

(e) Where any licensee is suspended pursuant to this section, said penalty may be appealed to the Commission and a hearing requested.

(f) The hearings before both the Commission's representative and the Commission itself shall be de novo proceedings.

(g) Where the suspension is immediate under (a) above, the licensee may seek a stay of said suspension pending a resolution of the charge or charges and/or the Final Decision of the Commission. Any such request shall be in writing and shall be addressed to the Executive Director (or his or her designee) and the Commission.

1. Such a request may be denied by the Commission, Executive Director, or his or her designee, where to grant the same would be adverse to the best interests of racing or inimical to the public in preserving the integrity of the sport and in preserving public confidence in the sport.

Amended by R.1978 d.275, effective August 9, 1978.
See: 10 N.J.R. 169(b), 10 N.J.R. 404(b).

Added text concerning the administration of medication to control bleeding for thoroughbred and harness racing.
Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Administering medication" recodified to N.J.A.C. 13:70-14A.2.
New Rule, R.1991 d.266, effective May 20, 1991.
See: 23 N.J.R. 673(a), 23 N.J.R. 1683(c).

13:70-14.18 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Medication; specimens" recodified to N.J.A.C. 13:70-14A.6.

13:70-14.19 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Protecting horses against drug administering" recodified to N.J.A.C. 13:70-14A.7.

13:70-14.20 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section recodified to N.J.A.C. 13:70-14A.3.

13:70-14.21 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Procedure following positive chemical analysis" recodified to N.J.A.C. 13:70-14A.12.

13:70-14.22 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Second offense" recodified to N.J.A.C. 13:70-14A.8.

13:70-14.23 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Suspensions; eligibility of horses" recodified to N.J.A.C. 13:70-14A.9.

13:70-14.24 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section was "Suspension; personnel."

13:70-14.25 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Narcotics conviction; denial of license" recodified to N.J.A.C. 13:70-14.26.

13:70-14.26 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Cooperation with other agencies; violation of law" recodified to N.J.A.C. 13:70-14.13.

13:70-14.27 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Fraud; disqualification" recodified to N.J.A.C. 13:70-14.14.

13:70-14.28 (Reserved)

Repealed by R.1979 d.497, effective January 1, 1980.
See: 11 N.J.R. 579(a), 12 N.J.R. 91(b).

Section "Post-race blood tests" recodified to N.J.A.C. 13:70-14.11.

13:70-14.29 (Reserved)

Repealed by R.1977 d.331, effective August 29, 1977.
See: 9 N.J.R. 345(b), 9 N.J.R. 487(a).

Section "State Police; responsibilities" recodified to N.J.A.C. 13:71-23.21.

SUBCHAPTER 14A. MEDICATION AND TESTING PROCEDURES

13:70-14A.1 Intent of medication rules; general provisions

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.

(b) On the day of the race, irrespective of the date, time, and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in this chapter. Examples of drugs and/or substances foreign to the natural

horse, and thus prohibited pursuant to this section, are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:70-2.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;
8. Erythropietin (epogen, EPO);
9. Pain killers;
10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders;
13. Mixtures, compounds, or solutions commonly referred to as "milkshakes," which contain any prohibited drug and/or substance; and
14. Controlled therapeutic medications equal to or in excess of the threshold levels set in the Association of Racing Commissioners International (RCI) Controlled Therapeutic Medication Schedule (Schedule), version 2.1 (Revised April 17, 2014), which is incorporated herein by reference, as amended and supplemented. The Schedule can be accessed at <http://arcicom.businesscatalyst.com/assets/arcicom-controlled-therapeutic-medication-schedule---version-2.1.pdf>.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse not containing prohibited drugs and/or substances.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an otherwise permissible external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:70-14A.9, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound as defined in this section shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse not containing prohibited drugs

and/or substances may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances, or compound that does not contain any of the examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse that alters its normal physiological state.

Amended by R.1994 d.125, effective March 7, 1994.

See: 25 N.J.R. 3099(a), 26 N.J.R. 136(a).

Amended by R.1995 d.295, effective June 5, 1995.

See: 26 N.J.R. 1955(a), 27 N.J.R. 2243(a).

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

In the introductory paragraph of (b), inserted a comma following "time", and substituted "this chapter" for "these rules"; in (b)12, deleted "and" from the end; in (b)13, substituted " 'milkshakes,' " for " 'milkshakes' ", and substituted "; and" for a period at the end; added (b)14; and rewrote (e).

Case Notes

Violation by presence of Butazolidin in blood noted (also cited as former N.J.A.C. 13:70-14.17). *State v. Dolce*, 178 N.J.Super. 275, 428 A.2d 947 (App.Div.1981).

Law Review and Journal Commentaries

Horse Drugging-The New Jersey Trainer Absolute Insurer Rule. Luke P. Iovine, III, John E. Keefe, Jr., 1 *Seton Hall J. sport L.* 61 (1991).

13:70-14A.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, 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 or 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, State Veterinarians, or Associate State Veterinarians.

13:70-14A.3 Pre-race testing program

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

(b) Such horses shall be tested in their respective barn area on the grounds of the permitholder on the day of the race at such time as designated by the Commission and shall be under the 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 blood for testing. A

3. A trainer and other persons charged with responsibility including, without limitation, licensed, practicing veterinarians, shall be suspended, fined or both for a third violation.

