

**CHAPTER 71**

**HARNESS RACING**

**Authority**

N.J.S.A. 5:5-30, 5:5-65.1 and 5:5-65.2.

**Source and Effective Date**

R.2005 d.234, effective June 17, 2005.  
See: 37 N.J.R. 419(a), 37 N.J.R. 2696(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 71, Harness Racing, expires on December 14, 2010. See: 42 N.J.R. 1488(a).

**Chapter Historical Note**

Chapter 71, Harness Racing, was filed and became effective prior to September 1, 1969.

Subchapter 14, Claiming, was repealed and Subchapter 14, Claiming, was adopted as new rules by R.1980 d.95, effective February 27, 1980. See: 11 N.J.R. 463(a), 12 N.J.R. 208(c).

Subchapter 3, Appeals, was repealed and Subchapter 3, Appeals, was adopted as new rules, and Subchapter 24, Authorized Agents, Subchapter 25, Vendors, Subchapter 26, Illegal Practices, Subchapter 27, Mutuels, and Subchapter 28, Initial Track Application, were adopted by R.1982 d.109, effective April 5, 1982. See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Tracks, Subchapter 9, Veterinarians and Veterinarians Certificates, Subchapter 21, Placing Conditions and Purses, and Subchapter 23, Stimulations and Tests, were readopted as R.1983 d.295, effective July 8, 1983. See: 15 N.J.R. 685(a), 15 N.J.R. 1256(a).

Pursuant to Executive Order No. 66(1978), Subchapter 7, Licensing, Subchapter 8, Officials, and Subchapter 17, Starting, were readopted as R.1984 d.103, effective March 19, 1984. See: 16 N.J.R. 221(a), 16 N.J.R. 742(a), 16 N.J.R. 1360(a).

Pursuant to Executive Order No. 66(1978), Subchapter 4, Definitions, expired on December 19, 1984.

Subchapter 4, Definitions, was adopted as new rules by R.1984 d.621, effective January 21, 1985. See: 16 N.J.R. 2976(a), 17 N.J.R. 204(b).

Subchapter 23, Stimulation and Tests, was repealed and Subchapter 23, Medication and Testing Procedures, was adopted as new rules by R.1985 d.58, effective February 19, 1985. See: 16 N.J.R. 3182(a), 17 N.J.R. 471(a).

Pursuant to Executive Order No. 66(1978), Subchapter 14, Claiming, was readopted as R.1985 d.137, effective February 25, 1985. See: 17 N.J.R. 57(a), 17 N.J.R. 710(c).

Pursuant to Executive Order No. 66(1978), Chapter 71, Harness Racing, was readopted as R.1990 d.126, effective January 25, 1990. See: 21 N.J.R. 3861(a), 22 N.J.R. 667(a).

Subchapter 29, Sulky, was adopted as R.1994 d.143, effective March 21, 1994. See: 26 N.J.R. 95(a), 26 N.J.R. 1357(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Harness Racing, was readopted as R.1995 d.103, effective January 25, 1995. See: 26 N.J.R. 4744(a), 27 N.J.R. 733(b).

Pursuant to Executive Order No. 66(1978), Chapter 71, Harness Racing, was readopted as R.2000 d.35, effective December 22, 1999. See: 31 N.J.R. 3050(a), 32 N.J.R. 322(a).

Subchapter 30, "Self-Exclusion List" Rules, was adopted as R.2004 d.399, effective October 18, 2004. See: 36 N.J.R. 2980(a), 36 N.J.R. 4828(a).

Chapter 71, Harness Racing, was readopted as R.2005 d.234, effective June 17, 2005. See: Source and Effective Date.

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2. That such a waiver is consistent with the intent of, if not the letter of, its rules; or

3. Where strict application of the rule would create an unnecessary hardship that is contrary to the legislative intent of the underlying statutes, the public interest or the integrity of the sport.

(c) The Commission may waive application of any rule in an individual circumstance on its own motion upon finding that such relief is warranted by the factors set forth in (b) above.

(d) The Commission shall not grant a waiver of its rules where to do so would be contrary to or inconsistent with an applicable statute.

(e) All decisions on requests for waiver shall be made at a public meeting of the Commission.

New Rule, R.2008 d.340, effective November 17, 2008.  
See: 40 N.J.R. 4300(a), 40 N.J.R. 6635(a).

