonists, and vaptans.

(A) Notwithstanding the foregoing, furosemide and trichlormethiazide may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division.

(B) Additionally, notwithstanding the foregoing, the above diuretics may be administered in an emergency situation in order to safeguard the health of the horse, provided that such treatment is:

(i) Made pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division, and

(ii) The administration is reported to the Official Veterinarian on either form CHRB-60 (Rev. 7/15) (Trainer Medication Report) by the trainer, or on form CHRB-24 (Rev. 7/15) (Veterinarian Report) by the treating veterinarian within twenty-four (24) hours.

(b) Therapeutic substances that are not otherwise prohibited pursuant to this regulation are permitted for use when a horse is out-of-competition, provided such substances have been approved by the FDA for use in the United States, and are prescribed and administered in accordance with all applicable federal and state laws and regulations, including all CHRB rules and regulations.

(c) A finding by the official laboratory that an official out-of-competition test sample taken from a horse contains a drug substance or its metabolites or analogues which is prohibited under this regulation shall be prima facie evidence that the trainer and/or any other licensee

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 such an event, the trainer, owner, foreman in charge of the horse, groom, and/or any other person shown to have had the care or attendance of the horse may be fined, and/or have his/her license suspended or revoked.

(1) The trainer is the absolute insurer of and responsible for the condition of the horses under his/her care while such horses are physically located within a licensed inclosure, regardless of the acts of third parties, except as otherwise provided in this article.

(2) The owner of a horse that is not physically located within a licensed inclosure and is not under the care and custody of another person licensed by the Board shall be the absolute insurer of and responsible for the condition of the horse, regardless of the acts of third parties.

(3) The defenses described in Rule 1888 shall be available to any person charged with a violation of this regulation.

(c) The Board, the board of stewards, the hearing officer, or the administrative law judge shall assess a penalty for violation of this section based upon the classifications and penalties set forth in Rules 1843.2 and 1843.3.

(d) A race day prohibition or restriction of a substance under this Article is not applicable to an out-of-competition test unless otherwise stated.

NOTE: Authority cited: Sections 19420, 19440, 19562, and 19580, Business and Professions Code. Reference: Sections 19440, 19580 and 19583, Business and Professions Code.

Item 12

STAFF ANALYSIS  
DISCUSSION AND ACTION BY THE BOARD REGARDING THE PROPOSED ADDITION  
OF CHRB RULE 1868, AUTHORIZED MEDICATION DURING WORKOUTS, TO  
ESTABLISH THRESHOLD LIMITS FOR THE PRESENCE OF CERTAIN DRUG  
SUBSTANCES AND MEDICATIONS IN OFFICIAL TEST SAMPLES TAKEN FROM  
HORSES AFTER THEY COMPLETE A TIMED WORKOUT.

Regular Board Meeting  
February 23, 2017

*\*Please note that the California Horse Racing Board voted to send this proposed regulation out for public comment at its December 2016 Regular Meeting. Although the 45-day public comment period has not yet commenced, the Medication, Safety and Welfare Committee has requested that this item be placed on the Agenda for further discussion of the proposed regulation.*

#### ISSUE

The California Horse Racing Board (CHRB or Board) currently employs a rigorous post-race testing program intended to prevent and detect the unauthorized use of certain medications and drug substances during horse races. The purpose of these efforts is twofold: to guard the health and welfare of horse and rider, and to ensure the integrity of horse racing in this State so as to protect participating licensees and the wagering public.

To date, however, the industry has gone without similar protections when horses complete timed workouts at licensed racing facilities.<sup>1</sup> The proposed addition of Rule 1868, Authorized Medication During Workouts, is thus intended to address this issue by establishing restrictions on the use of local anesthetics, narcotic analgesics, and non-steroidal anti-inflammatory drug substances (NSAID) for horses engaging in timed workouts.

#### BACKGROUND

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California.

Historically, the Board has focused its regulatory and enforcement efforts on preventing and penalizing the unauthorized use of certain medications and drug substances surrounding the running of a race via post-race testing.

