

COMMENTS RECEIVED AS OF 7/31/2019 ON PROPOSED REVISIONS TO THE PENALTY GUIDELINES.

From: Eric Hamelback <ehamelback@hbpa.org>

Date: July 29, 2019 at 11:36:07 AM EDT

To:

Subject: Non formalized Comments

As you hopefully know, serious punishment for true cheaters is something the NHBPA and Affiliates advocate for and will support. I have a few comments but I have not formally posted them. For one, I want to confirm that on these proposed Category A and B penalties the commission will be acting on is solely based on Limit of Detection. That is not clear to me, but possibly because that is a commission responsibility. Regardless, absent screening limits to account for incidental transfer positives I think these recommended penalties are very steep. I am not saying I agree or disagree, but I admit to being concerned.

Mainly my concern is based around being allowed to offer mitigating circumstances (we know the absolute insurer rule is in place in some jurisdictions), and the very high legal fees often associated with a mounted defense. I feel this may be a time to truly discuss and possibly apply the Administrative Orders and Procedures Act (AOPA). Something we have discussed at our conventions with attorney Peter Sacopulos.

As you are likely aware once an administrative complaint is filed, the licensee is required to exhaust all administrative remedies before being entitled to a hearing before a state court of law. Thus the licensee must navigate the administrative gauntlet and climb the financial administration mountain before he or she will be heard in a state court. The result, in the case of most licensees, is that they simply cannot afford to litigate and/or the cost/benefit analysis results in the alternative position of “just take the deal.” Interestingly, the AOPA specifically provides for Alternative Dispute Resolution (ADR), specifically for mediation.

Is this the proper time to discuss something such as ADR? This would play very well into my proposed Stewards Advisory and Review Committee. Why would a state racing commission not want to utilize the mediation process? After all, I am told most state courts mandate, by local rule, that all civil cases be mediated prior to trial.

Let me know your thoughts, thank you.

Eric J. Hamelback
CEO, The National HBPA

From: Scollay, Mary (PPC) **Sent:** Wednesday, July 10, 2019 9:57 AM
To: Rebecca Shoemaker <rshoemaker@arci.com>
Cc: Guilfoil, Marc (PPC)
Subject: Comments on proposed revisions to Penalty Guidelines

The philosophy behind the proposed revisions is sound. Enhanced penalties for intent and willingness to put horses' health/safety at risk, and mitigated penalties when unintended and indirect exposure (to human substances of abuse or substances legitimately prescribed for human consumption) occurs beyond the control of the trainer.

However, the list of substances is truncated and does not address other substances whose presence in an equine sample could fit one of the above situations. When one of those substances appears in a post-race sample, as an example it would be preferable, rather than reclassifying specific substances, to have a penalty provision that gives the Stewards/Judges the latitude to assess an augmented or mitigated penalty based on the facts of the case.

Considered alone, the detected concentration of a substance cannot indicate presence or absence of intent, time or route of administration/exposure, or dose. A concentration of a substance at a low picogram concentration is NOT unequivocal evidence for unintended, indirect exposure. The concentration of a substance is based on dose, route of administration, and time of administration/exposure. A lower dose administered closer to sampling can result in the same concentration as a larger dose administered further removed from the time of sampling. So the determination of intent, or absence thereof, must be made by the Stewards/Judges in consideration of all information presented at a hearing.

It is my recommendation that the penalty to the horse and the penalty to the trainer be separated and addressed individually. The penalty to the horse is intended to remedy the integrity of that particular race. The horse carried a prohibited substance in its body during the running of the race and as such must be disqualified (Class A, B, and C substances). However, in consideration of the facts of the case, the trainer may be held blameless, partially accountable, fully accountable, or having willfully attempted to impact the outcome of the race or put a horse's health/safety at risk.

The current structure of not disqualifying for a first offense but disqualifying for a second offense does not appropriately address the integrity of the competition. The horse that finishes second to a first-offense trainer has a different outcome than the horse that finishes second to a second-time offender. How does this remedy the integrity question? Same medication/drug, same concentration even—and yet the outcome is substantially different for all the other horses that participated in each race. The intent of disqualification is not to punish the owner of the affected horse, but rather to address the loss of integrity in that race. To the extent that punitive action needs to be taken, it would be directed at the trainer—in consideration of the facts of the case.

Respectfully submitted,

Mary Scollay, DVM

From: Sandbulte, AL als@deluxefeeds.com

Subject: New Proposed penalties

Date: May 21, 2019 at 12:10 PM

To: rules@arci.com

The rules are stiff enough your new proposals are completely ridiculous, especially on an owner, its hard enough to get new owners the way it is now, you are going too far.

Sincerely, AL Sandbulte

From: Victoria Keith [REDACTED]

Subject: Proposed rules comment

Date: May 21, 2019 at 8:43 AM

To: rules@arci.com

Where are the sanctions against the veterinarians?

JAMES HAYS

JUNE 11, 2019 AT 1:18 PM EDIT

REPLY

I am a retired person who decided to make Indiana harness racing my retirement hobby. I am a licensed owner in both Indiana and Ohio. I own two horses currently racing, and two more who may race this summer. My horses race at both Hoosier Park and at Indiana county fairs.

I am concerned about the proposed penalties for owners. Perhaps I have neglected this aspect of horse ownership, but I have very little if any control over what trainers racing my horses do where illicit administration of medications are concerned. Same thing with drivers, and their conduct during the race, by the way. The proposed fines for owners would eliminate my participation in racing, and I suspect would also remove many if not all "mom and pop" operations from Indiana harness racing.

Is there a way that I could indemnify myself against misconduct by my trainer? Is there a boilerplate written contract that your organization would propose that owners could use with trainers to protect ourselves from a \$25,000 fine? Are these penalties for the "second offense" with that trainer and that horse? If so, could an owner protect himself by immediately removing his horses from that trainer on the occasion of a first offense? If that's true, then one of the purposes here seems to be to drive a first offense trainer out of business; is that true? I am not saying that I think that's a bad idea, but perhaps there's a better way to accomplish that goal than put owners in the middle of these issues.

We're racing at Hoosier Park tomorrow night and I intend to try to find some folks up there who know way more about this than I do and ask some questions. We were drawn into racing, in part, by the fractional ownership program that Hoosier Park has to try to encourage more people to become race horse owners. During that program, I know we talked about the level of trust that must exist between owners and trainers, and I have experienced first hand how difficult it is to achieve that. From looking at this material, it sounds like I have a lot more homework to do.

FROM: TOM POOLE [REDACTED]

It happens world wide and at every level. Even Triple Crown trainers have had violations before. Record setting trainer in Australia ,topping off horses , was finally exposed and banned. It's all about Who,What,When and Where. There's a million stories about how horse racing is the Sport of Kings, in the hands of peasants. Rules are like that border wall in Texas. Hopefully they do some good and stop some of the violations.