

CALIFORNIA HORSE RACING BOARD  
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO ADD  
RULE 1866.2. SHOCK WAVE THERAPY RESTRICTED

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

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1866.2, Shockwave Therapy Restricted, to provide a regulation governing the use of Extracorporeal Shock Wave Therapy (ESWT) technology within CHRB inclosures. Rule 1866.2 will provide guidelines and procedures for the use of ESWT within a CHRB inclosure.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, February 20, 2020**, or as soon after that as business before the Board will permit, at the **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. 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.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **February 17, 2020**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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California Horse Racing Board  
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E-mail: [haroldc@chrh.ca.gov](mailto:haroldc@chrh.ca.gov)

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19562 and 19580, Business and Professions Code.  
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Business and Professions Code sections 19440, 19562 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19440, 19562 and 19580, Business and Professions Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVER VIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California.

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 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 treatment.

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 registered ESWT machines within the inclosure. Registering of ESWT machines by the official veterinarian is necessary to help regulate the use of the machines. The official veterinarian will know how many ESWT machines are 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 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 CHRB-24 (Rev. 01/18) (CHRB-24), which is incorporated by reference in the regulation. The CHRB-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 CHRB-24. This provision is consistent with Board Rule 1942, Veterinarian Report, which requires that every veterinarian who treats a horse within the inclosure shall in writing report the treatment to the official veterinarian. Subsection 1866.2(e) 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 the horse shall automatically be removed from the list on the 31<sup>st</sup> day. However, 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. This provision is consistent with Board Rule 1866, Veterinarian's List, which provides that the official veterinarian shall maintain a Veterinarian's List of those horses determined to be unfit to compete in a race due to veterinary treatment, physical distress, injury, lameness, unsoundness or infirmity. Subsection (b)(2) of Rule 1866 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 is consistent with Rule 1866, which states the eligibility criteria for a horse to be removed from the list.

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 trainer would receive a minimum one-year suspension absent mitigating circumstances. In addition, the trainer 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.

## CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendment, the Board has conducted an evaluation of any related regulations. The Board determined that Rule 1866 does provide that a horse receiving ESWT shall be placed on the Veterinarian's List. Rule 1866 also provides that a horse placed on the Veterinarian's List may not workout for a period of 72 hours after being placed on the list and provides minimum time periods horses must remain on the list. These provisions are not in conflict with Rule 1866.2. The proposed addition of Rule 1866.2 prohibits recorded workouts for a period of 30-days. The horse may still workout (exercise) as provided under Rule 1866; such exercise sessions are not recorded workouts. Rule 1866.2 requires the horse receiving ESWT to remain on the Veterinarian's List for a period of 30 days. The provision is not in conflict with Rule 1866, which provides for a "minimum" of 10 days for horses placed on the list for the first time in 365-days, and greater "minimum" time periods for horses placed on the list more than once within a 365-day period. If Rule 1866 would require a horse to be on the Veterinarian's List for more than 30-days, Rule 1866.2 provides that the horse must meet the criteria for removal from the list. The proposed addition of Rule 1866.2 is the only regulation dealing with procedures related to possessing and using ESWT machines within a CHRB inclosure. Therefore, the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

## DISCLOSURE 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 Government Code sections 17500 through 17630: none.

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

Cost of savings in federal funding to the State: none.

The Board has made an initial determination that the proposed addition of Rule 1866.2 will not have a significant statewide adverse economic impact directly affecting business including the ability of California business 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.

## RESULT OF ECONOMIC IMPACT ANALYSIS

The results of the Board's Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows: The adoption of the proposed addition of Rule 1866.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) increase or decrease investment in California; (5) benefit the state's environment. The proposed addition of Rule 1866.2 impacts individuals who administer ESWT within a CHRB inclosure and those who may administer ESWT in violation of the rule. In making the determination that the proposed addition of Rule 1866.2 will not have an adverse economic impact the Board took into consideration the fact that ESWT is administered to horses that would already be on the Veterinarian's List. ESWT is used to address maladies such as horses' musculoskeletal problems, soft tissue injuries and bone injuries. Regardless of the use of ESWT, any one of these issues would result in the horse being placed on the Veterinarian's List. A sampling of horses on the Veterinarian's List at Santa Anita Park Race Track (SA) from January 2019 through the end of March 2019 showed that 63 horses were placed on the Veterinarian's List for ESWT, or an average of 21 horses a month. During the same time period SA provided stall space for 3,295 horses (1,950 on-track, 1,345 off-track). The number of horses on the Veterinarian's List for ESWT during the three-month period represented only .64 percent of the total. The proposed addition of Rule 1866.2 promotes transparency and accountability in the use of ESWT within CHRB inclosures. The guidelines provided under the regulation will help to ensure the health and safety of race horses and will discourage the surreptitious use of ESWT machines for purposes other than healing. Transparency in medication procedures and sound, healthy race horses protects the economic interests of the industry and its licensees. Sound race horses promotes jockey/driver safety. Accordingly, the proposed regulation benefits the health and welfare of California residents involved in horse racing and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in a positive economic impact for the industry.

Effect on small business: none. The proposal to add Rule 1866.2 does not affect small businesses because horse racing is not a small business under government Code section 11342.610.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 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, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally as 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 PERSON

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:

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If the person named above is not available, interested parties may contact:  
Robert Brodnik,  
Staff Counsel  
Telephone: (916) 263-6025

## 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 on, may be obtained by contacting Harold Coburn, or the alternative contact persons 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 which 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 Harold Coburn 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 Harold Coburn 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 web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).