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<sup>1</sup> The one exception is that a horse required to complete a timed workout for removal from the Veterinarian's List is subject to the same medication restrictions as a horse participating in a race, pursuant to CHRB Rule 1866(e).

One major purpose of this program has been to prevent horses from being administered medications that could increase the likelihood of them becoming injured during a race. These same risks exist, however, during timed workouts. In a timed workout, a horse will run at full speed or near full speed, meaning the same concerns about certain medications increasing the chance of injury during a race are equally applicable. One such medication is non-steroidal anti-inflammatory drug substances (NSAID). NSAIDs are typically used to treat musculoskeletal and inflammatory processes in horses, but can also mask a horse's pain when used excessively. Such use potentially allows horses to train and race while injured and before they are fully healed. Masking a horse's condition with medications has the potential to obscure lameness and cause additional injuries to occur. Using pain-masking medications before a horse is fully healed can place a horse at a higher risk for breakdown, which can cause injury to horse and rider. Local anesthetics and narcotic analgesics can have similar masking-effects by deadening or reducing pain from an injury. The ability to detect signs of inflammation and/or lameness is critical for trainers, jockeys and other licensees to detect injuries, and thereby prevent injured horses from training.

Another primary purpose of the CHRB's post-race drug testing program is to ensure that horses do not have their performances enhanced, hindered, or altered by the use of unauthorized medications. Such efforts can give horses an unfair advantage or disadvantage in a race, which not only may impact the other trainers and owners with competing horses, but also defrauds the public wagering on the outcome of the race. Similar fraud, however, can result when the timed workout performance of a horse is enhanced, hindered, or altered as well. Many handicappers rely on the past performance of race horses to determine what they predict the order of finish will be in a particular race. Past performances often include the results of timed workouts, which means when these workouts are altered by the overuse of pain-masking medications, the wagering public is still being deceived as to the natural skill and ability of the horse over time.

## ANALYSIS

The proposed addition of Rule 1868, Authorized Medication During Training, would address the issues described above by placing certain restrictions on the use of NSAIDs, local anesthetics, and narcotic analgesics for horses completing timed workouts. Specifically, the proposed rule would prohibit the administration of local anesthetics and narcotic analgesics to horses within 24 hours of their completing a timed workout. Furthermore, the rule would impose the same post-race testing threshold limitations for NSAIDs on horses having just completed a timed workout. The goal of these amendments would be to eliminate the overuse of pain-masking medications that increase the chance of injury for a horse running at full speed, and to prevent deception on the public as to the natural ability and skill of a horse that may be wagered on.

## RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED ADDITION OF  
RULE 1868. AUTHORIZED MEDICATION DURING TRAINING.

Rule 1868. Authorized Medication During Workouts

(a) No person shall administer a local anesthetic or narcotic analgesic to any horse within 24 hours of a timed workout, nor shall any horse participating in a timed workout carry in its body any local anesthetic or narcotic analgesic.

(b) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be detected in an official test sample taken from a horse after it completes a timed workout, and shall be only one of the following authorized drug substances:

(1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum.

(2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum.

(3) Ketoprofen in a dosage amount that the test sample shall contain not more than 2 nanograms of the drug substance per milliliter of blood plasma or serum.

(4) Metabolites or analogues of approved NSAIDs may be present in test samples collected after a timed workout.

(c) If the official laboratory reports that a blood test sample collected from a horse after it completes a timed workout contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the

official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.

(d) If a blood and/or urine test sample is taken from a horse after a timed workout, the penalty provisions of this article shall apply to such timed workout in the same manner as to a scheduled race.

(e) For the purpose of this regulation, "timed workout" means an exercise session, run in compliance with Rule 1878, in which a horse runs full speed or close to full speed for the purpose of having their performance officially timed and reported.

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

Reference cited: Section 19580, Business and Professions Code.

