

INITIAL STATEMENT OF REASONS

Rule 1866.2. Shock Wave Therapy Restricted

SPECIFIC PURPOSE OF THE REGULATION

The proposed addition of Rule 1866.2, Shock Wave Therapy Restricted, will provide a regulation governing procedures for the possession and use of Extracorporeal Shock Wave Therapy (ESWT) machines within CHRB inclosures.

PROBLEM

Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy (ESWT) machines are used to administer shockwave therapy to horses. The non-invasive treatments consist of transmitting short, high energy pressure pulses to a designated area of the body through a hand-held probe. Different levels of energy may be used, depending upon the purpose of the therapy. Those who use the therapy believe the ESWT energy waves stimulate growth in the cells treated, jump-starting the healing process of any nearby injuries. The therapy is used to treat horses' musculoskeletal problems, soft tissue injuries and bone injuries. Shockwave therapy may increase healing in the veterinary patient, but it can also act as an analgesic in the area targeted. This raises the concern that some may use the therapy to keep horses going that shouldn't be worked. It is believed that the analgesic effect may last up to 72 hours, so various racing jurisdictions have ruled that shockwave therapy machines on the track must be used only by veterinarians and must be registered. Treated horses must be reported and are prohibited from racing for several days after treatment¹. The proposed addition of Rule 1866.2 will establish policies and procedures for the use of ESWT within CHRB inclosures.

NECESSITY

Subsection 1866.2(a) of the proposed regulation requires that all ESWT machines must be registered with the official veterinarian before being brought onto any CHRB inclosure. The official veterinarian shall keep a listing of all such registered ESWT machines. Registering ESWT machines with the official veterinarian is necessary to help regulate the use of ESWT machines within the inclosure. The official veterinarian will know how many ESWT machines are registered for use within the inclosure, and who is using them.

Subsection 1866.2(b) provides that only CHRB licensed veterinarians may use ESWT machines within the inclosure. The provision is necessary to ensure the ESWT machines

¹ Many states adhere in part to the Association of Racing Commissioners International (ARCI) model rule, which provides: 1) That ESWT machines are registered with the racing commission and used only by licensed veterinarians; 2) the machines are used only in designated locations; 3) horses cannot race or work for at least ten days after treatment; 4) horses are placed on the vet's list for ten days after treatment; persons possessing an ESWT machine or using ESWT in violation of the rule is subject to a Class "A" penalty. Arizona and Colorado do not allow ESWT. In Michigan, horses cannot race for seven days after ESWT. In New York, horses cannot race for ten days after ESWT.

are used correctly. Careless use by non-veterinarians could be a problem. Use of shockwaves on various organs, such as the eyes, intestines or lungs can cause serious damage. Higher than recommended settings for the number or strength of the pulses could also cause tissue damage on the body or worsen microfractures. Subsection (b) is also necessary to help ensure that ESWT is used for its intended purpose and not solely for its analgesic effect.

Subsection 1866.2(c) provides that ESWT machines are not allowed in the stable area and shall be used in a designated area approved by the official veterinarian. The subsection is necessary to provide an additional level of control over the use of the machines within the inclosure. It would be difficult to monitor the use of ESWT machines within the barn area. Providing a designated area for ESWT allows the official veterinarian to monitor the practice and ensures that only CHRB licensed veterinarians are administering the therapy.

Subsection 1866.2(d) requires the treating veterinarian to keep a log of all ESWT treatments. The log shall be available for inspection by the official veterinarian, the stewards or CHRB investigators, and it shall provide the date of the treatment, identifying information for the horse treated and information regarding the area treated and number of pulses administered. ESWT treatments are otherwise required to be reported using the form Veterinarian Report Confidential CHR-24 (Rev. 01/18) (CHR-24). The CHR-24, however, does not provide the same detail as required in the treating veterinarian's log. The log required under subsection 1866.2(d) is necessary to ensure that if something untoward were to happen to the horse, a detailed record of the ESWT treatments will be available for inspection.