4. Repeated violations of (d) above by a trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, for any horse under their care may subject said trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, to fine and/or suspension regardless of whether or not the same horse is involved.

(f) Notwithstanding anything to the contrary in this section 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 either Phenylbutazone or Flunixin, both NSAIDs, under the following conditions:

1. The NSAID level is below the permitted serum or plasma threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14, which are consistent with administration by a single intravenous injection that follows the FDA-approved dose regimen for each product(s) at least 24 hours before the post time for the race in which the horse is entered;

2. Phenylbutazone and Flunixin are not to be administered within the 24 hours before post time for the race in which the horse is entered; and

3. The presence of more than one of the approved NSAIDs or any unapproved NSAID(s) in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(g) In the event post-race testing determines that the threshold levels authorized in N.J.A.C. 13:70-14A.1(b)14 have been met or exceeded, there is evidence of more than one of the permitted NSAID(s) present or there is evidence of an unapproved NSAID, the stewards shall penalize the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, as follows, regardless of whether or not the same horse is involved:

1. First violation of N.J.A.C. 13:70-14A.9(f) - \$500.00 fine, loss of purse and 15 days suspension; and

2. Second or subsequent violation of N.J.A.C. 13:70-14A.9(f) - such fines, suspensions and/or other penalties allowed by this chapter.

(h) The following anti-ulcer medications may be administered up to 24 hours prior to the race in which the horse is entered: Omeprazole; Cimetidine; Ranitidine; and Sucralfate. In the event a horse tests positive for any of the anti-ulcer medications identified in this section, the trainer and other persons charged with responsibility, including, without limi-

tation, licensed, practicing veterinarians, shall be subject to the following penalties:

1. \$250.00 fine for the first violation;

2. \$500.00 fine and loss of purse for the second violation; and

3. Increased fine, loss of purse and license suspension as deemed appropriate by stewards for the third and subsequent violations.

(i) The following substances may be present in post-race samples as a result of possible environmental contamination from plants that are traditionally grazed or harvested as equine feed or are present from contamination during cultivation, processing, treatment, storage and transportation phases that contribute to contamination:

1. Atropine;

2. Dimethyl sulfoxide;

3. Estranediol;

4. Hydrocortisone;

5. Morphine and Metabolites;

6. Salicylic acid;

7. Scopolamine;

8. Strychnine;

9. Testosterone;

10. Theobromine; or

11. Theophylline.

(j) If a horse tests positive for one of the substances identified in (i) above, within 10 days of being notified of the positive test, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, may request in writing a hearing before the stewards for the purpose of determining whether the positive test resulted from environmental contamination as described in (i) above. The trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall have the burden of proof at the hearing. If the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, meet their burden of proof in showing environmental contamination as described in (i) above, the stewards shall consider the environmental contamination as a mitigating circumstance in assessing a penalty.

(k) Regulatory thresholds (the concentration of the drug below which no administrative action is taken) are established for caffeine as 100 nanograms per milliliter (100 ng/mL) of serum or plasma. A positive test which exceeds the regulatory threshold will subject trainers and other persons charged with responsibility, including, without limitation, licensed, practic-

ing veterinarians, to penalties consistent with those permitted by the New Jersey Racing Commission rules.

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).

Amended by R.1996 d.444, effective October 7, 1996.

See: 28 N.J.R. 3054(a), 28 N.J.R. 4488(a).

Amended by R.1997 d.90, effective February 18, 1997.

See: 28 N.J.R. 5056(a), 29 N.J.R. 584(a).

In (a)3, inserted reference to observation by a licensed veterinarian on the racetrack grounds.

Petition for Rulemaking: Notice of Action on Petition for Rulemaking: Administering Medication to Respiratory Bleeders.

See: 38 N.J.R. 1881(a), 2893(b), 4762(c).

Amended by R.2006 d.223, effective June 19, 2006.

See: 38 N.J.R. 1389(a), 38 N.J.R. 2723(a).

Section was "Administering medication to respiratory bleeders; standards for the administration of phenylbutazone". Rewrote the section.

Amended by R.2007 d.171, effective May 21, 2007.

See: 38 N.J.R. 4819(a), 39 N.J.R. 2133(a).

Added (a)4; and in the introductory paragraph of (b), deleted "as observed by the State Veterinarian" following "workout".

Amended by R.2011 d.272, effective November 7, 2011.

See: 43 N.J.R. 727(a), 43 N.J.R. 3036(a).

Section was "Administering medication to respiratory bleeders; standards for the administration of non steroidal anti-inflammatory drugs (NSAID) and anti-ulcer medications; environmental contaminants". In (f)1i, substituted "two" for "five" twice.

Amended by R.2014 d.163, effective November 3, 2014.

See: 46 N.J.R. 1414(a), 46 N.J.R. 2161(a).

Rewrote (d) and (f); and in (g), substituted "authorized in N.J.A.C. 13:70-14A.1(b)14 have been met or" for "set forth for the two permitted NSAID(s) were", and deleted "two" preceding "permitted".

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.