## STAFF ANALYSIS

DISCUSSION AND ACTION REGARDING THE PROPOSED AMENDMENT TO CHRB RULE 1844, AUTHORIZED MEDICATION, TO 1) PROVIDE THAT NOT MORE THAN ONE AUTHORIZED CORTICOSTEROID ANTI-INFLAMMATORY DRUG SUBSTANCE MAY BE ADMINISTERED TO A HORSE THAT IS ENTERED TO RACE AND TO; 2) IDENTIFY THE AUTHORIZED DRUG SUBSTANCES.

Regular Board Meeting  
February 23, 2017

## ISSUE

Corticosteroid anti-inflammatory drug substances (“corticosteroids”) can effectively and safely treat a number of conditions common in race horses, but for many years there has been concern over their potential promotion of degenerative joint disease, especially with some corticosteroid formulations, and misuse that can mask more serious injuries. For this reason, existing California Horse Racing Board (CHRB or Board) regulations establish threshold limits for individual corticosteroids; however, they do not prohibit the “stacking” of these drug substances, which can potentially achieve a cumulative effect similar to higher dosages of individual substances. This proposed regulatory amendment is intended to address that issue.

## BACKGROUND

Corticosteroids, administered via intra-articular and otherwise, are commonly used in race horses. Corticosteroids can effectively and safely treat a number of conditions common in race horses, but for many years there has been concern over their potential promotion of degenerative joint disease, especially with some corticosteroid formulations, as well as misuse that can mask more serious injuries. Dr. Wayne McIlwraith published two reviews on corticosteroid pharmacology and the clinical use of corticosteroids.<sup>1</sup> More recently Dr. Chris Whitton was able to associate intra-articular corticosteroid use to subsequent career-ending musculoskeletal injury, even though cause and effect was not well established.<sup>2</sup>

Prior to adoption of the National Uniform Medication Program (NUMP), corticosteroids were loosely regulated in the United States, including California. Beginning in October 2014, however, the Board introduced thresholds for commonly used corticosteroids. Much of the foundational research was conducted by Dr. Heather Knych at the Kenneth L. Maddy Equine Analytical Chemistry Laboratory.<sup>3</sup> A pre-regulation educational effort minimized the opposition

<sup>1</sup> McIlwraith, C.W.; The use of intra-articular corticosteroids in the horse: What is known on a scientific basis? *Equine vet. J.* (2010) 42 (6) 563-571

McIlwraith, C.W.; Principles and practices of joint disease treatment. M.W. Ross, S.J. Dyson (Eds.), *Diagnosis and Management of Lameness in the Horse*, Elsevier Saunders, St. Louis, Missouri (2011), pp. 840-852

<sup>2</sup> Whitton, R.C et.al.; Musculoskeletal injury rates in Thoroughbred racehorses following local corticosteroid injection. (2014) *The Veterinary Journal* 200, 71-76.

<sup>3</sup> Knych et al.; Pharmacokinetics of Betamethasone in Plasma, Urine and Synovial Fluid Following Intra-Articular Administration to Exercised Thoroughbred Horses. *Drug Test Anal.* 2017 Jan 24. doi: 10.1002/dta.2170. [Epub ahead of print]

to the new regulation, and in general, its implementation went better than as expected. Part of that effort included monitoring a large number of clinical cases within CHRB inclosures.<sup>4</sup>

Recently, however, staff has grown concerned about the practice of “stacking” corticosteroids (i.e. using multiple drugs of similar method of action so that each corticosteroid individually falls below the regulatory threshold). The table below demonstrates multiple corticosteroids in most of the reported cases.

