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OAL Docket. No. RAC 07184-20
 Agency Ref. No. NJRC-1-T-20-MP

APARNA BATTULA,

Petitioner,

v.

NEW JERSEY RACING COMMISSION,

Respondent.

**FINAL
 DECISION**

On July 29, 2019, New Jersey Racing Commission (“NJRC” or “Commission”) investigator Joseph Sczerbowicz, who is partnered with the NJRC’s canine investigator, searched Petitioner’s tack room at Monmouth Park. Initial Decision at 7. The canine alerted to a grey suitcase which contained 83 injectable vials and 36 needles. Ibid.

Sczerbowicz confiscated the contraband and interviewed Petitioner. Ibid. In the interview, Petitioner admitted that the items were hers. Ibid. Petitioner also admitted to injecting a race horse to calm it down. Id. at 8; Exhibit R-F.

On August 3 and 4, 2019 the NJRC Board of Stewards conducted a hearing at Monmouth Park. The Board of Stewards issued Ruling No. 19MON46 on August 9, 2019, finding that Petitioner’s possession of the hypodermic needles and injectables on the grounds of Monmouth Park is in direct violation of N.J.A.C. 13:70-14A.8 and N.J.A.C. 13:70-1.15. Due to the nature and



seriousness of these violations, the Board of Stewards suspended Petitioner's license to train horses immediately. Ruling No. 19MON46. Recognizing that the NJRC had sent confiscated substances to the laboratory for testing and identification, the Board of Stewards indicated that the hearing would continue when the testing results were received. Ibid.

When Ruling No. 19MON46 was issued, Petitioner was already serving a 15-day suspension from August 1, 2019 through and including August 15, 2019 that was imposed when the horse "Sassy Chub," trained by Petitioner, tested positive for dexamethasone after racing at Monmouth Park on May 19, 2019. See Ruling No. 19MON41 (Exhibit J-4). As a result, the suspension for possession of the contraband confiscated on July, 29, 2019 commenced on August 16, 2019. Petitioner requested a stay of the immediate suspension. On August 14, 2019, the NJRC's Executive Director issued a decision denying the stay request pursuant to N.J.A.C. 13:70-13A.8.

Upon receipt of the testing results and the completion of the NJRC's investigation, the Board of Stewards continued the hearing on June 10, 2020 and issued Ruling No. 20MON2 on June 22, 2020. Finding numerous violations of the NJRC's rules, the Board of Stewards issued multiple suspensions totaling nine years and imposed fines totaling \$18,500.¹ Ruling No. 20MON2 (Exhibit P-4). Petitioner appealed and requested a stay of the penalties. On July 1, 2020, the NJRC's Executive Director issued a decision denying the stay. The NJRC transmitted the appeal to the OAL and requested that the hearing be expedited.

On April 1, 2021, the OAL issued the initial decision in this matter. On April 20, 2021, NJRC staff applied for and received a 45-day extension of time to consider the initial decision. See Order of Extension-Final Decision, OAL Docket. No. RAC 07184-20, dated April 21, 2021. As a result, consideration of the initial decision is timely.

At its May 19, 2021 meeting, the Commission considered the initial decision, Petitioner's exceptions, which were filed by Howard A. Taylor, Esq., Respondent's exceptions, which were filed by Deputy Attorney General Dominic L. Giova, and Petitioner's reply to Respondent's exceptions, which was filed by Mr. Taylor. The Commission adopts the Administrative Law Judge's ("ALJ") findings of fact except as discussed below.

¹ At the Office of Administrative Law ("OAL"), the NJRC withdrew Count 3 set forth in Ruling No. 20MON2. See Initial Decision at 2, n. 1. For the violations found in Count 3, the Board of Stewards had imposed a 5-year suspension and \$5,000 fine. Ruling No. 20MON2.

The ALJ rejected Petitioner's contention that she kept the suitcase and bag containing the hypodermic needles, injectable substances and other contraband at an apartment in Long Branch, finding "[t]his is simply not credible." Initial Decision at 41. The Commission adopts the ALJ's finding that "petitioner was the owner of the bags that were maintained under her custody and control and stored at [Monmouth Park racetrack], either in her own room or in Cardone's room until Cardone returned them to petitioner on the morning of July 29, 2019." Id. at 42.

