

Case Notes

District court would abstain from reaching merits of harness race-horse trainers' applications for stays of orders. *Bongiorno v. Lalomia*, D.N.J.1994, 851 F.Supp. 606, affirmed 39 F.3d 1168.

Fines and suspension of licenses and privileges for extended periods ranging from 30 months to 66 months, based on findings that trainers' horses had tested positive for drugs were not arbitrary, capricious, unreasonable; principles of "trainer responsibility" and "no medication" were clearly established in law and commission had authority to protect integrity of horse racing. *New Jersey Racing Com'n v. Elliot*, 290 N.J.Super. 140, 675 A.2d 243 (A.D.1996).

Rule sets forth the association between the administration of drugs and the need to protect horses from them. *Gallo v. New Jersey Racing Commission*, 6 N.J.A.R. 381 (1983).

13:71-23.2 Testing

(a) Any horse entered to start at any licensed race meeting may be subjected to a pre-race and/or post-race blood, and/or urine test, at the direction of the State Veterinarian, the Judges and/or State Steward, in the manner prescribed by the New Jersey Racing Commission. The costs so incurred shall be borne by the track association. The cost to the track association for testing each sample shall be established by the New Jersey Racing Commission.

(b) Every owner, or his authorized agent, or trainer of any horse entered to race at any licensed racetrack shall immediately submit the said horse to any veterinarian designated by the Commission, for examination and/or testing whenever so requested by the Commission, Stewards, Judges, State Veterinarians, or Associate State Veterinarian.

Case Notes

Rule sets forth the association between the administration of drugs and the need to protect horses from them. *Gallo v. New Jersey Racing Commission*, 6 N.J.A.R. 381 (1983).

13:71-23.3 Pre-race blood testing program

(a) All horses entered to start in any race where pari-mutuel wagering is conducted shall be subject to a pre-race blood and/or urine test.

(b) Such horses shall be in the paddock at least two hours prior to post-time under the custody and care of a duly licensed attendant designated by the trainer of the horse.

(c) A licensed veterinarian approved by the Commission shall be the only person allowed to draw the blood for testing. A quantity of 20 cubic centimeters or such amount as the veterinarian may designate shall be extracted from each horse for testing purposes.

(d) Should the forensic analysis of such sample be classified as suspicious for any drug or substance foreign to the natural horse, except as expressly permitted by these rules and regulations, the horse shall be scratched.

(e) Should the forensic analysis of such sample be classified as positive for any drug or substance foreign to the natural horse, the horse shall be scratched and placed on the judge's list for seven days.

(f) The entry of a horse shall constitute permission for a veterinarian appointed by the New Jersey Racing Commission to obtain biological samples, and consent to the scratching of the horse from the race in the event such test is positive or suspicious.

(g) A trainer shall receive a warning for the first time a horse in his charge shall show a positive pre-race test. If the same horse shall again be positive on a pre-race test, then the trainer may be fined, suspended or both.

13:71-23.3A Post-race blood gas testing program

(a) An excess level of total carbon dioxide (TCO₂) in the race horse is deemed adverse to the best interests of harness racing, and adverse to the best interests of the horse in that such condition alters its normal physiological state. Accordingly, in compliance with the post-race testing program provisions of N.J.A.C. 13:71-23.4 and this section, on the date of the race and following a minimum one-hour stand-

ing at rest period for the horse subsequent to the conclusion of the race within which it competed, a State Veterinarian representing the Commission may obtain blood samples from the horse for the purpose of the testing of said samples by the Racing Commission laboratory for TCO₂ level on a Clinical Auto Analyzer that applies an ion selective electrode method (ISE) for measuring TCO₂ in blood. Where the TCO₂ level, based upon such testing equals or exceeds the following levels, the judges shall order the relief authorized pursuant to (b) below:

1. Thirty-seven (37) or more millimoles per liter for those horses not competing on furosemide; and

2. Thirty-nine (39) or more millimoles per liter for those horses competing on furosemide.

(b) Where the TCO₂ level in a horse is determined to equal or exceed the levels set forth in (a) above, and it is not determined that such TCO₂ levels are physiologically normal for that particular horse pursuant to (c) below, the judges shall order the following relief:

