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OAL Docket No. RAC 06114-24
Agency Ref. No. NJRC-4-H-24-MD

PER ENGBLOM (TRAINER),

Petitioner,

v.

Final Decision

NEW JERSEY RACING COMMISSION,

Respondent.

The question in this case is whether Per Engblom ("Petitioner") violated *N.J.A.C. 13:71-7.29(a)13*, *N.J.A.C. 13:71-23.1(a)*, *(b)1*, and *N.J.A.C. 13:71-23.6(a)(b)(c)(d)* and, if so, whether the penalty imposed by the Board of Judges of the New Jersey Racing Commission ("NJRC" or "Commission") was appropriate. The Board of Judges held a hearing and issued a ruling which imposed a total license suspension of 380 days and a total fine of \$6,000. In addition, the horse was disqualified from sharing in the purse, and eight Multiple Medication Violation ("MMV") points were imposed. Petitioner filed an appeal with the Office of Administrative Law ("OAL"). At the OAL, a hearing was held before an Administrative Law Judge ("ALJ"). The ALJ issued an initial decision which reduced the license suspension to 90 days but otherwise affirmed the penalties imposed by the Board of Judges. For the reasons stated below, the Commission rejects the reduced license suspension and modifies the initial decision to re-impose the 380-suspension period.

On April 29, 2023, the horse "Mon Amour" trained by Petitioner finished first in the sixth race at Meadowlands Racetrack. The horse was selected for post-race testing. Its blood and urine were collected and sent to Industrial Laboratories in Denver, Colorado for analysis. A screening test identified the



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presence of Oxycodone as well as Carisoprodol and Meprobamate, which is a metabolite of Carisoprodol. Subsequent testing confirmed the drugs to be present in the horse's urine. Oxycodone was identified at a level of 4.91 ng/mL, Carisoprodol at 118.50 ng/mL, and Meprobamate at 7.20 ng/mL. At Petitioner's request, a split sample was sent to Texas A&M Veterinary Medical Diagnostic Laboratory. The split sample testing confirmed the presence of Oxycodone, Carisoprodol, and Meprobamate in the horse's urine.

A hearing was conducted before the Board of Judges on December 6, 2023. The Judges concluded Petitioner had violated the rules cited above and issued Ruling No. 24MDH35 on February 15, 2024. Due to the finding of Oxycodone, the Board of Judges imposed a 365-day license suspension and a fine of \$5,000. For the finding of Carisoprodol and its metabolite Meprobamate, the Board of Judges imposed a 15-day license suspension and a fine of \$1,000. As indicated above, the horse also was disqualified from sharing in the purse, and eight MMV points were imposed.

By letter dated February 26, 2024, counsel for Petitioner filed a notice of appeal and requested a stay. The request was granted, and the Commission transmitted the matter to the OAL as a contested case.

At the OAL, a hearing was conducted before ALJ Thomas R. Betancourt on October 1, 2024. After considering the testimony presented at the hearing and written summations from the parties, the ALJ issued an initial decision on January 2, 2025. In the initial decision, the ALJ concluded the 380-day suspension imposed by the Commission was "extremely severe" and "draconian," and the "mitigating factors far outweighed the only aggravating fact (the presence of the offending substances)." Initial Decision at 11. The ALJ ordered that the Judges' Ruling should be affirmed, with the exception of the license suspension period which the ALJ reduced from 380 days to 90 days. *Ibid.* Counsel for NJRC filed exceptions on January 14, 2025. The deadline for filing a reply was January 19, 2025. No reply was filed, and the record closed on that date.

Certain facts are not in dispute. At the hearing, Petitioner stipulated that the post-race blood and urine samples were securely and properly collected from "Mon Amour," that the post-race urine sample was sent to Industrial Laboratories for testing, that the post-race urine sample tested positive for Oxycodone, Carisoprodol, and Meprobamate, and that a split sample was sent to Texas A&M Veterinary Medical Diagnostic Laboratory which also confirmed the presence of Oxycodone, Carisoprodol, and Meprobamate. See Exhibit J-1; Initial Decision at 3. Petitioner further stipulated that the accuracy of the positive test result was not in dispute and that "Mon Amour" did have Oxycodone, Carisoprodol, and Meprobamate in its body on April 29, 2023. *Ibid.*

The principal argument advanced by Petitioner on appeal was that the drugs were not in the horse's body at the time it ran and won its race. Tr. 6:18-25. It was further asserted that such transfer was unintentional based on Petitioner's otherwise clean record and that the drugs did not have any impact on the horse due to the low levels that were found. Tr. 8:2-16.

