

3. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity equal to or exceeding 5.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

- i. First violation of N.J.A.C. 13:71-23.8(g)3—\$500.00 fine, loss of purse and 15 day suspension; and
- ii. Second or subsequent violations of N.J.A.C. 13:71-23.8(g)3—such fines, suspensions and/or other penalties allowed by this chapter.

Amended by R.1988 d.183, effective April 18, 1988.
See: 20 N.J.R. 250(a), 20 N.J.R. 912(c).

Changed time a second time bleeder must remain on respiratory list from three months to 30 days; added third time bleeder to be kept for three months.

Amended by R.1990 d.486, effective October 1, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1718(a), 22 N.J.R. 3155(a).

Authorizes the administration of medication in assigned stall instead of detention barn and establishes dosage levels and time requirements recommended by the Association of Racing Commissioners International; provides for disciplinary action in the event of excessive drug levels as per post-race testing.

Amended by R.1990 d.575, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1233(c), 22 N.J.R. 3500(b).

Provides for the acceptance of certification of respiratory bleeders from racing commissions in other jurisdictions.

Amended by R.1991 d.264, effective May 20, 1991.

See: 23 N.J.R. 675(c), 23 N.J.R. 1684(e).

Changed "14 calendar days" to "10 calendar days"; changed "three months" to "90 days" in (d).

Amended by R.1992 d.18, effective January 6, 1992.

See: 23 N.J.R. 2919(d), 24 N.J.R. 109(a).

Revised (a)2.

Amended by R.1994 d.128, effective March 7, 1994.

See: 25 N.J.R. 3105(a), 26 N.J.R. 1240(a).

Amended by R.1995 d.297, effective June 5, 1995.

See: 26 N.J.R. 1957(a), 27 N.J.R. 2244(b).

Amended by R.1996 d.445, effective October 7, 1996.

See: 28 N.J.R. 3055(a), 28 N.J.R. 4488(b).

Administrative correction.

See: 29 N.J.R. 448(b).

Amended by R.1997 d.91, effective February 18, 1997.

See: 28 N.J.R. 5057(a), 29 N.J.R. 584(b).

In (a)2, inserted reference to observation by a licensed veterinarian on the racetrack grounds.

Petition for Rulemaking.

See: 35 N.J.R. 1456(c), 1741(c), 2755(a).

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).

13:71-23.9 Possession of drugs or drug instruments

(a) No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting, or anywhere within the confines of a racetrack enclosure, or anywhere within the grounds of any licensed off-track stabling facility, any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription

legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

Amended by R.1993 d.261, effective June 21, 1993.

See: 24 N.J.R. 1061(a), 25 N.J.R. 2488(b).

Case Notes

Horse trainer's abuse of veterinary practices and drugs resulting in horse's death warranted three-year license suspension. *Glemser v. New Jersey Racing Commission*, 96 N.J.A.R.2d (RAC) 26.

Possession of chondroitin sulphate, an unclassified substance possession of which is not violative of any State or Federal law, does not violate this rule; possession of hypodermic needle and syringe found to be a violation; rule sets forth the association between the administration of drugs and the need to protect horses from them (citing former N.J.A.C. 13:71-23.12). *Gallo v. New Jersey Racing Commission*, 6 N.J.A.R. 381 (1983).

13:71-23.10 Illegal devices

No electrical, mechanical or other appliance or device other than the ordinary whip shall be applied to a horse at any place on the grounds of any licensed racetrack. Any person so offending shall be suspended by the judges and referred to the Commission for license revocation. Possession of any such device anywhere on the grounds of a licensed racetrack may be punished by fine and/or suspension.

13:71-23.11 Narcotics conviction; denial of license

Any person who has been convicted of possession or use of narcotics by any court in the land shall be denied a license or ruled off or both as the Commission may decide.

13:71-23.12 Cooperation with other agencies; violations of law

Every association, all officials and employees thereof, and all persons licensed in any capacity by the Commission shall give every possible cooperation, aid and assistance to any department, bureau, division, officer, agent or inspector, or any other person connected with the United States Government or with the State of New Jersey, who may be investigating or prosecuting any matter involving a violation of any law, or any rules or regulations of the Commission.

Case Notes

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).

13:71-23.13 State Police; responsibilities

The enforcement of N.J.S.A. 5:5-71 and other criminal laws of the State of New Jersey shall be the responsibility of

the State Police. Investigation pursuant to the enforcement of N.J.S.A. 5:5-71 or other criminal laws of the State shall take precedence over any action taken by the association or the Racing Commission concerning an incident arising from an alleged violation of the provisions of this subchapter. Every association and Racing Commission official and employee shall render full cooperation, aid and assistance in any investigation undertaken for a reasonably apparent violation of N.J.S.A. 5:5-71 or other criminal statutes of the State. Further, every association and Racing Commission official and employee, on becoming aware of a reasonably apparent violation of N.J.S.A. 5:5-71 or other criminal laws of the State of New Jersey, shall communicate in writing the circumstances of such immediately to the New Jersey Racing Commission and the State Police who shall evaluate same and take whatever further action is deemed necessary.

Case Notes

Finding of entrapment by State Police and dismissal of criminal proceedings against jockey applicant did not prevent the use of incriminating evidence at licensing hearing. *Delguidice v. New Jersey Racing Commission*, 100 N.J. 79, 494 A.2d 1007 (1985).

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. 13:71-23.18). *Maietta v. New Jersey Racing Commission*, 183 N.J.Super. 397, 444 A.2d 55 (App.Div.1982), affirmed 93 N.J. 1, 459 A.2d 295 (1983).

13:71-23.14 Anti-recombinant human EPO antibody testing program

(a) A determination by the Racing Commission Equine Testing Laboratory that a pre-race or post-race blood sample taken from a horse entered to start in a race pursuant to N.J.A.C. 13:71-23.2, or a portion of a post-race blood sample taken from a horse entered to start in a race pursuant to N.J.A.C. 13:71-23.2(a) and 23.4(a), is positive for elevated titers of anti-recombinant human EPO antibody, as a result of post-race testing utilizing the anti-recombinant human EPO antibody test, shall result in the following actions by the Racing Commission Board of Judges:

1. The Racing Commission State Veterinarian shall be notified of the name of the horse for placement on the Steward's list pursuant to N.J.A.C. 13:71-16.8.

2. The Racing Commission State Steward shall be notified, and upon such notification, the State Steward shall authorize a search of the premises occupied by the stable involved pursuant to N.J.A.C. 13:71-23.5.

3. Unless the Board of Judges determine otherwise as a result of a hearing requested pursuant to (a)4 below, the horse shall not be permitted to enter a race or to race until such time as the owner or trainer makes the horse available for retesting by the Racing Commission pursuant to (b) below, and the testing results are determined negative with the anti-recombinant human antibody test. In the event retesting determines that the horse is negative with the anti-

recombinant human EPO antibody test, the Board of Judges shall cause the horse to be removed from the Steward's list and the horse shall be eligible to enter races and compete in races.

4. The owner and trainer of the horse shall be notified by the Board of Judges in writing of: the initial positive test result for elevated titers of anti-recombinant human EPO antibody; that a hearing will be afforded by the Board of Judges, following written request to them, at which hearing the owner and/or trainer of the horse can challenge the validity of the positive results of the Racing Commission Equine Testing Laboratory, and that the horse is not permitted to race until the terms of (b) below are satisfied, unless the results of any requested hearing demonstrates to the satisfaction of the Board of Judges that the horse was negative for elevated titers of anti-recombinant human EPO antibody as a result of the initial anti-recombinant human EPO antibody test. In the latter case, the Board of Judge's shall remove the horse from the Steward's list and the horse shall be permitted to race.

(b) An owner or trainer whose horse has tested positive for elevated titers of anti-recombinant human EPO antibody may not request that its horse be retested until 21 days following the date of the initial positive test as reported by the Racing Commission's Equine Testing Laboratory. If any retest of the horse results in a Racing Commission determination that the horse is or remains positive with the anti-recombinant human EPO antibody test, the owner or trainer may not request that its horse be retested again until 21 days following the date of the last positive retest as reported by the Racing Commission's Equine Testing Laboratory. All requests after the initial positive test for the retesting of a horse shall be in writing and directed to the Board of Judges, accompanied by a \$50.00 payment for administrative and testing costs. Following receipt of a timely request for retesting, the production of the horse at a permitted racetrack premises in this State approved by the Board of Judges, and the receipt of the \$50.00 retesting fee, the Board of Judges shall direct the State Veterinarian to take a blood sample from the horse for the purpose of retesting.

(c) Any horse claimed from a race pursuant to N.J.A.C. 13:71-14, Claiming, shall have its blood tested for elevated titers of anti-recombinant human EPO antibody. The successful claimant shall have the option to void the claim should the claimed horse test positive with the anti-recombinant human EPO antibody test.

(d) A horse which tests positive with the anti-recombinant human EPO antibody test remains subject to the requirements of this rule despite being sold, otherwise transferred, or claimed where the claimant elects not to void the claim as authorized by (c) above.

(e) The split sample testing provisions of N.J.A.C. 13:71-23.4(d), which is limited to where testing is conducted on a horse's urine sample, shall not be applicable to anti-