1. The trainer, as the absolute insurer of the horse responsible for the condition of a horse within his or her care and custody pursuant to N.J.A.C. 13:71-23.6, shall for a first violation have his or her license suspended for a 75 day period, be ordered to pay a \$1,000 fine and be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. For a second violation, the license of the trainer shall be ordered suspended for a 180 day period, a \$2,500 fine shall be ordered and the trainer shall be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. For a third or subsequent violation, the license of the trainer shall be ordered suspended for a minimum of one year to a maximum of licensure revocation, a \$5,000 fine shall be ordered and the trainer shall be denied the privileges of all grounds subject to the jurisdiction of the Commission during the suspension period. The licensure suspension aspect of these penalties shall be increased by a minimum of two years where evidence independent of the testing demonstrates that the excessive TCO₂ level of the horse resulted from the administration of a drug or substance foreign to the horse in violation of N.J.A.C. 13:71-23.1 and that such foreign substance was administered nasogastrically or orally, using a tubing device, jug or by any intravenous means;

2. In addition to the liability of the trainer as set forth in (b)1 above, any additional persons responsible shall be subject to the penalties set forth in (b)1 above; and

3. Disqualification and denial of purse with redistribution of any purse money due, pursuant to N.J.A.C. 13:71-23.7; and

4. Pre-race guarded quarantine pursuant to N.J.A.C. 13:71-23.3B.

(c) If the level of TCO₂ is determined to equal or exceed those set forth in (a) above, and the licensed owner or trainer of that horse contends in writing to the judges within three calendar days of notification of the results that such levels are physiologically normal for the particular horse, said licensee may by such writing request that the horse be held in guarded quarantine. In the event so requested, the track association shall make such guarded quarantine available, for a period of time to be determined by the judges but in no event more than 72 hours, at the sole expense of the licensee requesting same. During any quarantine, the horse shall be re-tested periodically and, although the horse may not race during such quarantine period, it may be exercised and trained at times prescribed by the track association and consistent with the ability to monitor the horse, take blood samples from the horse and test those blood samples of said horse. If the judges are satisfied, on the basis of the evident facts, the quarantine and the testing of the horse's blood during the quarantine period utilizing the Clinical Auto Analyzer, that the level of TCO₂ set forth in (a) above is physiologically normal for that particular horse, the judges shall not order the relief set forth in (b) above and the horse shall be permitted to compete. In such case, the judges in their discretion may, at the sole expense of the track association, require that the horse re-establish that such TCO₂ level is physiologically normal to it pursuant to the quarantine procedure set forth in this subsection but no sooner than 45 days after the last quarantine period for the purpose of such re-establishment.

(d) All persons participating in any blood gas testing program or quarantine process as described in this section, whether an employee of the Racing Commission or a track association, shall act at the direction of the Commission representative as designated by the Commission or its Executive Director. The taking of blood samples from a horse, as authorized by this section for the purpose of testing on the Clinical Auto Analyzer, shall be additional to and not in lieu of any other sampling or testing of blood or urine authorized by this chapter. For the purposes of this section, as well as N.J.A.C. 13:71-23.3B and 23.3C, a violation of this section on or after October 18, 1993 shall constitute a prior violation.

New Rule, R.1993 d.174, effective April 19, 1993.
See: 25 N.J.R. 269(a), 25 N.J.R. 1775(b).
Amended by R.1997 d.127, effective March 17, 1997.
See: 29 N.J.R. 95(a), 29 N.J.R. 901(b).
Substantially amended section.

13:71-23.3B Post-race blood gas testing program; pre-race guarded quarantine

(a) Where a trainer, during any 12 month period, has had any single horse under his or her custody, care and control test equal to or in excess of the total carbon dioxide level (TCO₂) set forth in N.J.A.C. 13:71-23.3A(a), and where the level of TCO₂ has not been determined as physiologically normal for the horse in such instance pursuant to N.J.A.C. 13:71-23.3A(c), that horse subsequently scheduled to participate in a race under the custody, care and control of said trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the order of quarantine.

(b) Where a trainer, during any 12 month period, has had any horse or horses under his or her custody, care and control test equal to or in excess of TCO₂ level set forth in N.J.A.C. 13:71-23.3A on two occasions, and where the said level of TCO₂ has not been determined as physiologically normal for the horse in either of such instance, all horses subsequently scheduled to participate in a race under the custody, care and control of that trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected trainer for eight months following the date of the second order of quarantine of a horse or horses under his custody, care and control, and without regard to whether those horses have been transferred to a new trainer. However, if during the eight month period any additional horse under the custody, care and control of the trainer is determined to have an excessive TCO₂ level in accord with N.J.A.C. 13:71-23.3A, and where the level of TCO₂ has not been determined as physiologically normal for the horse, the judges shall order that the eight-month pre-race guarded quarantine period as to all of the trainer's horses be extended for a length of time which they deem appropriate.

