

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.

Case Notes

District court would abstain from reaching merits of harness racehorse 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).

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. *Calatigirone 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 non steroidal anti-inflammatory drugs (NSAID) and anti-ulcer medications; environmental contaminants

(a) The Board of Judges may permit the administration of medication to control respiratory bleeding under the following conditions:

1. Furosemide may be administered intravenously to a horse which is entered to compete in a race to control respiratory bleeding. Administration of furosemide shall be permitted only after the State Veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List the following process must be followed:

i. After the horse's licensed trainer and a licensed, practicing veterinarian determine that it would be in the horse's best interests to race with furosemide they shall notify the State Veterinarian or his or her designee, using

the prescribed form provided by the Racing Commission, that they wish the horse to be put on the Furosemide List;

ii. The form must be received by the State Veterinarian or his or her designee no later than the time of entry to ensure public notification prior to race participation;

iii. A horse placed on the Furosemide List must remain on that list unless the licensed trainer and a licensed, practicing veterinarian submit a written request to remove the horse from the List. The request must be made to the State Veterinarian or his or her designee, on the proper form, no later than the time of entry; and

iv. After a horse has been removed from the Furosemide List the horse may not be placed back on the List for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the State Veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days;

2. The use of furosemide shall be permitted for horses on the Furosemide List under the following circumstances on the grounds of any racetrack where a detention barn is utilized:

i. Furosemide shall be administered at the direction of the State Veterinarian no less than four hours prior to post time for the race for which the horse is entered;

ii. A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified in (a)2i above;

iii. The dose administered shall not exceed 500 milligrams per horse (500 mg) nor be less than 150 milligrams per horse (150 mg);

iv. Furosemide shall be administered by a single, intravenous injection only;

v. After treatment, the horse shall remain in the detention barn or other designated area in the care, custody and control of its trainer or the trainer's designated representative under association and/or Commission security supervision until called to the saddling paddock; and

vi. Failure to administer furosemide in accordance with this paragraph may result in the horse being scratched from the race by the Board of Judges; or

3. The use of furosemide shall be permitted for horses on the Furosemide List under the following circumstances on the grounds of any racetrack where a detention barn is not utilized:

i. Furosemide shall be administered no less than four hours prior to post time for the race for which the horse is entered;

ii. The furosemide dosage administered shall not exceed 500 milligrams per horse (500 mg) nor be less than 150 milligrams per horse (150 mg);

iii. Furosemide shall be administered by a single, intravenous injection;

iv. The trainer of the treated horse shall cause to be delivered to the State Veterinarian, no later than one hour prior to post time for the race for which the horse is entered, the following information, on a form provided by the Racing Commission:

(1) The name of the horse, racetrack name, and the date and time the furosemide was administered to the entered horse;

(2) The dosage amount of furosemide administered to the entered horse;

(3) The printed name and signature of the attending licensed, practicing veterinarian who administered the furosemide; and

(4) The signature of the trainer or his or her representative; and

v. Failure to administer furosemide in accordance with this paragraph may result in the horse being scratched from the race by the Board of Judges.

4. If a horse is approved to receive Furosemide, the use of aminocaproic acid (AMICAR[®] injectable only) as an adjunct bleeder medication may be co-administered by a licensed veterinarian only when the horse receives Furosemide. Dose: AMICAR[®] injectable 10 ml (2.5 gram) I.V. four hours pre-race.

i. Veterinarians shall report that the horse was co-treated with AMICAR[®] on the Furosemide medication slip.

ii. The administration of AMICAR[®], pursuant to this paragraph, is only approved through December 31, 2007.

(b) The State Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout. Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following time periods:

1. For the first incident, the confirmed bleeder will be ineligible to race for 14 days;

2. For the second incident, the confirmed bleeder will be ineligible to race for 30 days;

3. For the third incident, the confirmed bleeder will be ineligible to race for 180 days; and

4. For the fourth incident, the confirmed bleeder will be barred from racing for its lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period. All horses on the Bleeder List who are eligible to race shall be administered furosemide before they can race. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by (b) above. A horse may be recommended for removal from the Bleeder List only on the direction of the licensed, practicing veterinarian, who shall certify in writing to the Board of Judges the recommendation for removal. A horse, which has been placed on a Bleeder List in another jurisdiction pursuant to these rules, shall be placed on a Bleeder List in this jurisdiction.

(d) 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 in (b) above. Post-race test results must show a detectable concentration of furosemide in the serum, plasma or urine sample taken from a furosemide treated horse. Quantitation of furosemide in serum or plasma shall be performed and concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 100 nanograms per milliliter of serum or plasma (100 ng/mL) or in the event that a post-race analysis of a blood or urine sample reveals no detectable concentration of furosemide, the trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall be liable to the penalties as set forth in (e) below.

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

1. A trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a warning for the first violation.

2. A trainer and other persons charged with responsibility, including, without limitation, licensed, practicing veterinarians, shall receive a fine not to exceed \$500.00 for a second violation.

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 herein or in N.J.A.C. 13:71-23.1, no penalty shall be imposed where on the day of the race a horse carries in its body either Phenylbutazone or Flunixin, both NSAID(s), under the following conditions:

1. The NSAID level does not exceed the following permitted serum or plasma threshold concentrations 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:

i. Phenylbutazone (or its metabolite oxphenylbutazone) - five micrograms per milliliter (five $\mu\text{g/mL}$);

ii. Flunixin -20 nanograms per milliliter (20 ng/mL);

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 two approved NSAID 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 NSAID 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 set forth for the two permitted NSAID(s) were exceeded, there is evidence of more than one of the two permitted NSAID(s) present or there is evidence of an unapproved NSAID the Board of Judges 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. 13:71-23.8(f) – \$500.00 fine, loss of purse and 15 day suspension; and

2. Second or subsequent violations of N.J.A.C. 13:71-23.8(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 subsection, the trainer and other persons charged with responsibility, including, without limitation, 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 the Board of Judges 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. Estradiol;
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 Board of Judges 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 Board of Judges 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, practicing veterinarians, to penalties consistent with those permitted by the New Jersey Racing Commission rules.

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).

Petition for Rulemaking: New Jersey Racing Commission; Notice of Action on Petition for Rulemaking: Administering Medication to Respiratory Bleeders.

See: 38 N.J.R. 1881(a), 1881(b), 2893(b), 2893(c), 4762(c), 4763(a).

Amended by R.2006 d.227, effective June 19, 2006.

See: 38 N.J.R. 1396(a), 38 N.J.R. 2727(b).

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

Amended by R.2007 d.172, effective May 21, 2007.

See: 38 N.J.R. 4820(b), 39 N.J.R. 2135(a).

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

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).