



*State of New Jersey*  
 OFFICE OF THE ATTORNEY GENERAL  
 DEPARTMENT OF LAW AND PUBLIC SAFETY  
 DIVISION OF NEW JERSEY RACING COMMISSION  
 25 MARKET STREET  
 PO Box 088  
 TRENTON, NJ 08625-0088

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

ROBERT LOUGY  
*Acting Attorney General*

PAMELA J. CLYNE  
*Chairman*

ANTHONY T. ABBATIello  
 MANNY E. APONTE  
 MICHAEL J. ARNONE, D.D.S.  
 PETER J. COFRANCESCO, III  
 ANTHONY G. DEPAOLA  
 David C. Gruskos  
 FRANCIS X. KEEGAN, JR.  
 PETER T. ROSELLE  
*Commissioners*

FRANCESCO ZANZUCCKI  
*Executive Director*

OAL Dkt. No. RAC 13821-15  
 AGY REF NO. NJRC-2-T-15-MP

\_\_\_\_\_  
 JANE CIBELLI, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NEW JERSEY RACING )  
 COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER OF REMAND**

On April 6, 2016, the New Jersey Racing Commission (“Commission”) reviewed the initial decision of the Administrative Law Judge (“ALJ”) in the matter of Jane Cibelli v. New Jersey Racing Commission, OAL Docket Number RAC 13821-15. The Commission determined that the initial decision contains legal errors and an incomplete factual record. The Commission therefore **REMANDS** the matter to the Office of Administrative Law (“OAL”) for the reasons set forth below.

The ALJ erred when he reached the legal conclusion that the Commission had adopted, and was therefore bound by, the Association of Racing Commissioners International’s (“ARCI”)



Uniform Classification Guidelines for Foreign Substances and Recommended Penalties (“ARCI Substances and Penalties”). The ALJ concluded that the Commission incorporated the ARCI Substances and Penalties by reference in N.J.A.C. 13:70-14A.7(c). The Commission did not. In N.J.A.C. 13:70-14A.7(c), the Commission incorporated ARCI-011-020B(13), Multiple Medical Violations, which is a provision inapplicable to this contested case.

The ALJ also erred when concluding that the Commission’s Board of Stewards (“Stewards”) lacked the authority to suspend Petitioner for violation of N.J.A.C. 13:70-14A.1 and -20.7. The Commission’s rules grant our Stewards broad power to impose fines and suspensions for violations of the Commission’s rules. See, e.g., N.J.A.C. 13:70-14A.7(a), -1.15, -16.7, -31.3. The Commission granted the Stewards broad discretion to assess penalties when the penalty is not set forth by rule as is the case with the methylprednisolone violation at issue here. See N.J.A.C. 13:70-16.2 (granting the Stewards the authority to determine “all questions not specifically covered by the rules.”).

Because of these legal errors, the factual record is incomplete as the ALJ failed to consider the appropriateness of the penalty assessed by the Stewards. Although Commission Steward Steven Pagano submitted a written certification explaining the reasoning behind the Stewards’ decision, it does not appear that the ALJ ever considered the appropriateness of the penalty assessed because he erroneously concluded that the ARCI Substances and Penalties were controlling.

The Commission cannot render a final decisions based upon the current record which is incomplete. If the ability to remand this matter were not available to the Commission, it would be forced to render a Final Decision on an incomplete record, thus precluding the Commission

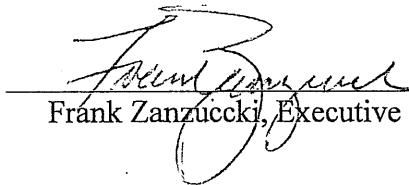
from “fulfilling [its] responsibility to the public to decide a case on the best record available.” In re Kallen, 92 N.J. 14, 28 (1983).

For the reasons set forth above, the New Jersey Racing Commission hereby **REMANDS** this contested case to the OAL pursuant to N.J.A.C. 1:1-18.7 to conduct a hearing, accept legal briefs and correct the record regarding the Stewards’ authority to issue a suspension and the appropriateness of the penalties the Stewards originally imposed. Specifically, the OAL is

**ORDERED** to:

1. Accept legal briefs relating to the Stewards’ authority to suspend a licensee for violation of N.J.A.C. 13:70-14A.1 and -20.7; and
2. Conduct a fact-finding hearing regarding the appropriateness of the \$500 fine and 15-day license suspension imposed by the Stewards for Petitioner’s violation of N.J.A.C. 13:70-14A.1 and -20.7 when considering her penalty history and any other relevant factors.

NEW JERSEY RACING COMMISSION

By:   
Frank Zanzuccki, Executive Director

April 14, 2016