(c) Where a single horse, during any 12 month period, is determined to have an excessive TCO2 level in accord with N.J.A.C. 13:71-23.3A, and where the level of TCO2 has not been determined as physiologically normal for the horse, the horse shall be placed under pre-race guarded quarantine even where the horse has been transferred to a new trainer. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the current trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the order of quarantine. However, where during the pendency of such six-month period the horse is under the custody, care and control of the new trainer and the horse is again determined to exhibit an excessive TCO2 level in accord with N.J.A.C. 13:71-23.3A, and where the level of TCO2 has not been determined as physiologically normal for said horse, the judges shall order that the six-month pre-race guarded quarantine period for the horse be extended for a length of time which they deem appropriate. Where such an event, during any 12 month period, constitutes the second incident of any horse or horses under the custody, care and control of the current trainer of said horse exhibiting an excessive TCO2 level in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, the provisions of (b) above shall apply as to that current trainer.

New Rule, R.1993 d.513, effective October 18, 1993.
See: 25 N.J.R. 3427(a), 25 N.J.R. 4751(b).
Amended by R.1997 d.127, effective March 17, 1997.
See: 29 N.J.R. 95(a), 29 N.J.R. 901(b).
Substantially amended section.

Case Notes

Quarantine of horse found to have violated blood gas test was justified. *McFadden v. New Jersey Racing Commission*, 97 N.J.A.R.2d (RAC) 9.

13:71-23.3C Post-race blood gas testing program; punishment for failure to cooperate

In the event any owner, trainer, licensed representative of same, or any person subject to the jurisdiction of the Racing Commission, fails to cooperate in connection with the blood gas testing program authorized pursuant to N.J.A.C. 13:71-23.3A, or with regard to any procedures set forth in N.J.A.C. 13:71-23.4, or otherwise set forth in or implemented pursuant to N.J.A.C. 13:71-23.3A or 23.3B, in addition to ordering the relief set forth in N.J.A.C. 13:71-23.3A, the judges may, consistent with this chapter, impose fines or suspensions, or both, on the non-cooperating person. In determining the length of such suspension or amount of the fine, the judges may consider prior violations of N.J.A.C. 13:71-23.3A, 23.3B or this section.

New Rule, R.1993 d.513, effective October 18, 1993.
See: 25 N.J.R. 3427(a), 25 N.J.R. 4751(b).

Amended by R.1997 d.127, effective March 17, 1997.
See: 29 N.J.R. 95(a), 29 N.J.R. 901(b).
Substantially amended section.

13:71-23.4 Post-race testing program; split urine sample

(a) No drug shall be administered or applied, internally or externally, to any horse that is to be sampled after a race until the blood and/or urine samples have been obtained unless permission from the State Veterinarian is obtained.

(b) Every horse to be tested shall be taken to a detention barn, to be supplied by the association in accordance with specifications set forth by the Commission. All blood samples shall be taken by a State Veterinarian while urine samples shall be secured by the State Veterinarian or a chemical inspector of the Commission at the direction of the State Veterinarian.

(c) During the taking of any blood and/or urine sample by the veterinarian representing the Commission, from the horse entered to race, the owner, trainer, or their designated representative shall be present and witness the procedure. The sample so taken shall be immediately sealed and tagged on the form provided by the Commission and the evidence of such sealing shall be indicated by the signature of such owner, trainer or representative. It shall be the obligation of the owner, trainer or representative to cooperate fully with the State Veterinarian in obtaining any samples which may be required and to attend and witness the taking and securing of such sample.

(d) For each horse to be tested, the State Veterinarian or a designated employee shall cause one sample of the horse's urine to be sent to the Racing Commission laboratory. Following the testing of the urine sample (hereinafter "primary sample"), any residue portion of the urine sample taken (hereinafter "split sample") shall be preserved by the Racing Commission laboratory until either: it is determined by said laboratory that the primary urine sample is negative for a foreign substance; or, if the primary urine sample is determined positive for a foreign substance, for 10 days following the issuance of written notification of such finding to the owner and trainer at their respective addresses as set forth in their current license applications on file with the Racing Commission. The owner or trainer, prior to the expiration of such 10-day time period, may request in writing to the Racing Commission's Executive Director that any split sample be sent to another laboratory for testing (hereinafter "outside laboratory"). The outside laboratory shall be selected by the requesting owner or trainer from a minimum of three appearing on a list of eligible laboratories to be previously approved by the Racing Commission. If no such request is timely made, upon expiration of the 10-day period, the Racing Commission laboratory shall properly dispose of any split sample and the findings of its testing shall be conclusive. If such a request is timely made, and if the entire primary sample was consumed during the Racing Commission laboratory testing process, the results of the Racing Commission laboratory testing on the primary sam-