The Commission also adopts the ALJ's findings and conclusions related to Count 5, which charged Petitioner with violating N.J.A.C. 13:70-14A.6(a)(c) and (d), N.J.A.C. 13:70-20.7 and N.J.A.C. 13:70-14A.8. Ibid. The ALJ found that "petitioner injected the horse Banker's Island in July 2019." Ibid. Petitioner admitted to injecting the horse at Monmouth Park ("MP") with Banamine and ACTH. Ibid. The ALJ found that the penalty imposed by the NJRC's Board of Stewards, which is a one-year suspension and \$2,500 fine, is an appropriate penalty. Id. at 58.

The Commission adopts the following conclusions. The ALJ found that "the only testing results that are reliable are F20991, for flunixin; F20994, for dexamethasone only; and F20996, for methocarbamol." Id. at 45. The ALJ rejected testimony that Petitioner injected twelve horses on race day, id. at 42, and dismissed Count 6 because no credible proof was presented that Petitioner administered medications improperly. Id. at 55. The ALJ also concluded that "the petitioner did not employ the services of an individual (Dr. Brophy) who did not possess the requisite license as a veterinarian ... in violation of N.J.A.C. 13:70-19.40(a)." Id. at 51. The ALJ also dismissed the charge that Petitioner made false or misleading statements to the stewards during the hearing. Id. at 56.

Finally, the Commission adopts the ALJ's conclusion that the Petitioner violated N.J.A.C. 13:70-14A.8 by having "in her possession and control hypodermic needles, syringes, and the prescription legend drugs flunixin, dexamethasone, and methocarbamol, in her stabling area." Id. at 53. The Commission also adopts the ALJ's conclusion that "an appropriate penalty should be imposed." Id. at 57.

However, the Commission rejects the ALJ's conclusion that for the violation of N.J.A.C. 13:70-14A.8, "Counts Two and Four should merge for the purposes of penalties." Ibid. Although the ALJ recognized that "[t]hese are serious violations", the ALJ modified the penalty and imposed a one-year suspension and \$4,000 fine. Id. at 58. Finding that "all contraband items, including drugs, syringes, and needles, were found at the same time and same

place”, the ALJ applied a criminal law doctrine of merger and substantially reduced the penalties imposed by the NJRC’s Board of Stewards. Id. at 53. Relying on criminal case law, the ALJ states that “an accused [who] committed only one offense . . . cannot be punished as if for two.” Ibid. (quoting State v. Tate, 216 N.J. 300, 302 (2013) and State v. Davis, 68 N.J. 69, 77 (1975)). The ALJ goes on to conclude that “[w]hile one offense may have occurred here, namely, possession of contraband (drugs and syringes and needles) as proscribed by the regulation, any penalty to be imposed must consider all of the evidence that was found at the scene of the violation, as well as the results of the testing laboratory.” Ibid.

In filing Respondent’s exceptions, DAG Giova argues that “[t]he merger doctrine is appropriate only under narrow circumstances in the criminal context.” See Respondent’s Exceptions at 25. Pointing out that this is an administrative matter and not a criminal matter, DAG Giova correctly asserts that “the possession of impermissible substances and, separately, the possession of instruments of injection are each their own violation” and that “[o]ne violation is not a lesser included offense of the other.” Id. at 26.

In finding two distinct infractions, the NJRC’s Board of Stewards imposed a 6-month suspension and \$2,500 fine for Petitioner’s possession of hypodermic needles and syringes in her stabling area in violation of N.J.A.C. 13:70-14A.8 and N.J.A.C. 13:70-1.15 and a one-year suspension and \$2,500 fine for possession of injectable foreign substances in violation of N.J.A.C. 13:70-14A.8 and N.J.A.C. 13:70-1.15. Id. at 48; Ruling No. 20MON2 (Exhibit P-4). The Commission finds that the appropriate penalty for Petitioner’s possession of hypodermic needles and syringes at the racetrack is a 6-month suspension and \$2,500 fine. The appropriate penalty for Petitioner’s possession of the injectable foreign substances at the racetrack is a one-year suspension, which shall be served consecutively, and a \$2,500 fine.

Although the ALJ correctly recognized “[t]hese are serious violations”, she failed to consider fully the evidence confiscated from Petitioner. The record establishes that Petitioner possessed 83 vials of injectable substances and 36 needles. Initial Decision at 7. See Exhibit R-C (Photo of Confiscated Items). The ALJ recognized that Petitioner’s possession of the 36 needles and her possession of flunixin, dexamethasone and methocarbamol violated N.J.A.C. 13:70-14A.8. Initial Decision at 53.

