

(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.

13:70-14A.4 Post-race testing program

(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.

13:70-14A.5 Procedure following positive chemical analysis

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

1. They shall notify the State Police and authorize a search of the premises occupied by the stable involved.
2. They shall, as quickly as possible, notify the owner and trainer of the horse involved.
3. They 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 Stewards.

Case Notes

Rule permitting warrantless administrative search of premises after positive drug test valid as within warrant exception for industries subject to pervasive and long-standing government regulation; scope of

search (cited as former N.J.A.C. 13:70-14A.12 and 13:70-14.21). *State v. Dolce*, 178 N.J.Super. 275, 428 A.2d 947 (App.Div.1981).

13:70-14A.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 substance 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.

Case Notes

Commission rules intended to place absolute responsibility upon the trainer in situations in which a horse has been administered a drug; trainer's suspension proper and not violative of due process, despite no finding of trainer's knowledge of drug or negligence (citing former N.J.A.C. 13:70-14.19). *Dare v. State*, 159 N.J.Super. 533, 388 A.2d 984 (App.Div.1978).

13:70-14A.7 Penalties

(a) Should the stewards 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 Stewards 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 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. 13:70-14A.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 13:70-14A.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. 13:70-14A.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 Stewards. (See N.J.A.C. 13:70-13A for rules concerning Appeals.)

Case Notes

Owner/trainer license was properly suspended for finding of procaine in horse's system. *Dickey v. New Jersey Racing Commission*, 93 N.J.A.R.2d (RAC) 34.

13:70-14A.8 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.262, effective June 7, 1993.
See: 24 N.J.R. 1060(a), 25 N.J.R. 2488(a).

13:70-14A.9 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 been charted to have bled in the "Daily Racing Form"; or
2. 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
3. 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 the State or Associate State Veterinarian and have been placed on a veterinarian's list for at least 10 days; or
4. 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 0.25 milligrams (mg) per pound of body weight (0.50 mg per kilogram) or 250 milligrams (five 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 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) A horse placed on the veterinarian's list for bleeding 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; however, 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:

1. A trainer and/or veterinarian shall receive a warning for the first time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma.
2. A trainer and/or veterinarian shall receive a fine not to exceed \$500.00 for a second time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma.
3. Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time the trainer and/or veterinarian shall be suspended, fined or both.
4. Repeated violations of (c) above by a trainer and/or veterinarian for any horse under their care may subject said trainer and/or veterinarian to fine and/or suspension regardless of whether or not the same horse is involved.

(f) Notwithstanding anything to the contrary herein or in N.J.A.C. 13:70-14A.1, no penalty shall be imposed where on the day of the race a horse carries in its body phenylbutazone, as a result of an administration prior to the day of the race, in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, as a result of an administration prior to the day of the race, they shall punish the offending party as follows:

1. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 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. 13:70-14A.9(g)1—\$250.00 fine;

ii. Second violation of N.J.A.C. 13:70-14A.9(g)1—\$500.00 fine and seven days suspension;

iii. Third violation of N.J.A.C. 13:70-14A.9(g)1—\$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:70-14A.9(g)1—such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity exceeding 3.0 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. 13:70-14A.9(g)2—\$500.00 fine and loss of any purse;

ii. Second violation of N.J.A.C. 13:70-14A.9(g)2—\$500.00 fine, loss of any purse and 15 days suspension;

iii. Third violation of N.J.A.C. 13:70-14A.9(g)2—\$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:70-23.8(g)2—such fines, suspensions and/or other penalties allowed by this chapter.

Amended by R.1988 d.244, effective June 6, 1988.
See: 20 N.J.R. 506(b), 20 N.J.R. 1207(b).

A respiratory bleeder has an additional opportunity to participate and further allows a horse that is a third time bleeder to be suspended from racing for three months rather than being barred from racing. Amended by R.1990 d.485, effective October 1, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1716(b), 22 N.J.R. 3154(a).

Authorizes the administration of medication in assigned stall instead of detention barns; dosage levels and time requirements adopted are those recommended by the Association of Racing Commissioners International and provides for disciplinary action in the event post-race tests show excessive levels in blood of horse.

Amended by R.1990 d.576, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1233(a), 22 N.J.R. 3499(d).