### 13:71-1.35 Procedure for modification of penalties

(a) The Commission may modify any penalty or decision imposed by a racing official either on its own motion or when requested to do so by the Executive Director. The application of this rule applies to the modification of penalties prior to the transmittal of the matter to the Office of Administrative Law as a contested case. The Commission's modification of any penalty or decision recommended by the Administrative Law Judge in an initial decision shall continue to be governed by the applicable provision of the Administrative procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) At least 15 days before the scheduled meeting at which the issue of modification will or may be addressed, the Commission shall notify the licensee involved and allow him or her to submit in writing any information he or she wishes the Commission to consider. All such submissions shall be filed with the Commission at least 5 days prior to the meeting.

(c) In deciding whether to modify such penalty or decision, the Commission shall consider factors, which may include:

1. Penalties imposed by the Commission in similar matters;
2. Whether the actions of the licensee placed the safety of other race participants at risk;
3. Whether the actions of the licensee had the potential to jeopardize the health of any race horse;
4. The extent to which the licensee's actions constituted conduct detrimental to the sport.
5. The extent to which the licensee's actions had a negative impact on the integrity of the sport.

6. Whether the actionable conduct of the licensee appears to be an isolated incident or a pattern of disregard of the Commission's rules.

(d) In deciding whether to modify such penalty or decision, the Commission shall consider the evidence before the racing official and any information submitted by the licensee pursuant to (b) above. In considering such evidence, the Commission may rely upon a staff summary and analysis of the evidence below.

(e) When modifying a penalty or decision, the Commission shall issue a written ruling setting forth the modification and the basis of its decision.

(f) Nothing in this section shall be interpreted as meaning that the Commission's authority to impose penalties is limited to licensees. The Commission's regulatory authority to issue penalties extends to all persons or entities engaging in conduct that requires licensure.

New Rule, R.2008 d.340, effective November 17, 2008.  
See: 40 N.J.R. 4300(a), 40 N.J.R. 6635(a).

### 13:71-1.36 Representation by attorney

(a) In any matter before the Commission or its judges prior to the determination that the matter is a contested case, a licensee may represent himself or herself or be represented by an attorney authorized to practice law in this State. A licensee which is a corporation must be represented by an attorney authorized to practice law in this State.

(b) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain a bona fide office for the practice of law here, may, upon application to and at the discretion of the Executive Director, be admitted once per calendar year to appear pro hac vice in a matter pending before the Commission or its judges.

1. Admission before the Commission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey on the form prescribed by N.J.A.C. 1:1-5.2(a)1.

2. The motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which, except for attorneys who are employees of and are representing the United States of America or a sister state, shall state that payment has been made to the New Jersey Lawyers Fund for Client Protection. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in New Jersey Court Rule 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of New Jersey Court Rule 1:21-2(b).

(c) In a matter pending before the Office of Administrative Law, the Deputy Attorney General representing the Commission shall not consent to the appearance of any attorney

seeking admission pro hac vice, who has already appeared once before the Commission or its judges pursuant to (b) above or at the Office of Administrative Law, in a matter involving the Commission in that calendar year.

New Rule, R.2008 d.340, effective November 17, 2008.  
See: 40 N.J.R. 4300(a), 40 N.J.R. 6635(a).

## SUBCHAPTER 2. VIOLATIONS

### Cross References

Judges and patrol judges, see N.J.A.C. 13:71-8.5.

### 13:71-2.1 Liability

Any person or association licensed by the Commission or any person or association subject to the jurisdiction of the Commission violating any of its rules or regulations shall be liable to the penalties herein provided, unless otherwise limited in and by the rules and regulations of the Commission.

### 13:71-2.2 Attempt to violate

Any attempt to violate the law or any of the rules and regulations of the Commission falling short of actual accomplishment shall constitute an offense and shall be punishable as if consummated.

### 13:71-2.3 Penalties

(a) The penalties for violation of the law or the rules of the Commission shall be as follows:

1. Denial, revocation or suspension of license;
2. Monetary fines not exceeding \$50,000 for each violation. The steward and board of judges may not impose directly a fine in excess of \$5,000.
3. Suspension from one or more activities at one or more tracks;
4. Expulsion from racing in New Jersey;
5. Forfeiture of purse;
6. In addition to the foregoing, the Commission may impose as a condition to licensing such conditions as it shall deem appropriate to secure compliance with the rules, regulations and directives of the Commission.

