

INITIAL STATEMENT OF REASONS

RULE 1435, SUSPENSION OF LICENSE TO CONDUCT A RACE MEETING

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to add Rule 1435 which will establish that the Board may, upon petition, issue an order suspending a license to conduct a race meeting or imposing restrictions when necessary to protect the safety of the horse or rider. The petition shall include documents in support of the request. Prior to the hearing on the petition, the Board shall notify the licensee in writing at least 24 hours before the hearing. At the hearing, the licensee will have the opportunity to be represented by counsel, present written evidence and make oral argument. A recording of the proceedings will be made. The Board will have five days following the hearing to issue a decision. Any decision to suspend a license or impose restrictions shall be reviewed by the Board within 10 calendar days. During the review, the licensee will be afforded the same rights as the initial hearing. Finally, any suspension issued by the Board shall remain in effect until the Board determines that the matters jeopardizing the health and safety of the horse or rider at the race meeting have been adequately addressed.

PROBLEM

During the winter meet last year at the Santa Anita Race Track, thirty thoroughbred horses suffered catastrophic breakdowns and were euthanized. These breakdowns happened between December 26, 2018 and June 23, 2019. Throughout this period of time, the California Horse Racing Board was involved in monitoring the race meet and investigating the fatalities. Unfortunately, while the investigations were pending, the Board was unable to take action to suspend racing in the wake of these deaths. As a result, Senate Bill 469 was introduced which expands the Board's ability suspend a license to conduct a horse race meeting when necessary to protect the health and safety of either the horse or rider. SB 469 was signed into law by California Governor Gavin Newsom on June 24, 2019 and became effective immediately. This authority is now codified in California Business and Professions code section 19481.7. Business and Professions code section 19481.7(d) required the Board to adopt emergency regulations to implement the authority provided by the new law. The Board did so on August 22, 2019.

The proposed addition of Rule 1435 will make permanent the emergency regulation that was adopted by the Board in August of 2019. This action will codify the authority provided by the legislature under SB 469 and allow the Board to act quickly when the health and safety of the horse or rider is endangered.

NECESSITY

The California Horse Racing Board is vested with the existing authority to grant race meet licenses in the state of California. The Board additionally has the authority to enforce compliance with existing regulations by imposing penalties against the license. The proposed addition of Rule 1435 will establish that the Board may, upon petition, issue an order immediately suspending a license to

conduct a race meeting or imposing restrictions. Rule 1435 additionally establishes the procedures to be followed in such instances, which is consistent with the requirements of California Business and Professions code section 19481.7.

Subsection (b)(1) establishes that the petition shall include declarations in support of the petition which demonstrate to the satisfaction of the Board that permitting the licensee to continue to engage in the licensed activity or permitting the licensee to continue to engage in the licensed activity without restrictions would endanger the health and safety of the horses or riders that are present at the race meeting. Declarations are necessary because they possess evidentiary significance by requiring the information contained within them to be certified as true. A written petition is necessary because written petitions or complaints are the manner in which the Board initiates a cause of action against a licensee.

Subsection (b)(2) provides instances where the health or safety of the horse or rider may be endangered. Instances where this may exist can include, an above-average number of injuries to horses and/or riders participating in the race meeting, a condition existing within the inclosure that is likely to endanger the health and safety of the horse or rider, or for any other reason the Board finds the health or safety of the horse or rider is endangered. Subsection (A) addresses instances where an above-average number of injuries to horses and/or riders participating in the race meeting has occurred. This section is necessary because an above-average number of equine injuries can be indicative of a greater problem whereby the health or safety of the horse or rider may be endangered. Subsection (B) addresses instances where a condition exists within the inclosure that is likely to endanger the health and safety of the horse or rider. This section is necessary to allow the Board to address unforeseen conditions that may endanger the health or safety of the horse or rider. Finally, subsection (C) addresses any other reason the Board finds the health or safety of the horse or rider is endangered. This subsection is necessary to allow the Board flexibility to respond to unforeseen conditions that may endanger the health or safety of the horse or rider as they come up.