Subsection 1866.2(e) requires that all ESWT treatments be reported using the form CHR-24, which is incorporated by reference in the regulation. This provision is consistent with Board Rule 1842, Veterinarian Report, which requires that every veterinarian who treats a horse within the inclosure shall in writing report the treatment to the official veterinarian. Rule 1866.2 requires that the ESWT treatment be reported by 10:00 a.m. the day following treatment. The reporting deadline is necessary to ensure the official veterinarian is informed of such treatments in a timely manner.

Subsection 1866.2(f) provides that a horse treated with ESWT shall be placed on the Veterinarian's List for 30 days. The day after treatment is the first day on the list, and unless otherwise provided under Rule 1866, the horse shall automatically be removed from the list on the 31st day. If a horse is placed on the Veterinarian's List for multiple reasons, it must meet the criteria required for those other reasons prior to removal from the list. Subsection 1866.2(f) is consistent with Board Rule 1866, Veterinarian's List, which requires that horses receiving veterinary treatment-shockwave therapy be placed on the list. The Board has determined that a horse receiving ESWT must remain on the Veterinarian's List for a period of 30 days beginning the day following the treatment. While it is generally believed the analgesic effect of ESWT may remain for up to up to 72 hours, the injury treated with ESWT must still be given time to heal. Therefore, the Board has determined that a 30-day period is in the horse's best interest. Horses receiving ESWT

generally have issues with musculoskeletal problems, soft tissue injuries and bone injuries; conditions that require the horse be placed on the Veterinarian's List. If a horse is on the list for reasons in addition to receiving ESWT, subsection 1866.2(f) requires that it fulfill the criteria required for removal for the other infirmities. This may include being on the Veterinarian's List for longer than 30-days, as horses placed on the Veterinarian's List as lame or unsound more than twice within a 365-day period may remain on the Veterinarian's List for as long as 180 days.

Subsection 1866.2(g) provides that horses treated with ESWT may not participate in a recorded workout for 30 days after treatment. Most horses in training get daily exercise, but not all exercise is considered an official workout. An official workout is one where the horse is timed by a track clocker. The time will be published in all records of the horse's past performances, which are often used by horse racing fans to determine the potential placement of a horse entered to race. The Board has determined that the 30-day period is necessary to ensure the analgesic effect of ESWT is gone, and to ensure the horse has had time to heal. Subsection (g) is consistent with the requirement that the horse remain on the Veterinarian's List for 30 days.

Subsection 1866.2(h) provides that no owner, trainer or licensee shall bring onto the inclosure a horse that has received ESWT in the previous 30 days without approval of the official veterinarian. Under Rule 1560, Duties of the Official Veterinarian, the official veterinarian is charged with enforcing the Board's rules and regulations related to veterinary practices and shall maintain a list of all infirm horses on the grounds. Informing the official veterinarian of the ESWT procedure will ensure the horse is placed on the Veterinarian's List and will not participate in an official workout for at least 30 days after treatment. The provision is necessary, as it is in the interest of horse racing and the health and safety of horse and rider that the true condition of all race horses within the inclosure is disclosed. In addition, the Board wants to prevent licensees from circumventing the provisions of Rule 1866.2 by removing horses from the inclosure just to receive ESWT and then entering the horses to race.

Subsection 1866.2(i) provides that any person using or possessing an ESWT machine in violation of the rule shall be considered to have violated Rule 1867, Prohibited Veterinary Practices, and is subject to a Class "A" penalty. The Board recognizes there are legitimate uses for ESWT within the inclosure; however, the potential for misuse or abuse of the therapy is a serious matter. The analgesic effect of ESWT is a temptation for licensees who are more concerned with winning than the health and welfare of horse and rider. A class "A" penalty means a licensee would receive a minimum one-year suspension absent mitigating circumstances. In addition, the licensee would be fined a minimum of \$10,000 and be referred to the Board for any further action deemed necessary by the Board.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed addition of Rule 1866.2 will provide clarity regarding the use of ESWT machines within a CHRB inclosure. The proper use of ESWT machines within the

inclosure will benefit horses suffering from musculoskeletal problems, soft tissue injuries and bone injuries. Rule 1866.2 will place any horse receiving ESWT on the Veterinarian's List, which will provide a period of rest and recuperation, and will ensure that the horse has demonstrated its physical fitness prior to entry to race. The regulation will help promote the health and safety of horse and rider. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Accordingly, the proposed regulation benefits the health and welfare of California residents and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact for the industry.