However, the ALJ failed to appreciate that the 83 vials, which are also known as injectable bottles, that Petitioner possessed on racetrack property also violate N.J.A.C. 13:70-14A.8 and N.J.A.C. 13:70-1.15. Injectable bottles necessitate the use of a hypodermic needle and syringe. Injectable bottles have

rubber tops that are designed to contain liquids for multiple use injections without leakage. See Exhibit R-C (Photo of Confiscated Items). A hypodermic needle is inserted through the rubber top to extract the liquid from the bottle and draw it into the syringe attached to the needle. Once the liquid is drawn into the syringe, the liquid can then be injected into the horse.

The Commission's rules prohibit the possession of injectable bottles as well as prohibited liquids in the injectable bottles. N.J.A.C. 13: 70-14A.8(a) states that:

No person aside from licensed veterinarians shall have in his possession anywhere within the grounds of any association conducting a race meeting . . . any drugs not possessed in accordance with the laws of the State of New Jersey, nor any contraband drug or unauthorized prescription legend drugs, nor any hypodermic syringes or needles, or any other instrument which may be used for injection, unless the injectable device is possessed for self-administration, and further provided that the individual possessing such device promptly notify the State Steward:

1. That he is in possession of such device; and
2. Of the chemical substance to be administered.

The rule prohibits unauthorized drugs, hypodermic syringes or needles and “any other instrument which may be used for injection, unless the injectable device is possessed for self-administration....” Ibid.

Injectable bottles are prohibited instruments used for injection. Injectable bottles, designed to permit the easy extraction of liquids into a hypodermic needle and syringe for injection, are prohibited drug paraphernalia that cannot be allowed near race horses on property subject to the NJRC's jurisdiction. Unless possessed in connection with self-administration, as provided in the rule, no person other than a licensed veterinarian may possess injectable bottles and the liquid substances therein at racetracks or anywhere within the grounds of any licensed off-track stabling facility. See Final Decision, DePietro v. New Jersey Racing Commission, OAL Docket No. RAC 11899-18 (May 21, 2021).

As indicated above and for the reasons set forth below, the Commission orders that Petitioner's license shall be suspended for a total of 2 years and 6 months and a \$7,500 fine shall be imposed for her violations of N.J.A.C. 13:70-14A-8, N.J.A.C. 13:70-14A.6(a)(c)(d), N.J.A.C. 13:70-20.7 and N.J.A.C. 13:70-1.15.

As discussed above, Petitioner's conduct resulted in egregious violations of the Commission's rules. In addition to possessing 83 injectable bottles, 36 needles, flunixin, dexamethasone and methocarbamol on racetrack property, Petitioner, who is not a licensed veterinarian, admitted to injecting a horse at Monmouth Park racetrack with Banamine and ACTH in July 2019.

When imposing penalties, the Commission does and must consider the licensee's penalty history. A few weeks before the prohibited needles, syringes, injectable bottles and drugs were confiscated on July 29, 2019, the horse "Sassy Chub," trained by Petitioner, finished second in the 7th race at Monmouth Park on May 19, 2019. The horse tested positive for dexamethasone. Initial Decision at 34. As discussed above, the NJRC's Board of Stewards imposed a 15-day suspension from August 1, 2019 through August 15, 2019 as well as a \$500 fine. *Id.* at 35; Ruling No. 19MON41 (Exhibit J-4).

Moreover, a review of Petitioner's penalty history indicates yet another post-race drug positive. The horse "Boheme De Lavi," who was trained by Petitioner, tested positive for methocarbamol after winning the 3rd race at Penn National racetrack on July 14, 2016. Initial Decision at 38; Exhibit J-2. After a split sample confirmed the presence of methocarbamol, the Pennsylvania Horse Racing Commission disqualified the horse, ordered redistribution of the purse and fined Petitioner \$1,000.² Exhibit J-2.

² The NJRC's application for a trainer's license asks the applicant if he or she has ever been fined \$100 or more. The ALJ found that when Petitioner submitted an application to the NJRC for a trainer's license on May 2, 2019, she failed to divulge the \$1,000 fine issued by the Pennsylvania State Horse Racing Commission for the methocarbamol positive. Initial Decision at 45-46.