(b) Any penalty of suspension from driving shall commence after a hearing before the judges and shall be served on a continuing basis. Where the term of suspension equals or is less than the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates where live racing there occurs. Where the term of suspension exceeds

the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates so as to encompass the maximum number of live race days there possible. However, where the term of suspension cannot be imposed consistent with the formulas set forth in this subsection due to the suspension of racing at the track where the infraction occurred, or where the judges determined that the application of such formulas would otherwise not be practical, the judges shall, in their discretion, determine the continuous dates over which the suspension is to be served. There shall be exceptions for stakes, futurities, early closures or feature races during the period of suspension as set forth below:

1. The board of judges may permit a driver serving a suspension of 10 days or less to drive in a designated race during the suspension if:

- i. The race has been specified as a designated race by the racing secretary of the association before the inception of the race meeting at the association;
- ii. The race has been approved as a designated race by the board of judges officiating at the meeting;
- iii. The driver, before the beginning of the suspension, satisfactorily demonstrates to the board of judges that the driver is scheduled to drive a horse in the designated race; and
- iv. The driver agrees to serve an additional racing day of suspension in place of the day on which the driver drives in the designated race.

(c) The penalties provided above, where applicable, shall be exacted from all persons, whether licensed by the Commission or not.

As amended, R.1976 d.125, effective April 22, 1976.

See: 8 N.J.R. 47(b), 8 N.J.R. 308(a).

As amended, R.1976 d.292, effective September 16, 1976.

See: 8 N.J.R. 250(c), 8 N.J.R. 483(a).

As amended, R.1982 d.109, effective April 5, 1982.

See: 13 N.J.R. 820(a), 14 N.J.R. 347(a).

Amended by R.1993 d.484, effective October 4, 1993.

See: 25 N.J.R. 2647(b), 25 N.J.R. 4600(c).

Amended by R.2001 d.250, effective July 16, 2001.

See: 33 N.J.R. 1338(a), 33 N.J.R. 2493(c).

In (b), inserted "as set forth below:" at the end of the introductory paragraph, and added 1.

Amended by R.2004 d.156, effective April 19, 2004.

See: 35 N.J.R. 4183(a), 36 N.J.R. 1952(b).

Rewrote (a)2.

### Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 756) adopted, which determined that appropriate penalty for positive drug test (for Proprantheline Bromide) was suspension of 90 days and fine of \$2,500, not the increased penalty of \$5,000 and one year imposed by the Racing Commission. *Synnefias v. N.J. Racing Comm'n*, OAL Dkt. No. RAC 3520-06, 2008 N.J. AGEN LEXIS 1116, Final Decision (October 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 756) adopted, which determined that the Racing Commission's authority to modify penalties

is not absolute. *Synnefias v. N.J. Racing Comm'n*, OAL Dkt. No. RAC 3520-06, 2008 N.J. AGEN LEXIS 1116, Final Decision (October 7, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 819) adopted, which concluded that denial of owner/driver/trainer license application was appropriate; although applicant's ongoing efforts to remain drug free should be commended, applicant had been in violation of several regulations since the 1993 revocation of his licensure, including transporting race horses, working at an unlicensed farm and training facility, and, most notably, training and racing horses under his sister's name. *Parolari v. N.J. Racing Comm'n*, OAL Dkt. No. RAC 8920-05 (RAC 6170-03 On Remand), Final Decision (November 20, 2006).

Racing Commission has the authority to issue a suspension regardless of if the trainer's license has expired; N.J.A.C. 13:71-2.3 crystallizes the Commission's broad authority in regulating people in the racing industry regardless of license status. *Colasanti v. N.J. Racing Comm'n*, OAL Dkt. No. RAC 0716-04, 2005 N.J. AGEN LEXIS 1331, Final Decision (November 21, 2005).

First driver pulling in front of second horse and causing second driver to take evasive action constituted interference; suspension ordered. *LaChance v. New Jersey Racing Commission*, 93 N.J.A.R.2d (RAC) 13.

Veterinarian's use of non-FDA-approved drug for his own horse at his own farm in another state; not conduct detrimental to racing. *Chovanes v. New Jersey Racing Commission*, 93 N.J.A.R.2d (RAC) 5.

#### **13:71-2.4 Betting restrictions; owner, trainer and driver**

No owner, trainer or driver of a horse entered in a race shall bet or cause any other person to bet on his behalf on any horse other than his own horse. In the case of exotic pools all tickets purchased by an owner, trainer or driver must include his horse entered to race.

R.1976 d.125, effective April 22, 1976.  
See: 8 N.J.R. 47(b), 8 N.J.R. 308(a).