

CALIFORNIA HORSE RACING BOARD
TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS
NOTICE OF PROPOSAL TO AMEND
RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Board Rule 1843.3, Penalties for Medication Violations, to clarify the penalties related to the use of Extracorporeal Shock Wave Therapy (ESWT).

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, October 22, 2020**, or as soon after that as business before the Board will permit, **via teleconference**. In accordance with the guidance from Executive Order N-29-20, a physical location will not be provided. Members of the public are strongly encouraged to participate using the teleconference phone number provided below so as to minimize the spread of COVID-19 and reduce the risk of infection during this current state of emergency. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

To participate in the teleconference, dial 888-392-4564 and enter 6896291# when prompted.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **October 12, 2020**. The Board must receive all comments by that time. However, written comments may still be submitted at the public hearing. Submit comments to:

Rick Pimentel, Policy and Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
Email: rpimentel@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461, and 19580, Business and Professions Code (BPC). Reference: Sections 19461, 19580, 19581, and 19582, BPC; and Section 11425.50, Government Code (GC).

BPC sections 19440, 19461, and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19461, 19580, 19581, and 19582 of the BPC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 19440 states that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of Chapter 4, BPC. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. BPC section 19461 states that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with or that any law, including the Labor Code and the regulations adopted thereunder or any rule or regulation of the Board affecting it, has been broken or violated. BPC section 19580 states that the board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state.

Board Rule 1843.3, Penalties for Medication Violations, sets forth various categories of penalties for licensed trainers and owners who commit medication violations. Board Rule 1843.3 also stipulates that a licensee found responsible for administration of a drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer. Board Rule 1866.2, Shockwave Therapy Restricted, establishes procedures for the use of ESWT and a penalty for violation of the rule.

The proposed amendment to Board Rule 1843.3 will modify subsection (j) to include the administration of ESWT as subject to the same penalties set forth for the licensed trainer. The proposed amendment would also specify that such penalties apply to any veterinarian found responsible for the administration of ESWT or any drug substance resulting in a positive test.

The proposed amendment to Board Rule 1843.3 will clarify penalties for veterinarians who commit violations in the administration of ESWT. Pursuant to Board Rule 1866.2, a person in violation of the procedures established for the use of ESWT are subject to a Category A penalty. The Category A penalties are set forth in Board Rule 1843.3. While the penalties apply to veterinarians, in addition to licensed trainers and owners, the penalties lack clarity and specificity in regards to veterinarians. Additionally, the penalties do not include violations associated with ESWT. Therefore, the modification of subsection 1843.3(j) establishes specific penalties for violations in the use of ESWT and clarifies that the veterinarian is subject to those penalties.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The proposed amendment of Board Rule 1843.3 will increase safety for horses and their riders. ESWT has analgesic properties. Therefore, horses administered ESWT are able to work out despite existing injuries. This increases the risk for further injury and breakdown, which subjects the rider to possible injuries or death from a fall. Therefore, it is imperative that the established procedures for the use of ESWT are followed. The proposed amendment of Board Rule 1843.3 helps to ensure adherence to these procedures by specifying the penalties for violations and clarifying that the Board-licensed veterinarian, who is the only person allowed to use the ESWT machine within a training or racing enclosure that is under the Board's purview, is subject to those penalties.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the amendment, the Board has conducted a search for any similar regulation on this topic and has concluded that Board Rule 1843.3 is the only regulation that sets forth specific penalties for veterinarians found to have administered ESWT in violation of the procedures set forth in Board Rule 1866.2. Therefore, the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with GC sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Board Rule 1843.3 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 following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULTS OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed amendment to Board Rule 1843.3 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) result in the expansion of businesses currently doing business with the state; or (4) benefit the state's environment. The adoption of the proposed amendment will benefit the health and welfare of California residents and worker safety by helping to maintain the integrity of veterinary practices, thereby reducing potential injuries to horses and their riders. The proposed amendment of Board Rule 1843.3 specifies penalties related to the administration of ESWT and clarifies that the veterinarian is subject to those penalties.

Effects on small businesses: none. The proposal to amend Board Rule 1843.3 does not affect small businesses because horse racing is not a small business under GC section 11432.610.

CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Rick Pimentel, Policy and Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
E-mail: repimentel@chrb.ca.gov

If the person named above is not available, interested parties may contact:
Amanda Drummond, Manager
Policy and Regulations
Telephone: (916) 263-6033
Email: amdrummond@chr.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Rick Pimentel or the alternative contact person at the address, phone number, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Rick Pimentel at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rick Pimentel at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation, and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.