

**CALIFORNIA HORSE RACING BOARD**

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**Finding of Emergency  
(pursuant to Government Code section 11346.1(b)(2))**

**Notice Date: July 8, 2016**

The California Horse Racing Board (CHRB or Board) finds that an emergency exists that requires the implementation of these emergency regulations for the immediate preservation of the public peace, health, safety, or general welfare, within the meaning of Government Code section 11346.1.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

**Facts Demonstrating the Existence of an Emergency & Need for Immediate Action**

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* (BS 154412), ordering the CHRB to set aside its approval of the Los Alamitos Quarter Horse Racing Association (LAQHRA) "house rule,"<sup>1</sup> which allows for that racing association to condition eligibility for the races it conducts on the non-presence of clenbuterol, albuterol, zilpaterol, and ractopamine in biological samples taken from participating horses.

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<sup>1</sup> The "house rule" that the Judge refers to was the subject of much discussion at the CHRB Legislation, Legal & Rules Committee meeting held in December of 2014. At that meeting, the Committee discussed whether or not Los Alamitos' house rule—which required that all horses participating in major races test free of clenbuterol, albuterol, zilpaterol and ractopamine in hair tests in order to be eligible to race—conflicted with existing CHRB regulations. The Committee determined that the house rule did not conflict with existing Board rules, and in fact furthered their intent.

In his Ruling, however, Judge Chalfant concluded that the Los Alamitos house rule conflicted with existing CHRB regulations. Essentially, he stated that because the Board's regulations allowed for the use of clenbuterol and albuterol up to certain thresholds in post-race urine samples, and because current rules still permit the therapeutic use of these medications when a horse is not racing, the house rule directly conflicts with CHRB regulations. Specifically, he states, "[t]he house rule effectively bans the use of clenbuterol . . . . Yet, CHRB's Rules permit the use of clenbuterol so long as it does not affect the quarter horse's race as demonstrated by a blood or urine test. . . . Thus, even now the Board's intent is to permit some usage of both drugs. LARC's house rule is inconsistent with that intent." (*De La Torre v. CHRB*, BS 154412, p. 14).

The CHRB has determined that the Court's Order in that case has created an emergency situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Essentially, the Judge's Order has created two options for the CHRB: withdraw approval of LAQHRA's "house rule," or risk being found in contempt of court.<sup>2</sup> If the Board withdraws approval of the "house rule" though, and moves forward with preventing the LAQHRA from enforcing its eligibility testing program, there will exist a substantial and immediate risk to the public health, safety and welfare.

Official drug and medication testing performed by the CHRB is conducted largely after races are run, and such tests can then only be used to punish those licensees responsible for medication violations after the fact. For the wagering public, however, there is no protection. Those who wager on a winning horse that has been administered an unauthorized medication—which often includes the horse's owners and trainers—obtain an unfair benefit, while those who bet on a losing horse not administered an unauthorized medication become victims of an unlawful performance enhancing scheme.

LAQHRA's "house rule" sought to prevent such public harm by declaring horses that test positive for clenbuterol, albuterol, zilpaterol, or ractopamine ineligible to participate in specific races. Based on the widespread overuse and abuse of these medications in the quarter horse racing industry<sup>3</sup>—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 "house rule," 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. Ultimately, the "house rule" has served as an effective consumer protection for the wagering public, as well as competing horsemen and horsewomen.

Furthermore, by conducting pre-race testing, LAQHRA was further enhancing the safety of participating horses and jockeys. By preventing horses that test positive for unauthorized

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<sup>2</sup> Opposing counsel in the *De La Torre* case has already attempted to make a motion to put the CHRB's Executive Director in contempt for not complying with the Court's Order. Judge Chalfant denied the motion for a number of procedural reasons, but told the CHRB it had until early August 2016 to withdraw its approval of the "house rule" or else the Board could be found in contempt.

<sup>3</sup> The CHRB conducted testing at LAQHRA for their 2010 signature end of season races, the \$2,000,000 Futurity and Champion of Champions. A total of 72 blood samples were obtained and tested. Of those samples, every sample (72 out of 72) contained detectable levels of clenbuterol in the horse's blood. Realistically, clenbuterol can be detected in blood for no more than 4-7 days after administration, indicating that all of the tested horses had recently been administered clenbuterol. At the request of Los Alamitos Racecourse and PCQHRA, the CHRB suspended authorization to clenbuterol by breed and track for one year at a time, pursuant to Rule 1844.1. The suspension was in place for 2011, and upon conducting a similar testing program, the CHRB found that no horses tested positive for clenbuterol this time around. In 2013, however, a number of trainers began to once again push the limits on clenbuterol use. In Fiscal Year 2013-14 there were 13 clenbuterol violations at Los Alamitos. While trainers are sanctioned when caught, the public is not protected in these instances. Those who wager on races where certain horses have been administered clenbuterol have no recourse. The people who bet on a winning horse that has been administered clenbuterol—which often includes the horse's owners and trainers—are rewarded, while those who bet on a losing horse not administered clenbuterol become victims of an unfair and illegal performance enhancing scheme.

medications, such as clenbuterol,<sup>4</sup> from entering certain 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.<sup>5</sup>

Nevertheless, because the Los Angeles Superior Court has found such efforts by the LAQHRA to be in conflict with existing Board regulations, the program has been ordered to cease until new regulations explicitly authorizing its implementation are enacted.<sup>6</sup> As a consequence, the enhanced consumer and safety protections LAQHRA's eligibility testing program offers the public, as well as jockey and equine athletes, will be removed unless the Board adopts these emergency amendments.

### **Authority and Reference Citations (pursuant to Gov Code 11346.5(a)(2))**

The CHRB, pursuant to the authority granted by Business and Professions Code sections 19440, 19580, 19581, and 19582, in order to implement, interpret and make specific Business and Professions Code sections 19401, 19440, 19580, 19581, 19582, and Penal Code sections 337f, g, and h, proposes to amend Title 4 California Code of Regulations (CCR) sections 1581 and 1843.

### **Informative Digest (pursuant to Gov Code 11346.5(a)(3))**

Title 4 CCR 1843, Medication, Drugs and Other Substances, explains the general intent behind the CHRB's medication regulations, and otherwise restricts the presence and administration of unauthorized medications in a horse that participates in a race. The proposed emergency amendment would add subsection (e) to this rule, which states "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." This amendment will remove the conflict identified by the Court in the *De La Torre* decision

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<sup>4</sup> Clenbuterol is a beta-2 agonist used as a bronchodilator in horses. Beta-2 agonists also have an anabolic-type effect through their muscle partitioning side effects. Clenbuterol is banned in human sport by the World Anti-doping Association for this reason. The drug is also abused in horses because of its anabolic effects. Clenbuterol became a problem in horse racing—especially quarter horse racing—when the CHRB and other racing authorities in the United States restricted the use of anabolic steroids. Last year, the CHRB de-authorized any detectable level of clenbuterol in a quarter horse's post-race urine sample for these reasons.

<sup>5</sup> Side-effects associated with clenbuterol administration, for instance, have been scientifically documented in horses to include a repartitioning effect and major alterations in cardiac and skeletal muscle function, as well as effects on bone, immune, endocrine, and reproductive systems. Such side effects may increase the likelihood of the horse becoming injured while running, which always carries the potential of injuring the rider as well. By preventing horses from racing with unauthorized medications in their bodies, the "house rule" increased the safety and welfare of equine athletes and their riders.

<sup>6</sup> 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. and CHRB rules.

by clarifying the Board's intent in regulating medications and drug substances. By expressly stating that an association may set race eligibility conditions with more restrictive medication requirements than what the Board has authorized, the Court will no longer be able to maintain that a conflict between the LAQHRA "house rule" and CHRB regulations exists.

Title 4 CCR 1581, Racing Secretary to Establish Conditions, presently provides that the racing secretary—who is an employee of the racing association or fair—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. "Race conditions" generally encompass the details of the course to be run and the eligibility requirements for the race. For instance, details about the course may include the surface that the race is to be run on (e.g. dirt or turf) and the length of the course (e.g. 870 yards, 6 furlongs, 1 mile). Eligibility requirements for the race then describe what qualifications the horses must meet in order to participate, including but not limited to, their age, breed, winning history, gender, and even color.

Beyond broadly defining what the different types of races are called, Horse Racing Law and the California Horse Racing Board (CHRB) do not control, participate in, or otherwise regulate, the writing of race conditions. Such functions have always been carried out exclusively by the racing association or fair (via their racing secretary) under the authority of their race meet license, and in conjunction with participating horsemen and horsewomen, pursuant to the terms of the horsemen's agreements they have entered into. This is supported and evidenced by the fact that CHRB Rule 1437 states an association may "impose conditions . . . requirements, qualifications or requisites for its race meeting as it may deem appropriate."

The proposed emergency amendment would clarify that when a racing secretary writes race 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, that such condition shall first be agreed to in advance in writing by the acknowledged horsemen's organization, and then 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 must be submitted to the Board for approval. The proposed amendment finally defines, "biological test sample" as any biological sample, including but not limited to, blood, urine, hair, tissue, or saliva, that is taken from a horse. This amendment is necessary to preserve the Board's oversight and authority over medication based requirements, and to assure that an association does not create a race condition that is in conflict with existing CHRB regulations.

The proposed emergency regulations do not differ substantially from an existing comparable federal regulation or statute.

The CHRB finds that the broad objective of the proposed emergency amendments is to reestablish and preserve a licensed association or fair's right and ability to protect the

wagering public from unfair advantages gained by trainers and owners who attempt to illegitimately enhance the performance of their horses using unauthorized medications. By enacting these emergency amendments, the Board will be able to allow LAQHRA to maintain their “house rule,” which seeks to prevent public harm by declaring horses that test positive for clenbuterol, albuterol, zilpaterol, or ractopamine ineligible to participate in their races. The anticipated benefits of such efforts are that quarter horses testing positive for the abovementioned unauthorized medications will not be permitted to race at Los Alamitos, protecting horse and rider from potential injury, and the public from betting on an unfair quarter horse race.<sup>7</sup>

The proposed emergency regulations are not inconsistent or incompatible with existing state regulations.

### **Statutory Requirements Specific to Agency (pursuant to Gov Code 11346.5(a)(4))**

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

### **Local Mandate Determination (pursuant to Gov Code 11346.5(a)(5))**

These proposed regulations impose no mandates on local agencies or school districts, or mandates which require reimbursement of costs or savings pursuant to Government Code sections 17500 – 17630.

### **Fiscal Impact Statements of Cost or Savings for the Following (pursuant to Gov Code 11346.5(a)(6))**

- Cost to any local agency or school district that is required to be reimbursed: None
- Cost or savings to any state agency: None
- Cost or savings in federal funding to the state: None
- Other nondiscretionary cost or savings imposed on local agencies: None

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<sup>7</sup> It is worth noting that the American Quarter Horse Association’s Challenge Championship will be held at Los Alamitos Race Course in October 2016. The Challenge Championship is a nationally renowned event that attracts numerous participants and bettors. If the LAQHRA is not able to enforce its “house rule,” there will be an increased potential harm to the public, deriving from the fact that horses with unauthorized medications in their systems would be able to participate in the event—availing participants and the public to imminent and substantial harm.

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, 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.