In support of the above argument, Petitioner offered the testimony of Dr. Clara Fenger as an expert in equine physiology, equine exercise physiology, equine pharmacology, and equine internal medicine. Tr. 85:13-17. Dr. Fenger opined in her report and during her testimony that the horse did not enter or start the race carrying in its body any Oxycodone or Carisoprodol. Exhibit P-1 at ¶ 45; Tr. 93:6-9. She posited in her report that the drugs must have been transferred to the horse via oral or mucus membrane contact with a human whose hands were contaminated with these drugs after it finished its race. Exhibit P-1 at ¶ 43.

The ALJ made several findings ostensibly based on Dr. Fenger's testimony. Many of the findings are unsupported by the record or otherwise flawed in their reasoning.

First, there is no evidence in the record to support the ALJ's finding that "[f]rom the time the horse leaves the barn to race time is approximately 30 minutes. It was not possible for Mon Amour to come into contact with Oxycodone, Carisoprodol and Meprobamate during this period." Initial Decision at 5. Dr. Fenger did not testify that the time period between a horse's departure from the barn and race time is 30 minutes, nor did any other witness who testified for either party at the hearing. Dr. Fenger testified that Mon Amour would have participated in a pre-race post-parade;¹ however, she estimated the post-parade would take between 5 and 10 minutes. Tr. 91:6-19. The Commission therefore rejects this finding by the ALJ.

Second, the ALJ erred in finding that "Oxycodone, Carisoprodol and Meprobamate were transferred to Mon Armour [sic] within 30 minutes of the urine test, which is post race." Initial Decision at 5. Dr. Fenger opined that Oxycodone and Carisoprodol metabolize rapidly in horses to the point that their metabolites should exceed their parent compounds in 30 minutes. Tr. 88:20-25 and Tr. 89:1-8 and Exhibit P-1 at ¶ 29 and 37. In the case of "Mon Amour," Meprobamate was present in the horse's urine in a quantity lower than its parent Carisoprodol, and no metabolite was yet present for Oxycodone. *Ibid.* As a result, Dr. Fenger deduced that the drugs were transferred less than 30 minutes before urine collection. *Ibid.* But, the premise for Dr. Fenger's conclusion was flawed.

In support of her view, Dr. Fenger offered citations to available research regarding the metabolism of Oxycodone and Carisoprodol. Exhibit P-1 at ¶ 29 and 37. However, the cited research charted the metabolism of Oxycodone and Carisoprodol over the course of several hours. *Ibid.* While these studies suggest metabolites exceed their parents after one hour, they cannot be cited for the proposition that metabolism is complete after exactly 30 minutes. The level of metabolites in the horse's liver at the 30-minute mark is not known, as demonstrated by the equivocal language used by Dr. Fenger in her report: "The only possible time frame during which the urine concentration of Carisoprodol would exceed its metabolite, Meprobamate, would be less than 1 hour after administration/exposure, and most likely less than 30 minutes after administration/exposure." Exhibit P-1 at ¶ 37 (emphasis added). In reviewing a study regarding Oxycodone, Dr. Fenger was similarly unsure of the exact timeline: "The amount of the metabolite, Oxymorphone, in the urine exceeds the amount of Oxycodone in the sample as early as 30 minutes after administration of Oxycodone, as shown in the figure below, copied from You et al., 2024." *Id.* at ¶ 29 (emphasis added). In addition, the cited report regarding Oxycodone was based on samples taken from a single horse that was 14 years old and no longer racing. Exhibit R-2 at Sec. 2.7; Tr. 103:22-25 and Tr. 104:1.

