

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against,)
DAN HENDRICKS, trainer)
RESPONDENT)
JENNIFER FINLEY, veterinarian)
RESPONDENT)
TODD BROKKEN, veterinarian)
RESPONDENT)

Case No. 17SA164
Case No. 17SA0202
Case No. 17SA0201

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

This matter was heard on November 5, 2017 by the Board of Stewards, Grant Baker, C. Scott Chaney, and Kim Sawyer at Del Mar Race Track in Del Mar, California.

The California Horse Racing Board (hereinafter "CHRB" or "Complainant") filed a complaint against trainer Dan Hendricks (case 17SA164, hereinafter "Respondent 1" or "Mr. Hendricks"), veterinarian Jennifer Finley (case 17SA0202, hereinafter "Respondent 2" or "Dr. Finley") and veterinarian Todd Brokken (case 17SA0201, hereinafter "Respondent 3" or "Dr. Brokken") for alleged violation of California Horse Racing Board rules 1843 (a)(d) (Medications, Drugs and Other Substances), 1843.1 (b) (Prohibited Drug Substances), 1844 (c) (1) (Authorized Medication) and 1887 (Trainer or Owner to Insure Condition of Horse).

These complaints were filed in conjunction with a phenylbutazone overage (3.8 ug/ml) discovered in the post race sample of trainer Hendricks' runner "Just a Little Hope" who finished first in the seventh race on May 29, 2017 at Santa Anita Park.

Present at the hearing were Mr. Hendricks and Investigator Jim Hamilton representing the CHRB. Dr. Finley and Dr. Brokken requested and were granted permission to appear by telephone. Court reporter Michelle Derieg recorded the proceedings. The hearing was opened at 11:20 A.M., oral testimony from all Respondents was heard, the three complaint packets were entered into evidence, the record was closed and all matters were taken under consideration.

LIST OF EXHIBITS

- CHRB Exhibit A: Hendricks complaint case #17SA164
CHRB Exhibit B: Brokken complaint case #17SA0201
CHRB Exhibit C: Finley complaint case #17SA0202

FACTUAL FINDINGS

I

At all times herein mentioned, all Respondents were licensed by the CHRB. Mr. Hendricks in the license category of trainer (since 1985); Dr. Finley in the license category of veterinarian (since 2008); and Dr. Brokken in the license category of veterinarian (since 2008). Both veterinarians were and are employed by veterinarian group, Blea, Von Bluecher, Hunkin, Inc.

II

Mr. Hendricks, Dr. Finley and Dr. Brokken were issued a Notice to Appear by the CHRB to answer to alleged violation of CHRB Rules 1843(a)(d)(Medication, Drugs and Other Substances), 1843.1 (Prohibited Drug Substances), 1844 (c)(1) (Authorized Medication) and 1887 (Trainer or Owner to Ensure Condition of Horse).

III

Mr. Hendricks appeared in person, Dr. Finley and Dr. Brokken at their request appeared by telephone, all Respondents answered the CHRB Non-represented Hearing Questionnaire for Respondents and agreed to go forward without representation.

IV

The thoroughbred racehorse "Just a Little Hope" trained by Mr. Hendricks was entered to race in the seventh race at Santa Anita Park on May 29, 2017.

V

On May 28, 2017, the thoroughbred racehorse "Just A Little Hope" was administered an injection of phenylbutazone at 9:45 AM by Dr. Brokken. The horse was held by Mr. Hendricks' employee.

VI

On May 28, 2017 at 11:15 AM said horse was also treated with phenylbutazone by Dr. Finley. The horse was held by a different employee of Mr. Hendricks.

VII

On May 29, 2017, the thoroughbred racehorse "Just a Little Hope" ran in the seventh race at Santa Anita Park and finished first.

VIII

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

IX

After testing the samples, "Maddy Lab" reported that the post race blood sample # SA 25899, which came from "Just a Little Hope" was positive for the class IV drug phenylbutazone in a concentration of 3.85 ug/ml (specified level 2.0 ug/ml).

X

A split sample was not requested by Mr. Hendricks.

XI

Mr. Hendricks testified that the horse "Just a Little Hope" was held by two different employees when Dr. Finley and Dr. Brokken treated the horse with phenylbutazone.

XII

Mr. Hendricks testified that after this incident, when a runner is treated, whoever holds the horse marks it on a card attached to the stall door to prevent a double treatment.

XIII

Mr. Hendricks has not had a medication violation since 2003.

XIII

Dr. Brokken testified that he treated the horse "Just a Little Hope" with the drug phenylbutazone at 9:45 AM on May 28, 2017, then informed Dr. Finley by text message.

XV

Dr. Finley testified that she treated the horse "Just a Little Hope" with the drug phenylbutazone at 11:15 AM on May 28, 2017, then informed Dr. Brokken by text message.

XVI

Dr. Brokken testified he was unaware of the double medication until he received the complaint packet filed against him.

XVII

Neither Dr. Brokken nor Dr. Finley acknowledged receipt of the others' text message.

XVIII

Dr. Brokken was penalized Five Hundred Dollars (\$500.00) in 2010 for a double medication by the CHRB.

XVIII

Dr. Finley has no prior penalties issued by the CHRB.

APPLICABLE RULES AND REGULATIONS

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

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

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

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

HISTORY:

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

California Horse Racing Board rule 1843.1. Prohibited Drug Substances.

