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MANITOBA HORSE RACING COMMISSION

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September 4, 2010

Commission Ruling #12

Carl Anderson

On August 31, 2010 the MHRC held a hearing to review Stewards' Ruling 79A whereby the Stewards imposed a 15-day licence suspension and \$1000 fine on owner/trainer, Carl Anderson, by reason of a horse for which he was responsible, testing positive for the banned substance, Clenbuterol, after winning the 5th race July 30, 2010.

All five MHRC members heard the review. Also present at the hearing were Stewards Blaine Buffalo and Charles Janaway, MHRC veterinarian, Dr. Meek, and Carl Anderson. The review hearing was open to the public and one member of the public was in attendance.

STEWARDS' RULING:

The Stewards received notification from CPMA (The Feds) of the positive test as a result of which the usual barn search was conducted, a hearing held, a finding of responsibility issued and a penalty imposed. The Stewards correctly relied on the trainer responsibility rule and found Mr. Anderson responsible for the positive test. In imposing the penalty the Stewards took into consideration both Mr. Anderson's cooperation and clean record.

APPEAL:

Mr. Anderson appealed the Stewards' decision both finding and penalty. At his request a stay was granted by MHRC Chair on August 14, 2010.

REVIEW:

Notwithstanding the appeal, the MHRC, by notice dated August 17, 2010, ordered that the penalty imposed by the Stewards be reviewed by the Commission itself. The review was ordered in case Mr. Anderson withdrew his appeal—which in fact he did. Therefore, as of August 31, 2010, the date of the review hearing, