

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

PAUL AGUIRRE
CHRB License #069840

Respondent

Case No. SAC 13-0032
CHRB Case #12HP104

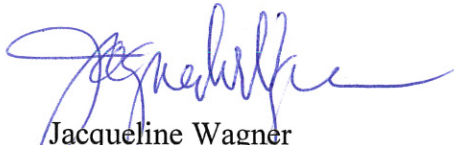
DECISION

The attached Proposed Decision by the Board of Stewards is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order setting the dates of suspension and the payment of fine.

IT IS SO ORDERED ON August 26, 2013

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman



Jacqueline Wagner
Assistant Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:

California Horse Racing Board

v.

PAUL AGUIRRE,

Trainer

Case No. 12HP104

PROPOSED DECISION

PROCEDURAL BACKGROUND

Following the running of the seventh race at Betfair Hollywood Park on November 8, 2012, the second place finisher in that race, "Dugan Bill," was drug tested. The drug substances Carisoprodol/Meprobamate (class 2, penalty category B) were discovered in the horse's urine sample. After the requested split sample confirmed the drugs' presence, the California Horse Racing Board (hereinafter "CHRB" or "the Board") filed an administrative complaint (case numbers 13SA017 and 13SA018) against the owner, trainer and jockey pursuant to CHRB Rule 1859.5 (Disqualification Upon Positive Test Finding). This complaint was not challenged and this Board of Stewards issued LATS Ruling #022 dated February 8, 2013, disqualifying "Dugan Bill" from said race, redistributing the purse commensurate with the disqualification. The CHRB also filed a separate administrative complaint against trainer Paul Aguirre (hereinafter "Mr. Aguirre" or "Respondent") pursuant to CHRB rules 1843 (Medication, Drugs and Other Substances), 1887 (Trainer to Insure Condition of Horse) and 1890 (Possession of Contraband). A formal hearing was held on May 31 and June 16, 2013 at Hollywood Park race track. The CHRB was represented by Deputy Attorney General Leah Gershon and Mr. Aguirre was represented by attorney Roger Licht. Also present at the hearing were the Board of Stewards – C. Scott Chaney, Kim Sawyer and Tom Ward. Witnesses included CHRB Investigator Phil Miyazaki, Dr. Nicola Hardgrove, Equine Medical Director Rick Arthur, Lisa Aguirre, and Paul Aguirre. The proceedings were recorded by Joyce Silverman. After taking oral testimony and receiving documentary evidence, the matter was closed.

LIST OF EXHIBITS

- CHRB Exhibit #1 Stipulation, CHRB-Aguirre, May 29, 2013
- CHRB Exhibit #2 CHRIS license history of Paul Aguirre
- CHRB Exhibit #3 Investigation Report, January 6, 2013
- CHRB Exhibit #4 Pictures (2) of Paul Aguirre's medicine cabinet and medication
- CHRB Exhibit #5 Positive Test Notification, Dugan Bill, November 28, 2012
- CHRB Exhibit #6 Industrial Laboratories affidavit of split sample, December 28, 2012
- CHRB Exhibit #7 Cover sheet of Complaint, case #12HP104, January 6, 2012
- CHRB Exhibit #8 CHRB report of Investigation, March 15, 2013
- CHRB Exhibit #9 CHRB Confidential Veterinarian Report, November 11, 2012
- CHRB Exhibit #10 University of California, Certificate of Analysis: CA-POS-008771, November 20, 2012
- CHRB Exhibit #11 CHRB Memorandum, Official Test Sample #HP10573, November 20, 2012
- RESPONDENT Exhibit #A Picture of locked medicine cabinet of Paul Aguirre

FACTUAL FINDINGS

I

At all times herein mentioned, Paul Aguirre was licensed by the CHRB in the license category of trainer.

II

On November 8, 2012 the thoroughbred racehorse "Dugan Bill" ran second in the seventh race at Betfair Hollywood Park.

III

Following the running of the race, blood and urine samples were collected from “Dugan Bill” and transported to the University of California, Davis, Maddy Analytical Laboratory (hereinafter “Maddy Lab”), the official testing laboratory for the CHRB.

IV

After testing the samples, Maddy lab reported that the post race urine sample #HP10573, which came from “Dugan Bill” tested positive for the prohibited drugs Carisoprodol/Meprobamate.

V

Carisoprodol/Meprobamate is classified under the CHRB rules and regulations as a class 2 substance in the penalty category B.

VI

Pursuant to the rules, Respondent made a timely request that the split sample be tested by the laboratory at Industrial Laboratories, which confirmed the presence of carisoprodol/meprobamate in the urine.

VII

The drug positive was caused by the misadministration of the medication Carisoprodol.

APPLICABLE RULES AND REGULATIONS

Rule No.	Rule Title
1843	Medication, Drugs and Other Substances.
Rule Text	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 the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context: (a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided. (b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules. (c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled. (d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of the limits established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse. NOTE: Authority cited: Sections

19440, 19580, 19581 and 19582, Business and Professions Code. Reference: Sections 19401, 19440, 19580, 19581 and 19582; Sections 337(f)(g) and(h), Penal Code. HISTORY: 1. Repealed and new rule filed 10-29-81; effective 11-28-81. 2. Amendment of subsections (a), (c) and (d) filed 8-19-92; effective 9-18-92.

Rule No.	Rule Title
1887	Trainer to Insure Condition of Horse.

Rule Text	<p>(a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off. (b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration. NOTE: Authority cited: Sections 19440, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19577, 19580 and 19581, Business and Professions Code. HISTORY: Amendment filed 7-9-92; effective 8-8-92. Amendment filed 10-25-94; effective 11-24-94. Amendment filed 12-6-99; effective 12-6-99. Amendment filed 8-8-05; effective 9-7-05.</p>
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Rule No.	Rule Title
1843.3	Penalties for Medication Violations

	<p>((a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum. (b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to: (1) The past record of the licensee regarding violations of Business and Professions Code section 19581; (2) The potential of the drug(s) to influence a horse's racing performance; (3) The legal availability of the drug; (4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug; (5) The steps taken by the trainer to safeguard the horse; (6) The steps taken by an owner to safeguard against subsequent</p>
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medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer; (A) For the purpose of this regulation "unaffiliated trainer" means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred. (7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors; (8) The purse of the race; (9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division; (10) Whether there was any suspicious wagering pattern on the race; (11) Whether the licensed trainer was acting under the advice of a licensed veterinarian. (c) For the purpose of this regulation, the Board shall consider the classification of a drug substance as referred to in Rule 1843.2 of this division and the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification, (1/08), which is hereby incorporated by reference, if a determination is made that an official test sample from a horse contained: (1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this division, or Any drug substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in the article. (d) Penalties for violation of each classification level are as follows: [See CHRB website "Publications" section for a complete copy of rule 1843.3 including Category A, B and C Penalties chart.] (e) Violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category "D" penalty, may result in a written warning for a first offense to the licensed trainer and owner. A Category "D" penalty for a first offense may result in a written warning or fine that will remain on the licensee's record for a period of two years. After the two year period, if the licensee has had no further violations of CHRB Rule 1843, the Category "D" penalty will be expunged from the licensee's record for penalty purposes. (f) Any drug or its metabolite or analogue thereof found to be present in an official test sample that is not classified in Rule 1843.2 of this division shall be classified as a Class 1 substance and a Category "A" penalty until classified by the Board. (g) The administration of a drug substance to a race horse must be documented by the treating veterinarian through the process described in Rule 1842 of this division. (h) Any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer and his presence may be required at any and all hearings relative to the case. (1) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "A" shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action. (2) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category "B" or "C" may be referred to the CVMB for consideration of further disciplinary action upon the recommendation of the Equine Medical Director, the board of stewards or hearing officers. (i) A licensee who is suspended, or whose license is revoked, because of a medication violation is not able to benefit financially during the period of suspension or revocation. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members. (j) For the purpose of this regulation "licensed family members" means any person who holds an occupational license issued by the CHRB and who is related to the suspended licensee, or the licensee whose license is revoked, by blood, or by marriage or domestic partnership, or who is related by blood to the spouse or domestic partner of such licensee. (l) For the purpose of this regulation, licensed trainers suspended 60 days or more, or whose license is revoked, shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, during the period of suspension, or revocation, such trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment, tack, office equipment, and any other property. NOTE: Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: Sections 19461, 19580, 19581 and 19582, Business and Professions Code. Section

11425.50, Government Code. HISTORY: 1. New rule filed 5-23-08; effective 5-23-08. 2. Amendment filed 2-14-12; effective 3-15-12 3. Amendment filed 6-6-12; effective 7-6-12

	Rule Title
1890	Possession of Contraband.
Rule Text	(a) No person other than a veterinarian licensed by the Board, shall have in his possession at a facility under the jurisdiction of the Board any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection. (b) No person other than a veterinarian licensed by the Board, shall have in his possession at a facility under the jurisdiction of the Board any veterinary treatment or any medicine, medication, or other substance recognized as a medication, which has not been prescribed in accordance with Rule 1840 of this division and labeled in accordance with Rule 1864 of this division. (c) No person shall have in his possession on the premises during any recognized meeting any electrical stimulating or shocking device commonly known as a battery, or any mechanical stimulating device, or any other appliance, which might affect the speed or actions of a horse. (d) The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose. NOTE: Authority cited: Sections 19420, 19440 and 19580, Business and Professions Code. Reference: Sections 19460, 19580 and 19581, Business and Professions Code. HISTORY: 1. Amendment filed 12-6-99; effective 12-6-99. 2. Amendment filed 1-27-10; effective 2-26-10.