ple shall be conclusive. If such a request is timely made, and a split sample remains, the Racing Commission laboratory shall cause the split sample or portion thereof to be delivered to the selected outside laboratory for testing. If the Board of Judges determines that the outside laboratory confirms substantially the Racing Commission laboratory findings, or that the split sample was not of sufficient quantity for the outside laboratory to conduct valid testing or to reach a valid testing conclusion, those findings of the Racing Commission laboratory shall be considered conclusive. If the Board of Judges determines that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, any outstanding allegation or determined finding that the foreign substance in question was in the horse's system at the time of the subject race shall be dismissed. The owner or trainer requesting the testing of any split sample shall bear all costs related to the shipment and testing of same by the outside laboratory. The timely submission by an owner or trainer of a request for split sample testing shall not result in a deferral or suspension of the implementation of the procedures set forth in N.J.A.C. 13:71-23.4.

(e) Nothing contained in (d) above shall be interpreted: to preclude the State Steward from initiating the procedure set forth in N.J.A.C. 13:71-23.5 upon notification of a positive urine test by the Racing Commission laboratory; or to preclude the holding of an initial hearing with respect to an alleged violation of this subchapter where a request for testing of the split sample has been timely made and the results of testing by the outside laboratory are pending. However, where in such circumstance an appeal of any initial determined violation is filed pursuant to N.J.A.C. 13:71-3.4, a stay of any ordered penalty notwithstanding the provisions of N.J.A.C. 13:71-3.8 shall be issued pending receipt of the results of the outside laboratory testing. In the event the Board of Judges determines in such case that the outside laboratory does not confirm substantially the Racing Commission laboratory findings, and the determined violation is therefore dismissed pursuant to (d) above, any allegation or determination of a violation as a result of any search initiated pursuant to N.J.A.C. 13:71-23.5 shall not be affected.

Amended by R.1999 d.99, effective April 5, 1999.

See: 30 N.J.R. 3759(a), 31 N.J.R. 888(a).

Added (d) and (e).

Amended by R.2001 d.356, effective October 1, 2001.

See: 33 N.J.R. 2018(a), 33 N.J.R. 3453(a).

Rewrote (d); in (e), substituted "23.5" for "3.8" preceding "shall not be affected".

13:71-23.5 Procedure following positive chemical analysis

(a) On receiving written notice from the official chemist that a specimen has been found "positive" for any drug or substance foreign to the natural horse, the steward shall proceed as follows:

1. He or she shall notify the State Police and authorize a search of the premises occupied by the stable involved.

2. He or she shall, as quickly as possible, notify the owner and trainer of the horse involved.

3. He or she shall, with the assistance of the State Police, conduct a thorough investigation, interviewing the trainer, assistant trainer and any other persons who may have pertinent knowledge of the circumstances involved.

4. During the progress of such investigation, the stable involved shall be permitted to race; save that the particular horse (or horses) involved shall not be entered or start until allowed to do so by the judges. In no event shall such a prohibition extend beyond seven days unless the stable has failed to provide all due cooperation to the Judges in the course of such investigation.

Case Notes

Rule cited as example of Commission's reliance on conventional law enforcement services; denial of groom's license held arbitrary as the Rehabilitated Convicted Offender Act applies to Commission's licensing function (citing former N.J.A.C. 13:71-23.17). *Maietta v. New Jersey Racing Commission*, 183 N.J. Super. 397, 444 A.2d 55 (App.Div. 1982), affirmed 93 N.J. 1, 495 A.2d 295 (1983).

13:71-23.6 Trainers

(a) A trainer shall be the absolute insurer of and is responsible for the condition of a horse within his care and custody.

(b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.

(c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.

(d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substances foreign to the natural horse, except as otherwise provided for in these rules and regulations by any unauthorized individual, and the administration of any unauthorized drug or substance foreign to the natural horse by any person.

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Fines and suspension of licenses and privileges for extended periods ranging from 30 months to 66 months, based on findings that trainers' horses had tested positive for drugs were not arbitrary, capricious, unreasonable; principles of "trainer responsibility" and "no medication" were clearly established in law and commission had authority to protect integrity of horse racing. *New Jersey Racing Com'n v. Elliot*, 290 N.J.Super. 140, 675 A.2d 243 (A.D.1996).