Subsection (c)(1) provides that notice shall be given at least 24 hours before a hearing on the petition to suspend or restrict a license. Subsection (c)(2) provides that notice shall be given in writing and may be provided by electronic service, mail, facsimile or electronic mail. Finally subsection (c)(3) indicates that notice shall be given to the licensee, its designee, or any officer or director associated with the licensee. Subsection (c) is necessary to ensure the licensee is aware of the potential action the Board could take on the license and clarifies the manner in which the Board can provide that notice. The 24 hour notice requirement is necessary to provide the licensee with sufficient notice while still allowing the Board to address the matter effecting the health and welfare of the horse or rider promptly. The requirement that the notice include the petition and the declarations is necessary so the licensee is aware of what the petition says and the evidence that will be presented in support of the petition. Finally, the requirement that the notice be given to the either the licensee, its designee, or any officer or director associated with the licensee is necessary so service of the notice is not hindered by the absence or unavailability of any one person.

Subsection (d) provides the rights of the licensee at the hearing on the petition. Subsection (A) includes being represented by counsel. This section is necessary to ensure the licensee is allowed the opportunity to be advised and represented by counsel if he or she chooses. Subsection (B) includes having a record made of the proceedings. This section is necessary so the licensee can

obtain a copy of the record of the proceeding if he or she wishes. Finally, subsection (c) includes having the ability to present written evidence in the form of relevant declarations, affidavits and documents and presenting oral argument. This section is necessary to allow the licensee the opportunity to present their own evidence in support of his or her position.

Subsection (e) provides that the Board shall issue a decision on the petition for suspension or license restriction order within five business days following submission of the matter. This is necessary to establish a timeline for the Board to take action to ensure the situation is addressed promptly. The five day requirement is necessary to allow sufficient time for the Board to deliberate, prepare and issue a decision on the petition.

Subsection (f) provides that the Board shall review any decision to suspend a racing license or impose license restrictions within 10 calendar days of that decision. This is necessary to provide the Board the ability review the prior action and determine whether additional action needs to be taken or if the matter effecting the health and safety of the horse or rider has been addressed. Additionally, this requirement is mandated by California Business and Professions Code section 19481.7.

Subsection (g) provides the rights of the licensee at the review hearing. Subsection (A) includes being represented by counsel. This section is necessary to ensure the licensee is allowed the opportunity to be advised and represented by counsel if he or she chooses. Subsection (B) includes having a record made of the proceedings. This section is necessary so the licensee can obtain a copy of the record of the proceeding if he or she wishes. Finally, subsection (c) includes having the ability to present written evidence in the form of relevant declarations, affidavits and documents and presenting oral argument. This section is necessary to allow the licensee the opportunity to present their own evidence in support of his or her position.

Subsection (h) provides that any suspension shall remain in effect until the Board determines that the matters jeopardizing the health and safety of the horse or rider have been adequately addressed. This section is necessary to clarify the Board's power to continue a suspension until the race meet is safe to resume and the matters effecting the health and safety have been addressed. Subsection (h) requires the Board to take this action at a meeting. This is necessary because any action by the Board requires a consensus of four commissioners, which can only occur during an open meeting pursuant to the Bagley-Keene Open Meeting Act.

Subsection (i) provides that as a condition of lifting a suspension, the Board may require a licensee to comply with additional safety standards or other requirements as it deems necessary or desirable for the best interests of horse racing and the purposes of this chapter. This section is necessary to clarify the Board's power to impose restrictions on a license that facilitate the continuance of a safe race meet for both the horse or rider. Additionally, this section mirrors the authority expressly provided to the Board in California Business and Professions Code section 19481.7(a)(4).

Subsection (j) provides that failure to comply with a suspension order issued pursuant to subdivision (a)(1) shall constitute a separate cause for disciplinary action against any licensee. This section is necessary to clarify that any suspended licensee who continues to engage in an activity which requires a license, is subject to additional and separate disciplinary action by the Board.