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

Shock Wave Therapy for Lameness: DVM360 Magazine 5/01/05.

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 the State of California by helping to ensure the health and safety of horse and rider. The proposed regulation will not benefit the State of California's environment.

The Board has made the initial determination that the proposed addition of Rule 1866.2 will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The proposed regulation will provide guidelines for the proper use of ESWT machines within CHRB inclosures and will require that horses treated with ESWT be placed on the Veterinarian's List.

Purpose:

The proposed addition of Rule 1866.2 will provide guidelines for the proper use of ESWT machines within CHRB inclosures and will require that horses treated with ESWT be placed on the Veterinarian's List. The purpose of the proposed regulation is to protect the health and safety of horse and rider by ensuring that ESWT is used to promote healing, and not for the illicit use of the treatment's analgesic effects. Under the proposed

regulation, horses receiving ESWT within the inclosure must be placed on the Veterinarian's List and may not be removed from the list until: 1) the horse has been on the list for the required number of days, and 2) the horse on the list for multiple reasons has met other criteria for removal. This will ensure the horse has had a period of rest, and that it has demonstrated it is fit.

The Creation or Elimination of Jobs Within the State of California:

The proposed addition of Rule 1866.2 will provide guidelines for the proper use of ESWT machines within CHRB inclosures and procedures to be followed in the administration of ESWT. The proposed regulation will impact any CHRB licensed individual found to have participated in ESWT or to have an ESWT machine in their possession within the inclosure in violation of the regulation. The proposed regulation will not affect any other type of California business. Therefore, the CHRB has determined that this regulatory action will not have a significant impact on the creation or elimination of jobs in the State of California.

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

The proposed addition of Rule 1866.2 will provide guidelines for the proper use of ESWT machines within CHRB inclosures and procedures to be followed in the administration of ESWT. The proposed regulation will impact any CHRB licensed individual found to have participated in ESWT or to have an ESWT machine in their possession within the inclosure in violation of the regulation. The proposed regulation will impact trainers, owners or other CHRB licensees who use and ESWT or possess and ESWT machine within a CHRB inclosure in violation of the rule. The regulation will only have an effect on a limited number of CHRB licensees, and as such will only affect horse racing and no other type of California business. Therefore, the CHRB has determined this regulatory proposal will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

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

The proposed addition of Rule 1866.2 will provide guidelines for the proper use of ESWT machines within CHRB inclosures and procedures to be followed in the administration of ESWT. The proposed regulation will impact any CHRB licensed individual found to have participated in ESWT or to have an ESWT machine in their possession within the inclosure in violation of the regulation. The proposed regulation will only impact individual trainers, owners or any other CHRB licensee found to have participated in ESWT or to have an ESWT machine in their possession within the inclosure in violation of the regulation. The proposed regulation will only have an effect on a limited number of CHRB licensees, and as such only has an effect on horse racing and not any other type of California business. The CHRB has determined, therefore, that the proposed regulatory action is not relevant to the expansion of businesses currently doing business in the State of California.

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

The proposed addition of Rule 1866.2 will protect the health and safety of California's race horses, jockeys and exercise riders. ESWT is primarily used on horses with musculoskeletal problems, soft tissue injuries and bone injuries. This means the horses are generally not fit to compete in a race and they need time to rest and recuperate. Rule 1866.2 will provide that horses receiving ESWT cannot perform a workout for 30 days and will require that horses receiving ESWT be placed on the Veterinarian's List for at least 30 days. Such horses must also meet the criteria for any other reason they are placed on the list. The procedures for ESWT under Rule 1866.2 will ensure that horses having had ESWT are sound and fit to compete in a race. Protecting the health of race horses will promote jockey/exercise rider safety. Accordingly, the proposed regulation benefits the health and welfare of California residents and improves worker safety. The regulation does not benefit the state's environment.

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 1866.2 was discussed at the June 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
January 3, 2020