

CALIFORNIA HORSE RACING BOARD

15-DAY NOTICE OF MODIFICATION TO THE TEXT OF THE PROPOSED ADDITION OF RULE 1866.2, SHOCKWAVE THERAPY RESTRICTED

Pursuant to the requirements of Government Code (GC) section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the Californian Horse Racing Board (Board) is providing notice of changes that have been made to the text of the proposed addition of Board Rule 1866.2, Shockwave Therapy Restricted.

CHANGES TO THE PROPOSED TEXT

The originally proposed text was noticed to the public on January 3, 2020 and was the subject of a public hearing on February 20, 2020. The modifications reflected in this Notice are in response to recommendations made by the Office of Administrative Law (OAL).

A copy of the full text of the regulations with the proposed changes indicated is attached. Additions to the originally proposed text appear in double underlined text and deletions are shown in ~~double strikethrough~~.

1866.2 Shockwave Therapy Restricted

Proposed subsection (a) has been modified to provide that Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy (ESWT) machines shall be registered by the official veterinarian. This modification was necessary for clarity to accurately reflect the registration process. When an ESWT machine is brought to an inclosure, the machine is registered in a listing by the official veterinarian so that the Board can track how many machines are in an inclosure and to whom they belong.

New subsection (a)(1) provides that the listing of registered ESWT machines shall be available for inspection by the official veterinarian, stewards, or Board investigators. Subsection (a)(1) also provides that a listing of all registered ESWT machines shall be kept by the official veterinarian and shall include the manufacturer, model, and serial number of the listed machine, and the name of the Board-licensed veterinarian responsible for the ESWT machine. The new subsection is necessary to clarify the procedure for registering an ESWT machine, as well as the necessary information to include in the listing when registering the machine. This information is necessary to give the official veterinarian and Board enforcement staff a record of how many ESWT machines are in the inclosure, and to aid in identifying which machine belongs to which veterinarian.

Proposed section (c) has been modified to clarify that the designated area for ESWT use, chosen by the official veterinarian, is in a Board racing or training “inclosure”, not in a Board racing or training “facility”. The term “inclosure” is widely used in Board regulation text, so to maintain consistency and clarity, it is necessary to use the term “inclosure”.

Also, the term “approved” was replaced with the term “chosen” to clarify that the official veterinarian selects the designated area.

New subsection (c)(1) provides that the official veterinarian will choose a location within the Board inclosure to perform ESWT treatment. The approved area will be secure, safe for the horse receiving treatment, and accessible for monitoring either by security personnel or by security cameras. It is necessary for the Board to ensure that the safety of the horse being treated is maintained, therefore the official veterinarian is tasked with ensuring that the location chosen for ESWT treatment is physically and medically safe for the horse to be in and safe for this particular type of treatment administration. Additionally, it is essential that an accurate treatment record is maintained so that future examining veterinarians can fully evaluate a horse in light of its prior treatments. In order to ensure that use of the ESWT machine is not abused or underreported, security measures are necessary.

Proposed section (d) has been modified to include the date that the treatment was administered in the list of items to be recorded in the treatment log by the treating veterinarian.

Proposed section (e) has been modified to reflect the correct title of form CHRB-24. The modified language will state the title of the form CHRB-24 as “Veterinarian Report Confidential” instead of “Veterinary Report Confidential”, as the former is the correct title.

Proposed section (f) has been modified to strike the term “automatically” from the language to provide that horses treated with ESWT and placed on the Veterinarian’s List for 30 days will not be automatically removed from the Veterinarian’s List following the 30th day. Instead, the modified language provides that the horse will be removed from the Veterinarian’s List following the 30th day provided that the satisfied the requirements in Board Rule 1866, Veterinarian’s List. This modification is necessary to reflect the requirement in Board Rule 1866, Veterinarian’s List, that a horse placed on the Veterinarian’s List shall be removed from the list only after having established or demonstrated to the satisfaction of the official veterinarian or the racing veterinarian, by passing a soundness examination, that the horse is sound and in fit physical condition to exert its best effort in a race. By requiring a horse to pass a physical examination approved by the official veterinarian prior to removal from the Veterinarian’s List after receiving ESWT treatment, horses and their riders will be better protected by ensuring only those who are sound and in fit physical condition are eligible to workout or run in a race.

Proposed section (g) has been modified to remove the word “recorded” from the text, changing the phrase “recorded workout” to “workout”. The proposed modification provides that horses treated with ESWT may not participate in a workout for 30 days after treatment. The term “workout” provides consistency with existing Board Rule 1866, wherein a workout is defined as “an exercise session near full speed, or close to full speed”. Additionally, new subsection (g)(1) provides that for the purpose of this regulation

a “workout” means an exercise session near full speed, or close to full speed to further clarify the definition of the term being used.

Proposed section (h) has been modified to exchange the term “facility” for the term “inclosure”. Similar to the proposed modification to section (c), the term “inclosure” is more consistent with existing Board Rule language and more accurately reflects the specific type of Board racing or training facility being regulated. The term “inclosure” is therefore necessary for clarity and consistency.