The 30-minute metabolism period is, at best, a guess. Even if it takes a horse's liver precisely 30 minutes to metabolize Oxycodone and Carisoprodol within its body as Dr. Fenger led the ALJ to believe, such 30-minute period would not account for any additional time needed for the compounds to reach the liver, which may differ depending on how the drug was administered to the horse. Dr. Fenger acknowledged during her own testimony that the absorption process from a topical application on the horse's skin would be slower than if the drugs were absorbed through mucus membrane, i.e. the horse's gums. Tr. 110:19-22; see also Tr. 116:3-11. For the foregoing reasons, the Commission also rejects this finding by the ALJ.

Third, the Commission rejects the ALJ's finding that "Mon Amour did not race in the sixth race at the Meadowland [sic] Racetrack on April 29, 2023, with Oxycodone, Carisoprodol and Meprobamate in

¹ In a pre-race post parade, the horses in an upcoming race walk (parade) from the paddock to the starting gate in front of the grandstand. It is the last opportunity for members of the betting public to look at the horses before placing their bets.

its system.” This finding follows from the same flawed premise. The race went off at 8:23 p.m. Tr. 90:14-18. Assuming a 5-minute post parade, the horse was on the track at 8:18 p.m. Tr. 91:6-25. The horse’s urine was caught 32 minutes later at 8:50 p.m. Tr. 92:1-8. The possibility of a pre-race administration of Oxycodone, Carisoprodol, and Meprobamate is eliminated only if metabolism takes no more than 30 or 31 minutes and absorption is a non-issue. As indicated above, the research cited by Dr. Fenger does not establish a metabolism rate with such precision.

Fourth, there is no evidence in the record to support the ALJ’s finding that “Oxycodone, Carisoprodol and Meprobamate were transferred to Mon Amour via oral or mucus membrane contact with a human whose hands were contaminated [sic] the said substances post race and prior to testing.” Initial Decision at 5. Dr. Fenger indicated in her report that the presence of the above drugs resulted from oral or mucus membrane contact; however, during her testimony she stated the most likely contact was mucus membrane. Exhibit P-1 ¶ 43; Tr. 96:19-21.

Dr. Fenger’s theory about mucus membrane contact is conjecture. Based on a metabolism rate of 30 minutes, and the placement of the horse on the track for 32 minutes, Dr. Fenger deduced that the drugs must have gotten into the horse’s system through mucus membrane contact when someone with drugs on their hands touched the horse’s gums, the bit, or bridle. Tr. 97:3-6. But, the assumed metabolism rate lacks a basis in the cited research. Even if the research did confirm a 30-minute metabolism rate, both studies cited by Dr. Fenger involved oral administration, not mucus membrane contact. Exhibits R-2 and R-2; Tr. 99:19-22. The Commission therefore rejects this finding.

Finally, the Commission rejects the ALJ’s finding that Dr. Fenger’s expert testimony and report were credible. The ALJ specifically noted, “She was able to explain the science behind her conclusions in simple straightforward terms easily understandable to the lay person. It leads to the conclusion that Mon Amour did not have the offending drugs in its system when it entered the race.” Initial Decision at 8. As explained above, Dr. Fenger’s opinion that the drugs could not have been in the horse’s system at the time of its race is based on two studies which do not confirm a metabolism rate of precisely 30 minutes. Even if they can be read to confirm such a metabolism rate, neither study involved the mucus membrane contact which Dr. Fenger claims was most likely involved in this case. One of the studies involved samples taken from a single horse that was no longer racing and older than “Mon Amour.”

From the above findings and credibility determination, the ALJ arrived at conclusions which are inaccurate or immaterial to this case. The ALJ characterized several matters as undisputed. First, the ALJ concluded, “Here we are presented with the unrebutted testimony of Dr. Fenger that the horse was not administered the offending substances prior to the race, but that they were introduced post-race and prior to testing. That is undisputed. The Racing Commission offered no expert testimony to rebut Dr. Fenger.” Initial decision at 10. Second, the ALJ concluded, “Further, it is also undisputed that the offending substances did not factor into the outcome of the race.” *Ibid*.