**TABLE 3: Time at which corticosteroid concentrations fell below the ARCI regulatory threshold following administration of various combinations of clinical doses of triamcinolone acetonide, methylprednisolone acetate, betamethasone and isoflupredone acetate to a total of 82 Quarter Horse racehorses**

Drugs	Dose range (mg)	Time until below RCI regulatory threshold	
		Day 7	Day 10
Betamethasone (n = 3)	12-24	3/3	
Isoflupredone + Betamethasone (n = 29)	4-26 12-42	29/29 29/29	
MPA + Betamethasone (n = 1)	40 24	1/1 1/1	
TCA + Betamethasone (n = 3)	10-20 6-12	3/3 2/3	3/3
TCA + Isoflupredone + Betamethasone (n = 24)	10-24 2-20 6-36	24/24 24/24 24/24	
MPA + Isoflupredone + TCA + Betamethasone (n = 17)	20-40 5-30 10-40 6-30	16/17 17/17 17/17 17/17	17/17
TCA + MPA + Isoflupredone (n = 3)	2-20 20-40 8-25	3/3 3/3 3/3	
TCA + MPA + Betamethasone (n = 2)	20-40 20-40 18-30	2/2 2/2 2/2	

Knych, H.K., Vidal, M.A., Casbeer, H.C, McKemie, D.S. Pharmacokinetics of Triamcinolone Acetonide Following Intramuscular and Intra-articular Administration to Exercised Thoroughbred Horses. *Equine Vet J.* 2013, 45, 715.

Knych, H.K., Harrison, L.M., Casbeer, H.C., McKemie, D.S. (2014) Disposition of Methylprednisolone Acetate in Plasma, Urine, and Synovial Fluid Following Intra-articular Administration to Exercised Thoroughbred Horses. *J Vet Pharmacol.* 2014, 37, 125.

Knych, H.K., Harrison, L.M., White, A., McKemie, D.S. (2016) Disposition of Isoflupredone Acetate In Plasma, Urine And Synovial Fluid Following Intra-Articular Administration To Exercised Thoroughbred Horses. *Drug Test Anal.* 2015, 7, 39.

<sup>4</sup> Knych, H. K., Blea, J. A., Arthur, R. M., Overly, L. R. and McIlwraith, C. W. (2016), Clearance of corticosteroids following intra-articular administration of clinical doses to racehorses. *Equine Vet Educ*, 28: 140-144.

With similar method of action for all commonly used corticosteroids, it is reasonable to expect that the effect is cumulative. The primary concern is multiple corticosteroid use in intra-articular (i.e. joint) injections.

A number of racing jurisdictions have addressed the use of intra-articular corticosteroids by requiring horses not to race or receive other intra-articular therapies for a certain number of days after treatment. New York, for instance, initially adopted a five-day stand down restriction for intra-articular corticosteroid administrations, but has recently increased the stand down period to seven days. Alternatively, the International Federation of Horseracing Authorities (IFHA) animal welfare guidelines recommend a fourteen-day stand down period between intra-articular corticosteroid administrations and/or any other intra-articular therapy and racing.

After reviewing Kentucky's data, Dr. Mary Scollay, Equine Medical Director for the Kentucky Horse Racing Commission (KHRC) estimates only about 1% of their samples suggest stacking. Dr. Stanley is presently analyzing CHRB samples and expects to have information by the time of this month's Committee meeting.

On February 6, 2017, the Racing Medication and Testing Consortium referred the corticosteroid stacking issue to their Scientific Advisory Committee which includes Drs. Arthur, Stanley, Knych and Blea from California. The issues they will evaluate will be whether additional regulations are warranted, and, if so, what would be the most reasonable way to regulate multiple intra-articular corticosteroid use and/or multiple corticosteroid administrations.

## ANALYSIS

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of the Horse Racing Law. Responsibilities of the Board include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any means to a horse after it has been entered to race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. Board Rule 1844, Authorized Medication, names drug substances and medications authorized by the Board that may be administered to safeguard the health of the horse entered to race. The rule lists the drug substances and medications that may be found in official test samples, as well as the maximum levels at which such substances may be detected.

CHRB staff proposes that this Board consider the proposed amendment to Rule 1844, Authorized Medication, included in this package. Specifically, the amendment would prohibit the use of multiple corticosteroids once a horse is entered to race, and authorize only one of six corticosteroids to be present in post-race blood plasma or serum test samples, up to the specified thresholds.