Business and Professions Code (BPC) section 19580 has been removed from the list of statutes granting authority. BPC section 19580 grants authority to the Board regarding equine medication. ESWT is a treatment, not a medication, therefore BPC 19580 is not relevant to the Board’s authority to regulate ESWT.

BPC section 19583 has been added to the list of statutes in the reference section. BPC 19583 provides that every veterinarian who treats a horse within the inclosure shall, in writing, on a form prescribed by the Board, report to the official veterinarian in a manner prescribed by them, information regarding the treatment and other information requested by the official veterinarian. It is necessary to include this statute in the list of statutes referenced because Board Rule 1866.2 implements and makes specific BPC 19583 by describing how treating veterinarians are to comply with BPC 19583 regarding ESWT treatment.

All other changes to the proposed regulation are for clarity, consistency, spelling and grammatical purposes.

WRITTEN COMMENT PERIOD

Any interested person may submit a written statement relating to the modified language during the public comment period from **May 13, 2020 to May 28, 2020**. All written comments must be submitted to the Board no later than **May 28, 2020**. The Board will only consider comments received at the Board’s office by that time. Submit written comments to:

Zachary Voss, Policy and Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Email: zavoss@chrb.ca.gov

All written comments received by May 28, 2020, which pertain to the indicated text changes will be reviewed and responded to by the Board’s staff as part of the completion of the rulemaking file. Please limit your comments to the modifications to the text. Text proposed to be added to the rulemaking in this comment period is displayed in the double underline and proposed deletions to the rulemaking in this comment period are displayed in ~~double strikethrough~~.

Questions concerning the proposed amendments may be addressed to Zachary Voss at (916) 263-6036, emailed to zavoss@chr.ca.gov, or mailed to the address above. If Zachary Voss is not available, questions concerning the proposed amendment may be directed to Amanda Drummond, Policy and Regulations Manager, at (916) 263-6033 or amdummond@chr.ca.gov.

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Copies of this notice, the original Notice of Proposed Rulemaking, the Initial Statement of Reasons, the original proposed text of the regulation, additional documents and information to the record, and the revisions to the proposed text of the regulations can be accessed via the Board website at: http://www.chrb.ca.gov/rules_law.asp.

CALIFORNIA HORSE RACING BOARD

May 13, 2020

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 15. VETERINARY PRACTICES
PROPOSED ADDITION OF
RULE 1866.2. SHOCKWAVE THERAPY RESTRICTED.

Text of Modified Proposed Regulations

Changes are illustrated with double underline for proposed additions and by ~~double strikethrough~~ for proposed deletions.

1866.2 Shockwave Therapy Restricted

(a) Prior to being brought into any CHRB racing or training inclosure, all Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy (ESWT) machines shall be registered with by the official veterinarian who shall keep a listing of all ESWT machines so registered.

(1) The listing shall be available for inspection by the official veterinarian, stewards, or CHRB investigators. The listing shall include the manufacturer, model, serial number, and the name of the CHRB licensed veterinarian responsible for the ESWT machine.

(b) Only CHRB licensed veterinarians ~~are allowed~~ may to use ESWT machines within a CHRB racing or training inclosure.

(c) ESWT machines are not allowed in the stable area. All treatments ~~are to~~ shall be conducted in a designated area ~~approved~~ chosen by the official veterinarian responsible for that CHRB racing or training ~~facility~~ inclosure.

(1) The designated area shall be secure, safe for the horse receiving treatment, and accessible for monitoring either by security personnel or by security cameras.

(d) The treating veterinarian shall keep a log of all ESWT treatments. The log shall be available for inspection by the official veterinarian, stewards or CHRB investigators. The log shall include the date of treatment; the horse's tattoo, microchip number, or other identifying information if the horse is not tattooed or microchipped; the anatomical area treated; and the number of pulses administered.

(e) All ESWT treatments are to shall be reported to the official veterinarian on a separate form Veterinary Veterinarian Report Confidential CHRB-24 (Rev. 01/18) (CHRB-24), which is incorporated by reference. Such report shall be submitted by 10:00 AM the day following treatment.

(f) Horses treated with ESWT will shall be placed on the Veterinarian's List for ESWT treatment for 30 days. The day after treatment is the first day on the Veterinarian's List. Unless otherwise provided under Rule 1866, the horse will be automatically removed from the Veterinarian's List for ESWT on the day following the 30th day (30 + 1 days) The horse shall be removed from the Veterinarian's List for ESWT on the day following the 30th day (30 + 1 days) provided that the horse satisfied Rule 1866(d). A horse on the Veterinarian's List for multiple reasons must meet whatever the criteria is required for removal for those other reasons.

(g) Horses treated with ESWT may not participate in a recorded workout for 30 days after treatment.

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

(h) No owner, trainer, or licensee shall bring on to a CHR racing or training facility a horse known to have received ESWT within the last 30 days without prior approval of the official veterinarian.

(i) Any person participating in the use of ESWT and/or the possession of ESWT machines in violation of this rule shall be considered to have committed a prohibited veterinary practice and is subject to a Category A penalty pursuant to Rule 1843.3 of this Division.

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

Reference: Sections 19440, 19562, and 19580, 19583,
Business and Professions Code.