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

Amended by R.1991 d.263, effective May 20, 1991.

See: 23 N.J.R. 674(a), 23 N.J.R. 1684(a).

Change in text from "14 calendar days" to "10 calendar days" and from "three months" to "90 days" in (d).

Amended by R.1992 d.19, effective January 6, 1992.

See: 23 N.J.R. 2919(c), 24 N.J.R. 108(b).

Revised (a)3.

Amended by R.1994 d.129, effective March 7, 1994.

See: 25 N.J.R. 3100(a), 26 N.J.R. 1237(a).

Amended by R.1995 d.298, effective June 5, 1995.

See: 26 N.J.R. 1956(a), 27 N.J.R. 2243(b).

13:70-14A.10 Breathalyzer test

Officials, jockeys, trainers and grooms shall, when directed by the State Steward, submit to a breathalyzer test and if the results thereof show a reading of more than .05 percent of alcohol in the blood, such person shall not be permitted to continue his duties. The stewards may fine or suspend any participant who records a blood alcohol reading of .05 percent or more. Any participant who records a reading above the prescribed level on more than one occasion shall be subject to expulsion, or such penalty as the stewards may deem appropriate.

Case Notes

Regulation valid as reasonable under the Fourth Amendment; drug disclosure form did not violate jockey's privacy interests; urinalysis test information use regulations must also be applied to breathalyzer test results; tests to be conducted privately. *Shoemaker v. Handel*, 619 F.Supp. 1089 (D.N.J.), affirmed 795 F.2d 1136 (3rd Cir.1986) certiorari denied 107 S.Ct. 577, 479 U.S. 986, 93 L.Ed.2d 580.

Preliminary injunction denied to jockeys who sought to halt implementation of Commission's breathalyzer and urine test regulations, as they did not establish a likelihood of success on the merits of their unconstitutionality claim; horse racing comes within a recognized "pervasively regulated business" exception to the administrative search warrant requirement. *Shoemaker v. Handel*, 608 F.Supp. 1151 (D.N.J. 1985).

13:70-14A.11 Urine test

(a) No licensee or official shall use any Controlled Dangerous Substance as defined in the "New Jersey Controlled Dangerous Substance Act", N.J.S.A. 24:21-1, et seq. or any prescription legend drug, unless such substance was obtained directly, or pursuant to a valid prescription or order from a licensed physician, while acting in the course of his professional practice. It shall be the responsibility of the official, jockey, trainer and groom to give notice to the State Steward that he is using a Controlled Dangerous Substance or prescription legend drug pursuant to a valid prescription or order from a licensed practitioner when requested.

(b) Every official, jockey, trainer and groom for any race at any licensed racetrack may be subjected to a urine test, or

other non-invasive fluid test at the direction of the State Steward in a manner prescribed by the New Jersey Racing Commission. Any official, jockey, trainer or groom who fails to submit to a urine test when requested to do so by the State Steward shall be liable to the penalties provided in N.J.A.C. 13:70-31.

(c) Any official, jockey, trainer and groom who is requested to submit to a urine test shall provide the urine sample, without undue delay, to a chemical inspector of the Commission. 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 the tested official, jockey, trainer or groom. The portion of the form which is provided to the laboratory for analysis shall not identify the individual official, jockey, trainer or groom by name. It shall be the obligation of the official, jockey, trainer or groom to cooperate fully with the Chemical Inspector in obtaining any sample which may be required to witness the securing of such sample.

(d) A "positive" Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designees shall proceed as follows:

1. For a licensee's first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee's condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee's condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:70-31, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

(e) Any information received in the process of obtaining a urine sample, including but not limited to medical information, the results of any urine test, and any reports filed as a result of attending a Supervisory Treatment Program shall be treated as confidential, except for their use with respect to a ruling issued pursuant to this rule, or any administrative or judicial hearing with regard to such a ruling. Access to the information received and/or reports of any positive results and/or reports from a Supervisory Treatment Program shall be limited to the Commissioners of the New Jersey Racing Commission, the Executive Director and/or his designee, Counsel to the Racing Commission and the subject, except in the instance of a contested matter. In the instance of a contested matter, any information received and reports prepared shall not be disclosed without the approval of the Executive Director or his designee.