Trainer who set own period of suspension without proper authorization must serve additional suspension. *Riegle v. New Jersey Racing Commission*, 97 N.J.A.R.2d (RAC) 2.

Licenses of four trainers whose horses tested positive for fenspiride were suspended for 18 months for first occurrence and 12 months for each subsequent occurrence. *New Jersey Racing Commission v. Elliot*, 96 N.J.A.R.2d (RAC) 31.

The Racing Commission has decided, through rulemaking, to exercise strict control over the use of narcotics. *Maietta v. New Jersey Racing Commission*, 93 N.J. 1, 459 A.2d 295 (1983).

Horse trainers were properly suspended for unknowingly giving horses feed containing caffeine. *Capone v. New Jersey Racing Commission*, 96 N.J.A.R.2d (RAC) 22.

Horse trainer; race horses; suspension. *DeVitis v. New Jersey Racing Commission*, 94 N.J.A.R.2d (RAC) 55.

Trainer suspended after the horse was discovered to have a foreign substance in its system. *New Jersey Racing Commission v. Janis Gianforte*, 94 N.J.A.R.2d (RAC) 49.

Trainer violated responsibility rule; illegal drug. *New Jersey Racing Commission v. Rubin*, 94 N.J.A.R.2d (RAC) 17.

Post-race test finding of buprenorphine; trainer suspended. *Caltagione v. New Jersey Racing Commission*, 92 N.J.A.R.2d (RAC) 7.

13:71-23.7 Penalties

(a) Should the judges determine that any person or persons have violated any section of this subchapter, they may punish the offending party consistent with the penalties provided for in these rules and regulations.

(b) In addition thereto, the judges may penalize the owner of any horse, or any entry of which said horse is a part, that has started in any race with any drug or substance foreign to the natural horse in its body by disqualification and denial of any part of the purse with redistribution of purse moneys as in the case of a disqualification.

(c) Any individual suspended or disciplined in any fashion for a second or subsequent violation of N.J.A.C. 13:71-23.6(a), (b), (d) or any comparable rule of any other racing commission or turf governing body may be deemed a repetitive offender. A second or subsequent violation of N.J.A.C. 13:71-23.6 may constitute grounds for further disciplinary action by the Commission.

(d) Horses owned wholly or in part by persons suspended for violation of N.J.A.C. 13:71-23.6(a), (b) or (d) are ineligible to start during the period of such suspension, unless sold to a bona fide purchaser. Horses trained by a person suspended for such a violation, wherein the trainer does not have an ownership interest, are automatically eligible to start when placed in the hands of a licensed trainer approved by the judges.

(See N.J.A.C. 13:71-3 for rules concerning appeals.)

13:71-23.8 Administering medication to respiratory bleeders; standards for the administration of phenylbutazone

(a) The stewards may permit the administration of medication to control respiratory bleeding in animals that:

1. At any time have received a comprehensive cardiopulmonary examination at an approved equine hospital or school of veterinary medicine and as a result thereof are certified as bleeders and therefore are in need of medication in order to race; or

2. Are observed in New Jersey to bleed during the running or driving of a workout or race at a duly licensed New Jersey racetrack, or in the detention barn following such workout or race by a State or Associate State Veterinarian or by a licensed veterinarian at any time on the grounds of a racetrack and have been placed on a veterinarian's list for at least 10 days; or

3. Have been certified as respiratory bleeders in other racing jurisdictions by a veterinarian employed by that jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.

(b) All horses that are placed on the veterinarian's list shall be required to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn. During this period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Furosemide, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian and shall be limited to an intravenous dose of 0.50 milligrams (mg) per pound of body weight (1.00 mg per kilogram) or 500 milligrams (10 cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time. Said practicing veterinarian shall make daily reports of all said treatments and file said reports with the State Veterinarian each day.

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with Lasix® (furosemide) to control respiratory bleeding pursuant to the requirements set forth above. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 50 nanograms per milliliter of plasma (50 ng/ml) the trainer and/or the practicing veterinarian shall be liable to the penalties as set forth in (e) below.

(d) Any horse having bled in any jurisdiction shall be placed on the veterinarian's list for bleeding and must remain on the list for 10 calendar days, a second time bleeder must remain on the respiratory list for 30 days, and a third time bleeder must remain on the respiratory list for 90 days. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; how-

ever, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.

(e) Should the stewards determine that any person or persons have violated (c) above, they shall punish the offending party as follows: