



401 WEST MAIN STREET, SUITE 222 · LEXINGTON, KY 40507 · PHONE: 859-759-4081 · WWW.RMTCNET.COM

To: Ed Martin, Executive Director ARCI

From: Mary Scollay, DVM, Executive Director RMTC

Date: March 15, 2021

Re: In support of non-mitigable disqualifications

The penalty assessed for a medication violation is intended to achieve two purposes:

- 1) To penalize the individual(s) having culpability for the presence of the substance in the horse;
and,
- 2) To remedy the loss of integrity in the race and its impact on other contestants.

The penalty for culpability should rightly be mitigable—in consideration of the facts of the case. A mistaken administration is far different from a willful one, and the penalty to the trainer (and any other licensees determined accountable) should reflect that. Intent, or lack thereof, matters. The trainer whose horse tests positive for methamphetamine, the exposure to which was determined to be unintended transfer from a substance abusing stable employee, may be assigned reduced or no culpability by the Stewards. Did the trainer drug test new hires? Did the employee ever show signs of impairment while working? Did the trainer employ reasonable measures to prevent his horse's exposure? If it is determined the trainer exercised due diligence in preventing such exposure to his horses, his penalty can be mitigated accordingly.

Now, if that same trainer gets a subsequent methamphetamine positive that is traced back to the same employee—that could be considered an aggravating circumstance. The trainer was now aware that an employee had a substance abuse problem and did not take adequate measures to protect his horses from exposure.

For most cases, the facts indicate culpability somewhere between malicious intent and complete inability to prevent exposure to the substance. What is the trainer's accountability for assigning a groom who does not read English, to administer oral medications thus resulting in mis-administrations? The trainer did not intend for the wrong horse to receive the medication. However, he also did not take reasonable steps to prevent the error. He could have had additional labelling in Spanish applied to the medication containers. He could have assigned an individual able to read the medication labels to oversee those treatments. These are the cases that challenge Stewards as each case has its own unique set of facts that must be considered.

However, lack of intent or even inability to prevent exposure does not alter the fact that the prohibited substance was present in the horse at the time of the race. And so, disqualification should not be a penalty that can be elective—either mitigated away or augmented to. The detection of a given substance should always be associated with a disqualification or never associated with a disqualification. The current penalty structure with its option to mitigate a disqualification for Class B and C substances means that in two different races in which a horse tested positive for the same drug (and at the same concentration) the results can stand for one race, while a horse is disqualified in the other. This cannot fairly address the loss of integrity to the competition or remedy the impact of those horses' performances on the other entrants' final placings. Repeated infractions are aggravating factors that can be addressed by a scale of escalating fines and/or suspensions. The DQ impacts every other horse/owner/trainer in the race. The ability to mitigate to a non-DQ based on facts related to how and why a substance was introduced into a horse, or the trainer's record of offenses, or other factors, fails to consider the effect of the DQ/non-DQ on the other participants.

Adoption of the non-mitigable DQ may rightly require a review of the 4/C substances to determine which, if any, should never be associated with a disqualification. A subset of 4/C substances could be established as non-DQ substances, or they could be reclassified as 4/D—where Class D penalties do not result in disqualification.

When a board of Stewards mitigates to a non-DQ, they are basically declaring that the infraction did not matter that much—to them. Perhaps it is more appropriate to wonder if it did not matter that much to the others in that race.