Additionally, this section mirrors the authority expressly provided to the Board in California Business and Professions Code section 19481.7(c)(1).

Subsection (k) states that the orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law. This section is necessary to clarify that other relief provide by law is still available.

Finally, subsection (l) provides that a petition for an order suspending a license to conduct a racing meeting or imposing license restrictions may be filed by the Executive Director or their designee, or Equine Medical Director of the Board. This section is necessary to clarify who can bring a petition before the Board. The Executive Director or the Equine Medical Director are the most appropriate individuals to have this authority because of their responsibility to the Board to advise on the safety of both horse and rider.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed addition of Rule 1435 will make permanent the emergency regulation that was adopted by the Board in August of 2019. The anticipated benefit of this proposed addition will be the added authority of the Board to act quickly when the health or safety of the horse or rider is endangered. Accordingly, this addition will benefit the health, safety and welfare of horses, licensees, and the wagering public by ensuring the sport of horse racing is conducted in a safe manner.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Board did not rely on any technical, theoretical, and/or empirical study, reports or documents in proposing this regulation.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The results of the Board's Economic Impact Assessment as required by Government Code Section 11346.3(b) are as follows:

- The proposed regulation will not impact the creation or elimination of jobs within the State of California.
- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulation will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulation will benefit California by promoting the safety and welfare of horse, rider, and the wagering public, and will not benefit the State's environment.

The Board has made the initial determination that the proposed addition of Rule1435 will not have a significant statewide adverse economic impact directly affecting business including the ability of

California businesses to compete with businesses in other states. The addition of Rule 1435 would implement a procedure for the Board to follow in suspending a license to conduct a race meeting when necessary to protect the health and safety of the horse or rider. This will not impact businesses in any way, as this regulation simply establishes the procedure to be followed when the Board is considering a license suspension or restriction for the health or safety of the horse or rider.

Purpose:

The purpose of the proposed addition of Rules 1435 is to codify a procedure whereby the Board can take action against a licensed racing association in instances where the health and safety of the horse or rider may be endangered. These changes will increase the safety and welfare of both equine and human athletes, as well as improve the public perception of the sport.

The Creation or Elimination of Jobs Within the State of California

The proposed addition of Rule 1435 would implement a procedure for the Board to follow in suspending a license to conduct a race meeting when necessary to protect the health and safety of the horse or rider. Accordingly, the Board has determined that the proposed regulation will have no direct impact on the creation or elimination of jobs within the State of California as this regulation simply establishes the procedure to be followed when the Board is considering a license suspension or restriction for the health or safety of the horse or rider.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed addition of Rule 1435 would implement a procedure for the Board to follow in suspending a license to conduct a race meeting when necessary to protect the health and safety of the horse or rider. Accordingly, the Board has determined that the proposed regulation will have no direct impact on the creation of new businesses or the elimination of existing businesses within the State of California as this regulation simply establishes the procedure to be followed when the Board is considering a license suspension or restriction for the health or safety of the horse or rider.

The Expansion of Businesses Currently Doing Business Within the State of California

The proposed addition of Rule 1435 would implement a procedure for the Board to follow in suspending a license to conduct a race meeting when necessary to protect the health and safety of the horse or rider. Accordingly, the Board has determined that the proposed regulation will have no direct impact on the expansion of businesses currently doing business in the State of California as this regulation simply establishes the procedure to be followed when the Board is considering a license suspension or restriction for the health or safety of the horse or rider.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed addition of Rule 1435 will substantially enhance the health and safety of horses and riders participating in racing throughout the state, by providing the Board a procedure to efficiently address

instances when the health or safety of the horse or rider is endangered. This regulation will not benefit the state's environment or effect worker safety as it has no effect on these areas.

ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR BUSINESSES

The Board has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed addition of Rule 1435 was discussed at the November 21, 2019 Regular Board Meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments which offer any alternative proposal.

California Horse Racing Board
March 20, 2020