It is true the Commission did not offer expert testimony; however, it does not necessarily follow that Dr. Fenger’s testimony was unrebutted. Several points were developed during cross examination that called into question the basis of Dr. Fenger’s conclusions. During cross examination, Dr. Fenger testified that mucus membrane contact was in her opinion the most likely source of the drugs, but she later conceded that the two studies relied upon in this case involved oral administration, not mucus membrane contact. Tr. 97:3-6; Tr. 99:19-22. Moreover, she testified that she was unaware of any medical literature that would support the opinion that the metabolism of Oxycodone and Carisoprodol administered via mucus membrane is identical to their metabolism via oral administration. Tr. 107:10-16. She further acknowledged the Oxycodone study was based on samples taken from a single horse that was no longer racing and that it is not scientifically accepted to rely upon studies based on sample taken from only one horse. Tr. 105:13-20.

It also cannot be said, based on Dr. Fenger's testimony or otherwise, that the offending substances did not factor into the outcome of the race. In fact, Dr. Fenger specifically stated in her report and testimony that, "The pharmacodynamics (effects) of Oxycodone have not been studied in horses. However, there is no reason to believe that the pharmacodynamics of Oxycodone are not similar to other opioids." Exhibit P-1 at ¶ 22; Tr. 97:17-24. She goes on to speculate that since a Morphine concentration of 30 ng/mL in blood has no effect, and Oxycodone is three times more potent than morphine, an Oxycodone concentration of less than 10 ng/mL in a horse's blood (which was the case with Mon Amour) would have no effect. Exhibit P-1 at ¶ 23-25. Once again, Dr. Fenger's view lacks support in medical literature and essentially amounts to an unsupported extrapolation based on the pharmacodynamics of a different drug, without any evidence to suggest why "there is no reason to believe" that Oxycodone would behave the same way. It is also immaterial to the question of whether a violation occurred. Oxycodone, as well as Carisoprodol and Meprobamate, are non-threshold drugs. (Cite?) As explained by NJRC Assistant Director Thomas Salerno at the hearing, the presence of a non-threshold drug at any level is considered a medication violation under guidelines established by Association of Racing Commissioners International ("ARCI"). Tr. 60:20-25 and Tr. 61:1-13.

N.J.A.C. 13:71-23.1(a) states the intent of the Commission's medication rules is "to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse."

The Commission cannot enforce its medical rules based on unsupported guesses about exactly how long it takes drugs to metabolize within a horse's body or conjecture about how those drugs got there in the first place. Otherwise, the integrity of the race cannot be assured.

It is for this reason that the Commission's rules are clear that the horse's body must be clean of any drugs foreign to its body on the day of a race: "On the day of the race, irrespective of the date, time, and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in this chapter. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section are as follows: [a]rticles meeting the definition of drug as set forth in N.J.A.C. 13:71-4.1..."² N.J.A.C. 13:71-23.1(b)(1) (emphasis added).

On April 29, 2023, the horse "Mon Amour" trained by Petitioner finished first in the sixth race at Meadowlands Racetrack and was found to have Oxycodone, Carisoprodol, and Meprobamate in its system on that date. The presence of these drugs in the horse is a violation of the Commission's medical rules.

The initial decision relies upon Dr. Fenger's report and testimony as mitigating circumstances. As explained above, such reliance is misplaced. Lacking from the initial decision is any recognition of the

² "Drug" is defined in N.J.A.C. 13:71-4.1 as "1. Articles recognized in the official U.S. Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; 2. Articles intended for use in the diagnosis, cure mitigation, treatment, or prevention of disease in man or other animals; and 3. Articles (other than food) intended to affect the structure or any function of the body or other animals; and 4. Articles intended for use as a component of any article specified in paragraph 1, 2, or 3, but does not include devices or their components, parts or accessories."

seriousness of the drugs found in the horse's system. ARCI has analyzed certain drugs and adopted a classification scheme based on their pharmacology, drug use patterns, and the appropriateness of their use in racing horses. See the Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule Dec. 2022 (v.15.1) ("Guidelines"). The Guidelines comprise Classes 1 through 5, with Class 1 drugs having the highest potential to affect performance and no generally accepted medical use in a racing horse. *Ibid.* Within this scheme, ARCI has placed Oxycodone and Carisoprodol in the two highest classifications, Class 1³ and Class 2⁴ drugs respectively. *Ibid.* Meprobamate is a Class 2 drug. *Ibid.* As explained above, all three are non-threshold drugs, meaning they should not be in the horse's body at any level.