DISCUSSION OF ISSUES

Typically with post race drug positives there are two issues that must be addressed—the positive itself and the trainer penalty, if any. In the instant case, there was no dispute about whether the positive actually occurred – in fact, all parties agreed that the horse tested positive for carisoprodol/meprobamate (class 2, penalty category B), the horse was disqualified and the purse was redistributed. The only remaining issue, then, is whether trainer Aguirre deserves some penalty under the rules and regulations. The rules and regulations create a form of strict liability (popularly known as the “trainer insurer rule”) for trainers with medication positives but then dilute the severity therein by creating defenses to the rule and as well as circumstances which allow deviation from the penalty guidelines. First, CHRB Rule 1888 (Defense to Trainer Insurer Rule) creates

four “defenses” to the trainer insurer rule. The three procedural defenses do not apply in the instant case. The fourth defense (c) requires that the trainer show “by a preponderance of the evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons” does not apply either because this is not a case of tampering, rather a medication administered too close to race time. The inquiry therefore moves to CHRB rule 1843.3 (Penalties for Medication Violations) which delineates specific penalties for medication positives as well as mitigating and aggravating factors that would allow for deviation from those penalties. Since this is Mr. Aguirre’s only class 1, 2 or 3 medication positive in the last two years, the required penalty is a 30 day suspension and/or a \$500 .00 fine. A review of the aggravating and mitigating factors is now required to determine if some deviation from that penalty is appropriate.

(1) Past medication record of the licensee: Respondent’s last major medication positive was 2007. He starts many horses, but class 1, 2 or 3 medication positives are significant. We consider this factor neither mitigating nor aggravating.

(2) The potential of the drug(s) to influence a horse’s performance: Evidence demonstrated that the medication could influence performance, making this factor aggravating.

(3) The legal availability of the drug: The drug was prescribed by a veterinarian (though improperly labeled) and was legally available. This factor is mitigating.

(4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug: This factor is neutral because the responsible party intended to give the medication but did not intend to give the medication so close to the race.

(5) The steps taken by the trainer to safeguard the horse: This factor is aggravating because evidence showed that Mr. Aguirre’s wife administered the medication and apparently did not understand the required withdrawal time for the medication. Additionally, the medication was not labeled and therefore there was no withdrawal time suggested on the label.

(6) The steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer: There was no evidence on this factor and is therefore neutral.

(7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors: This factor is neutral.

(8) The purse of the race: This is mitigating because the purse of the race was not particularly large.

(9) Whether the drug found to be present in the official sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 (Veterinarian Report): This factor is slightly mitigating because the horse was prescribed the medication by a veterinarian. However, the mitigation is somewhat tempered by the fact that the bottle was not properly labeled.

(10) Whether there was any suspicious wagering pattern on the race: This factor is mitigating because there is no evidence that wagering on this race was out of the ordinary.

(11) Whether the licensed trainer was acting under the advice of a licensed veterinarian: This factor is mitigating because evidence suggested that Mr. Aguirre was operating under the advice of a licensed veterinarian.

A review of these factors reveals that there are more mitigating than aggravating ones and therefore a deviation from the minimum penalty is in order.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, we propose the following ruling/decision:

State of California

CALIFORNIA HORSE RACING BOARD

Trainer **PAUL AGUIRRE**, who started the horse “**DUGAN BILL**” in the seventh race at Betfair Hollywood Park on November 8, 2012, is fined **FIVE HUNDRED DOLLARS (\$500.00)*** and suspended for **FIFTEEN (15) DAYS** for violation of rule #1843 (a)(d) (Medication, Drugs and Other Substances - carisoprodol and meprobamate - class 2, penalty category B) pursuant to California Horse Racing Board rule #1887(a) (Trainer to Insure Condition of Horse).

During the term of suspension, all licenses and license privileges of Paul Aguirre are suspended and pursuant to California Horse Racing Board rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Mr. Aguirre is denied access to all premises in this jurisdiction.

*Rule # 1532 – Fine shall be paid to the Paymaster within seven calendar days from the date of this ruling, or the person upon whom the fine is imposed shall be suspended.

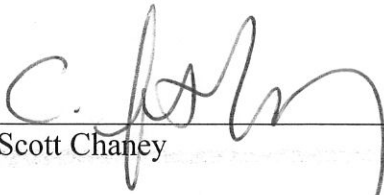
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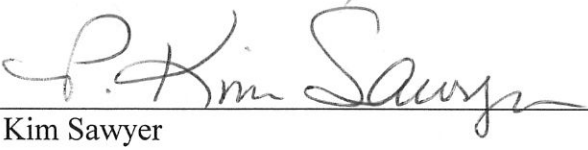
CASE: 12HP104

DATED: August 11, 2013.

BOARD OF STEWARDS



C. Scott Chaney



P. Kim Sawyer



Tom Ward