



TO: DTSP COMMITTEE & Model Rules Committee

FROM: Ed Martin

RE: March 3, 2019

RE: Modified Penalty Guideline Proposal – For discussion, modification or recommendation

The RCI Board has approved “in principle” the proposed modifications to the penalty guidelines resulting from the extensive work done by the “Work Group”. Those who developed the initial proposal were: Dr. Kathy Anderson, DVM - past AAEP President; Dr. Charles Vail, DVM - past AAEP President, former Colorado Racing Commissioner; Mr. John Ward - former regulator and lifelong horseman; Rick Baedeker - former track operator and current regulator; Mike Hopkins - former horseman and lifelong regulator, and; Dan Hartman - regulator and workgroup coordinator.

The matter was remanded to the DTSP Committee to explore ways to simplify the changes in order to ease implementation. A conference call of the committee will be convened to consider this and this memo is being posed on the ARCI Model Rules website as a pending proposal, obviously subject to further modification.

While there was a desire to create two types of violations: “Doping and Equine Endangerment” and “Treatment Misapplication”, it appears that the proposal previously considered might prove burdensome to officials and too radical a change to implement in an orderly manner.

To that end, I have explored alternate ways to accomplish the desire of the Board to increase penalties for the most severe violations while preserving those aspects of the guidelines that have historically worked well. The initial concept of a two-tiered approach is realized by increased penalties for the most egregious violations and any substance that would not have qualified as a “treatment misapplication” is recommended to have the most serious penalty recommendation absent mitigating circumstances.

The modified proposal put forward for you to consider would:

- Create a new penalty guideline tier – “AA” – which would bring increased penalties for trainers and owners for instances of “Doping or Equine Endangerment”;

- Preserve all other existing recommended penalties for Class A, B, and C tiers while making modifications increasing possible penalty options resulting from aggravating factors;
- Increase all recommended penalties for Class 1 substances to the new AA penalty tier in recognition of the fact that these substances have no legitimate reason to be found in a horse and will have the most effect on performance;
- Increase many recommended penalties for Class 2 substances that were not found to be possible “treatment misapplications” by the workgroup, essentially treating them equally severe as Class 1 substances.
- Continue existing recommended Class A penalties for Class 2 substances found to qualify as a treatment misapplication;
- Increase certain Class 2 substance penalty recommendations from a B to an A consistent with the recommendations of the workgroup;
- Leave penalty recommendations for Class 3 substances unchanged, with the exception for a task force recommendation to change the recommended penalty for acepromazine;
- Leave penalty recommendations for Class 4 and Class 5 substances unchanged.
- Create a new penalty recommendation for licensees who fail to maintain or report a required treatment record.

The per substance penalty recommendations were contained in the workgroup submission and I make no recommendation as to any particular substance other than to note that the changes envisioned in this proposal allow for increased penalties for the most serious violations involving substances that do not belong in a horse, whether they be a Class 1 or Class 2 substance.

The following charts represent the proposed penalty guideline grid, with changes noted in red.
NOTE: There are no changes to Penalty Class B or C.

There are three additional files which contain the individual Class 1 and Class 2 substances whose penalties would be affected by this proposal.

The following are recommended penalties for violations due for **DOPING or EQUINE ENDANGERMENT** presence of a drug carrying a **Category "AA" penalty** and for violations of ARCI-011-015: Prohibited Practices:

| | | |
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| LICENSED TRAINER: | | |
| 1st offense | 2nd LIFETIME offense in any jurisdiction | |
| <ul style="list-style-type: none"> Minimum two-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a five-year suspension. <p style="text-align: center;">AND</p> | <ul style="list-style-type: none"> Revocation of license with no reapplication permitted. | |
| <ul style="list-style-type: none"> Minimum fine of \$50,000 plus share of purse absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 and share of purse. <p style="text-align: center;">AND</p> | Minimum fine of \$100,000 plus share of purse. | |
| <ul style="list-style-type: none"> May be referred to the Commission for any further action deemed necessary by the Commission. | | |
| LICENSED OWNER: | | |
| 1st offense | 2nd LIFETIME offense in owner's stable in any jurisdiction | 3rd LIFETIME offense in owner's stable in any jurisdiction |
| <ul style="list-style-type: none"> Disqualification and loss of purse. <p style="text-align: center;">AND</p> | <ul style="list-style-type: none"> Disqualification and loss of purse plus \$25,000 fine absent mitigating circumstances. Aggravating factors could be used to impose suspension. <p style="text-align: center;">AND</p> | <ul style="list-style-type: none"> Disqualification and loss of purse. Minimum thirty-day suspension and \$50,000 fine absent mitigating. Aggravating factors c/b used to impose a maximum of one-year suspension and \$100,000 fine. AND |
| <ul style="list-style-type: none"> Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. |
| | <ul style="list-style-type: none"> May be referred to the Commission for any further action deemed necessary by the Commission. | <ul style="list-style-type: none"> May be referred to the Commission for any further action deemed necessary by the Commission. |

The following are recommended penalties for violations due to the presence of a drug carrying a **Category “A” penalty** and for violations of ARCI-011-015: Prohibited Practices:

| LICENSED TRAINER: | | |
|---|---|---|
| 1st offense | 2nd LIFETIME offense in any jurisdiction | 3rd LIFETIME offense in any jurisdiction |
| <ul style="list-style-type: none"> ◦ Minimum one-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$10,000 or 10% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine up to \$50,000 and loss of between 25-100% of purse. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Commission for any further action deemed necessary by the Commission. | <ul style="list-style-type: none"> ◦ Minimum three-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$25,000 or 25% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$50,000 or 50% of purse (greater of the two). <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Commission for any further action deemed necessary by the Commission. | <ul style="list-style-type: none"> ◦ Minimum five-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$50,000 or 50% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 or 100% of purse (greater of the two). <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Commission for any further action deemed necessary by the Commission. |
| LICENSED OWNER: | | |
| 1st offense | 2nd LIFETIME offense in owner’s stable in any jurisdiction | 3rd LIFETIME offense in owner’s stable in any jurisdiction |
| <ul style="list-style-type: none"> ◦ Disqualification and loss of purse. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall be placed on the veterinarian’s list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> ◦ Disqualification and loss of purse and a \$10,000 fine absent mitigating circumstances. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall be placed on the veterinarian’s list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> ◦ Disqualification, loss of purse and \$50,000 fine. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall be placed on the veterinarian’s list for 180 days and must pass a commission-approved examination before becoming eligible to be entered. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Referral to the Commission with a recommendation of a suspension for a minimum of 90 days. |

Version 7.0 to 8.0, ARCI Board, April 2017, changed recommended veterinarian’s list time to 180 Days for 1st and 2nd offense.

The following are recommended penalties for violations due to the presence of a drug carrying **Category “B” penalty**, for the detection of two or more NSAIDs in a plasma/serum sample and/or urine sample, subject to the provisions set forth in ARCI-011-020(E) and for violations of the established levels for total carbon dioxide:

| LICENSED TRAINER: | | |
|---|--|--|
| 1st offense | 2nd offense (365-day period) in any jurisdiction | 3rd offense (365-day period) in any jurisdiction |
| <ul style="list-style-type: none"> ◦ Minimum 15-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$1,000. | <ul style="list-style-type: none"> ◦ Minimum 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$2,500. | <ul style="list-style-type: none"> ◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$5,000 or 5% of purse (greater of the two). <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Commission for any further action deemed necessary by the Commission. |
| LICENSED OWNER: | | |
| 1st offense | 2nd offense in stable (365-day period) in any jurisdiction | 3rd offense in stable (365-day period) in any jurisdiction |
| <ul style="list-style-type: none"> ◦ Disqualification and loss of purse [in the absence of mitigating circumstances] * <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> ◦ Disqualification and loss of purse [in the absence of mitigating circumstances] * <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse must pass a commission-approved examination before becoming eligible to be entered. | <ul style="list-style-type: none"> ◦ Disqualification and loss of purse, and a \$5,000 fine.* <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall be placed on the veterinarian’s list for 45 days and must pass a commission-approved examination before becoming eligible to be entered. |

The following are recommended penalties for violations due to the presence of a drug carrying a Category “C” penalty and overages for permitted NSAIDs and furosemide: **(All concentrations are for measurements in serum or plasma.)**

| LICENSED TRAINER | Furosemide (>100 ng/ml) and no furosemide when identified as administered** | Phenylbutazone (>0.03 mcg/ml) Flunixin (>5.0 ng/ml) Ketoprofen (>2.0 ng/ml) and CLASS C Violations |
|--|--|---|
| 1 st Offense (365-day period) in any jurisdiction | Minimum of a written warning to a maximum fine of \$500 | Minimum fine of \$1,000 absent mitigating circumstances |
| 2 nd Offense (365-day period) in any jurisdiction | Minimum of a written warning to a maximum fine of \$750 | Minimum fine of \$1,500 and 15-day suspension absent mitigating circumstances |
| 3 rd Offense (365-day period) in any jurisdiction | Minimum fine of \$500 to a maximum fine of \$1,000 | Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances |
| LICENSED OWNER | Furosemide (>100 ng/ml) and no furosemide when identified as administered** | Phenylbutazone (>0.3 mcg/ml) Flunixin (>5.0ng/ml) Ketoprofen (>2.0 ng/ml) AND CLASS C VIOLATIONS |
| 1 st Offense (365-day period) in any jurisdiction | Horse may be required to pass commission-approved examination before being eligible to run. | Loss of purse [in the absence of mitigating circumstances]. Horse must pass commission-approved examination before being eligible to run |
| 2 nd Offense (365-day period) in any jurisdiction | Horse may be required to pass commission-approved examination before being eligible to run | Loss of purse. If same horse, placed on veterinarian’s list for 45 days, must pass commission-approved examination before being eligible to run |
| 3 rd Offense (365-day period) in any jurisdiction | Disqualification and loss of purse. Horse must pass commission-approved examination before being eligible to run | Loss of purse. Minimum \$5,000 fine. If same horse, placed on veterinarian’s list for 60 days, must pass commission-approved examination before being eligible to run |

*If the trainer has not had more than one violation within the previous two years, the Stewards/Judges are encouraged to issue a warning in lieu of a fine provided the reported level is below 3.0 mcg/ml, absent of aggravating factors.

After a two-year period, if the licensee has had no further violations, any penalty due to an overage in the 2.0 – 5.0 category will be expunged from the licensee’s record for penalty purposes.

(This would be a new section of the penalty guidelines.)

FAILURE TO MAINTAIN OR PROVIDE REQUIRED TREATMENT RECORDS.

The following are recommended penalties for **a licensee's failure to keep or report required treatment records:**

| LICENSED TRAINER: | | |
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| 1st offense | 2nd offense in any jurisdiction during any 365-day period. | 3rd offense in any jurisdiction |
| ◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$2,500. | ◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$5,000. | ◦ Minimum fine of \$5,000 absent mitigating circumstances. AND |
| | | ◦ May be referred to the Commission for any further action deemed necessary by the Commission. |