Imprecise guessing and conjecture cannot be the basis for mitigation, especially in a case involving drugs of such a high classification. To do so threatens the public's trust in the integrity of the sport. It also would directly contradict the other stated purpose of the Commission's regulation which is to guard the health of the horse. Even if Dr. Fenger's theory about a metabolism rate of precisely 30 minutes had been adequately supported, the fact remains that these drugs are not healthy or safe for the horse to have in its body.

As the trainer of Mon Amour, Petitioner is ultimately responsible for its care. N.J.A.C. 13:71-23.6 sets forth the liability of trainers for medication violations. It specifically provides:

- (a) A trainer shall be the absolute issuer of and is responsible for the condition of a horse within his care and custody.
- (b) A trainer shall not enter or start a horse that has in its body any drug or substance foreign to the natural horse except as otherwise provided for in these rules and regulations.
- (c) A trainer has the duty to be familiar with the medication rules of this Commission and with any drug or substances foreign to the natural horse administered to said horse at his direction or while in his care and custody.
- (d) The trainer, owner, veterinarian, groom or other person charged with the custody, care and responsibility of a horse are all obligated to protect and guard the horse against administration of any drug or substances foreign to the natural horse, except as otherwise provided for in these rules and regulations by any unauthorized individual, and the administration of any unauthorized drug or substance foreign to the natural horse by any horse.

The Board of Judges imposed penalties that were appropriate based on the seriousness of the violation. N.J.A.C. 13:71-7.29(a) sets forth the Commission's authority to take disciplinary action. The Commission may suspend or revoke the license of any driver, trainer, or groom or impose a monetary fine based on certain conduct, including "[a]ny other act or conduct detrimental to the sport." N.J.A.C. 13:71-7.29(a)13. Although the Judges are not bound to follow them, the Guidelines can be consulted, which was done in this case. For a first offense involving a Class 1 drug, the Guidelines recommend a minimum one-year suspension and a minimum fine of \$10,000⁵ or 10% of the total purse (greater of the two), absent mitigating circumstances. For a first offense involving a Class 2 drug, the Guidelines recommend a minimum 15-day suspension and a minimum fine of \$500, absent mitigating

³ Class 1 drugs include: "[s]timulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse." See Guidelines.

⁴ Class 2 drugs "are 1) not generally accepted as therapeutic agents in racing horses, or 2) they are therapeutic agents that have a high potential for abuse." See Guidelines.

⁵ Although the Guidelines recommend a fine of \$10,000, the Board of Judges imposed a fine of \$5,000 because \$5,000 is the maximum fine the Board of Judges may impose under NJRC regulations for a single violation. N.J.A.C. 13:71-2.3(a)2.

circumstances. The penalties imposed by the Board of Judges were within the recommended ranges. Ruling No. 24MDH35.

In concluding that the penalty in this case should be reduced, the ALJ noted Petitioner has no disciplinary history. Initial decision at 10. But, a clean record is taken into account by the Guidelines as different penalties are recommended if the violation is a first or second offense. Furthermore, Petitioner's clean record was specifically considered in the Judges' decision, as indicated in the testimony of NJRC Assistant Director Thomas Salerno who was the Presiding Judge at Meadowlands Racetrack at the time this violation occurred. Tr. 63:3-9. The Judges also considered that Meprobamate, although a drug in itself, was likely a metabolite of Carisoprodol in this instance and, for that reason, they decided not to assess a separate penalty for that drug. Tr. 61:22-25 and Tr. 62:1-2.

For the reasons stated above, the Commission hereby accepts the ALJ's finding of violations of N.J.A.C. 13:71-7.29(a)13, N.J.A.C. 13:71-23.1(a), (b)1, and N.J.A.C. 13:71-23.6(a)(b)(c)(d), imposition of a \$6,000 fine, and imposition of 8 MMV points. The Commission, however, rejects the portion of the ALJ's order which reduced the suspension period from 380 days to 90 days. The Commission modifies the suspension period to 380 days, as originally imposed by the Board of Judges.

NEW JERSEY RACING COMMISSION


Sara Ben-David, Acting Executive Director

Dated: April 23, 2025