For purposes of this division, prohibited drug substance means:

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

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

HISTORY:

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

California Horse Racing Board rule 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) If the official chemist reports that a blood test sample 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.
- (e) 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 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
- (f) 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
 - (2) Dantrolene; 100 picograms per milliliter
 - (3) Detomidine; 1 nanogram per milliliter
 - (4) Dexamethasone; 5 picograms per milliliter
 - (5) Diclofenac; 5 nanograms per milliliter
 - (6) Dimethylsulfoxide (DMSO); 10 micrograms per milliliter
 - (7) Firocoxib; 20 nanograms per milliliter
 - (8) Lidocaine; 20 picograms per milliliter
 - (9) Methocarbamol; 1 nanogram per milliliter
 - (10) Methylprednisolone; 100 picograms per milliliter
 - (11) Glycopyrrolate; 3 picograms per milliliter
 - (12) Prednisolone; 1 nanogram per milliliter
 - (13) Triamcinolone Acetonide; 100 picograms per milliliter
 - (14) Xylazine; 10 picograms per milliliter of serum or plasma
 - (15) Butorphanol; 2 nanograms per milliliter
 - (16) 3456744 Isoflupredone; 100 picograms per milliliter
- (g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)(1)-(12).
- (h) 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.
- (i) All expenses related to surveillance and testing for procaine under subsection (h) of this 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.

HISTORY:

1. Repealer and new rule filed 10-29-81; effective 11-28-81.
2. Amendment filed 2-9-84; effective 2-9-84.
3. Amendment filed 8-3-95; effective 9-2-95.
4. Amendment filed 6-16-97; effective 6-16-97.
5. Amendment filed 4-28-99; effective 5-28-99.
6. Amendment filed 1-28-02; effective 1-28-02.
7. Amendment filed 4-27-05; effective 5-27-05.
8. Amendment filed 9-20-07; effective 10-20-07
9. Amendment filed 5-1-08; effective 5-31-08
10. Amendment filed 10-26-10; effective 11-25-10.
11. Amendment filed 2-14-12; effective 2-14-12.
12. Amendment filed 9-15-14; effective 9-15-14
13. Amendment filed 7-31-15, as an emergency; effective through 1-28-16.
14. Amendment filed 8-31-15; effective 10-1-15.
15. Amendment filed 7-19-16; effective 7-19-16.

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

- (a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off.
- (b) A ship-in horse is defined as any horse entered to race that has not been in the care of a licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.
- (c) Notwithstanding the above, if the Board or its agent fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under the rules unless it is shown by the preponderance of the evidence that the trainer or the owner of a ship-in horse administered the drug or other prohibited substance defined in ship-in horse administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

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

HISTORY:

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

DISCUSSION

The facts of these cases are straight forward. Both Dr. Finley and Dr. Brokken admittedly entered Mr. Hendricks barn at two different times (Brokken 9:45) (Finley 11:15) on May 28, 2017 and medicated (IV) runner "Just a Little Hope" with the drug, phenylbutazone. Two different Hendricks' employees held said horse for the injections given. Dr. Brokken testified he texted Dr. Finley after the 9:45 treatment, Dr. Finley testified she "just missed it" she also testified she texted Dr. Brokken when she treated the horse at 11:45. Dr. Brokken testified "for some reason we both missed the text messages that we sent to each other." When asked if they would remedy this system Dr. Brokken stated that coming up with something else would be "tedious" and have "time restraints". No proof of the texting was admitted into evidence. It was disappointing that neither Respondent 2 nor 3 had any plan to adjust their procedure of giving medication injections to prevent a double medication (overage) from occurring again. Dr. Brokken was penalized for the same violation in 2010. Mr. Hendricks has changed the procedure in his stable to prevent this. In the future, a check mark will be placed on a card on the

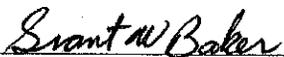
door of his runner after treatment signifying a medication has been given. We find this issue to be a serious one. Over medication by practicing veterinarians, not only affects the license record of the trainer involved, but it also gives the over medicated horse an advantage over the other participants in the race and obviously, affects the wagering public. It is the opinion of this Board of Stewards, Dr. Finley and Dr. Brokken's policy of texting to prevent a misadministration is a weak procedure to prevent a mishap.

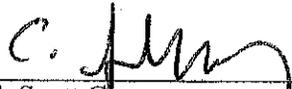
CONCLUSION

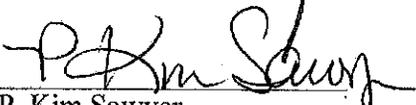
In a unanimous decision, pursuant to the recommended penalty guidelines, Mr. Hendricks was eligible for and was issued an official warning by the Stewards.
In a unanimous decision we issued a FIVE HUNDRED DOLLAR (\$500.00) fine to be imposed against Dr. Finley and Dr. Brokken for violation of the CHRB rules filed. These two (2) rulings (DFTD #013 and #014) were issued on November 12, 2017 at Del Mar Race Track. This action is memorialized in the following rulings.

DATED: January 1, 2018.

BOARD OF STEWARDS


Grant Baker


C. Scott Chaney


P. Kim Sawyer

2018 JAN - 2 PM 12:14

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling
of the
Board of Stewards

Del Mar Thoroughbred Club
(Association)

November 12, 2017
(Date)

DFTD #014

Veterinarian TODD BROKKEN, who treated the horse JUST A LITTLE HOPE in the seventh race at Santa Anita Park on May 29, 2017 is fined FIVE HUNDRED DOLLARS (\$500.00)* for violation of California Racing Board rules #1843.1(b) (Prohibited Drug Substance), #1843 (a)(d) (Medications, Drugs and Other Substances) and #1844(c)(1) (Authorized Medication – phenylbutazone (3.85 ug/ml)).

LIC #: 297638 exp. 06/2019
Case Number 17SA0201

*Rule #1532. Fine shall be paid to the Paymaster within seven calendar days from the date of this ruling, or the license of the person upon whom the fine has been imposed shall be suspended.

BY ORDER OF THE
BOARD OF STEWARDS