The Board adopted a similar regulation when it prohibited the use of multiple non-steroidal anti-inflammatory drug substances (NSAIDs) in post-race test samples under Rule 1844(c). The proposed amendment is therefore constructed to mirror those provisions for consistency.

#### RECOMMENDATION

This item is presented to the Board for discussion and action.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1844. AUTHORIZED MEDICATION

1844. Authorized Medication.

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

(a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.

(b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.

(c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances:

(1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum.

(2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum.

(3) Ketoprofen in a dosage amount that the test sample shall contain not more than 2 nanograms of the drug substance per milliliter of blood plasma or serum.

(4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.

(d) Not more than one authorized corticosteroid anti-inflammatory drug substance may be administered to a horse that is entered to race, and shall be only one of the following authorized drug substances in blood plasma or serum:

- (1) Bethamethasone; 10 picograms per milliliter
- (2) Dexamethasone; 5 picograms per milliliter
- (3) Methylprednisolone; 100 picograms per milliliter
- (4) Prednisolone; 1 nanogram per milliliter
- (5) Triamcinolone Acetonide; 100 picograms per milliliter
- (6) Isoflupredone; 100 picograms per milliliter

(ed) If the official chemist reports that a blood test sample contains an authorized NSAID or corticosteroid anti-inflammatory drug substance in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID or corticosteroid anti-inflammatory drug substance.

(fe) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels:

- (1) Acepromazine; 10 nanograms per milliliter
- (2) Mepivacaine; 10 nanograms per milliliter
- (3) Albuterol; 1 nanograms per milliliter
- (4) Procaine; 25 nanograms per milliliter

- (5) Salicylates; 750 micrograms per milliliter
- (6) Clenbuterol; 140 picograms per milliliter, except in quarter horses for which no level of clenbuterol is authorized.
- (7) Omeprazole; 1 nanogram per milliliter
- (8) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.
- (9) Boldenone; 15 nanograms per milliliter in males other than geldings.
- (10) Testosterone; 20 nanograms per milliliter in geldings.
- (A) Testosterone at any level in males other than geldings is not a violation of this regulation.
- (11) Testosterone; 55 nanograms per milliliter in fillies or mares.
- (12) Butorphanol 300 nanograms per milliliter
- (g) Official blood test samples may contain the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels in serum or plasma:
  - (1) ~~Bethamethasone; 10 picograms per milliliter~~
  - (12) Dantrolene; 100 picograms per milliliter
  - (23) Detomidine; 1 nanogram per milliliter
  - (4) ~~Dexamethasone; 5 picograms per milliliter~~
  - (35) Diclofenac; 5 nanograms per milliliter
  - (46) Dimethylsulfoxide (DMSO); 10 micrograms per milliliter
  - (57) Firocoxib; 20 nanograms per milliliter
  - (68) Lidocaine; 20 picograms per milliliter

~~(79)~~ Methocarbamol; 1 nanogram per milliliter

~~(10)~~ Methylprednisolone; 100 picograms per milliliter

~~(811)~~ Glycopyrrolate; 3 picograms per milliliter

~~(12)~~ Prednisolone; 1 nanogram per milliliter

~~(13)~~ Triamcinolone Acetonide; 100 picograms per milliliter

~~(914)~~ Xylazine; 10 picograms per milliliter of serum or plasma

~~(1015)~~ Butorphanol; 2 nanograms per milliliter

~~(16)~~ Isoflupredone; 100 picograms per milliliter

~~(hg)~~ Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection ~~(fe)~~-(1)(12).

~~(ih)~~ Procaine, following administration of procaine penicillin, is an authorized medication provided:

(1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter.

(2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division,

(3) procaine penicillin was not administered after entry to race,

(4) the horse was under surveillance for a minimum of six hours prior to racing.

~~(ji)~~ All expenses related to surveillance and testing for procaine under subsection ~~(ih)~~ of this regulation shall be paid by the owner of the horse.

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