At the OAL hearing, Petitioner also admitted under oath, that on her application, she also failed to divulge a \$100 fine issued by the Maryland Racing Commission for entering "Break the Mold" to race at Laurel Park on August 13, 2017 without providing the jockey with the owner's colors. *Id.* at 46; Exhibit J-2.

N.J.A.C. 13:70-4.11 states that "[a]ny person making any false, untrue or misleading statement on an application for license ... may be disciplined as provided for in these rules and regulations." The NJRC has not yet had the opportunity to consider this admitted violation of N.J.A.C. 13:70-4.11 or determine the appropriate penalty for falsification of her May 19, 2019 trainer's application. The ALJ did not address, recommend or impose a penalty for Petitioner's false statements on her NJRC's trainer's application and likely could not do so as this alleged violation was not included in the matters transmitted to the OAL. To the extent that Petitioner may argue that the ALJ made an implied finding that no penalty is warranted for her false, untrue or misleading statements on the application, the NJRC rejects any such implied finding. The NJRC reserves the right to consider this admitted violation and to impose an appropriate penalty.

Horse racing is a highly regulated industry; participation in it is a privilege and not a right. Wendling v. New Jersey Racing Commission, 279 N.J. Super. 477 (App. Div. 1995). The need for strict regulation of the horse racing industry is well established and has a long history. Horsemen's Benevolent and Prot. Ass'n v. Atlantic City Racing Ass'n., 98 N.J. 445 (1985); Jersey Downs, Inc. v. Div. of New Jersey Racing Commission, 102 N.J. Super. 451, 457 (App. Div. 1968); State v. Dolce, 165 N.J. Super. 448 (Law Div. 1979). "The danger of clandestine and dishonest activity inherent in horse racing, as in all forms of gambling, has been well recognized." DeVitis v. New Jersey Racing Commission, 202 N.J. Super. 484, 490-91 (App. Div. 1985).

Petitioner's conduct as a licensed trainer shows a complete disregard for the rules under which she was permitted a license. All trainers have the specific responsibility to safeguard and protect the race horses under their care, custody and control, as well as to protect the integrity of the sport by following the NJRC's rules. Petitioner utterly disregarded this responsibility by possessing prohibited hypodermic needles, injectable bottles and prohibited prescription legend drugs on racetrack property and injecting a race horse with Banamine and ACTH.

In New Jersey, a licensed trainer cannot inject a race horse for any reason or possess needles, injectable bottles or prohibited substances. Drugging a horse can lead to the injury or death of the drugged horse and endanger others participating in the same race. Tampering with a race horse also defrauds the wagering public, which is entitled to expect that races are conducted without licensees seeking chemical advantage. A trainer injecting a race horse and the unauthorized presence of drugs and instruments of injection on property where race horses are located undermines the public's trust in the integrity of the sport and strict penalties are warranted.

For the reasons set forth above, the Commission hereby orders that Petitioner's license shall be suspended for 2 years and 6 months and a \$7,500 fine shall be imposed for her violations of N.J.A.C. 13:70-14A.8, N.J.A.C. 13:70-14A.6(a)(c)(d), N.J.A.C. 13:70-20.7 and N.J.A.C. 13:70-1.15.

On August 9, 2019, the NJRC's Board of Stewards issued Ruling 19MON46 which ordered an immediate suspension of Petitioner's license to train horses, pending testing and further hearing, for the violations discussed herein. As indicated above, Petitioner was already serving a suspension from August 1, 2019 through August 15, 2019 for the May 19, 2019 dexamethasone positive at Monmouth Park. As a result, the suspension for the violations at issue here commenced on August 16, 2019. Given the egregious nature of these violations, the NJRC did not grant a stay of this suspension.

It is hereby ordered that Petitioner's license shall continue to be suspended through and including February 15, 2022. During this suspension, Petitioner shall continue to be denied access to all grounds under the jurisdiction of the New Jersey Racing Commission for any and all purposes. It is also ordered that Petitioner shall pay fines totaling \$7,500 to the New Jersey Racing Commission in full on or before February 15, 2022.

NEW JERSEY RACING COMMISSION

By: Judith A. Nason
Judith A. Nason, Executive Director

Date: May 21, 2021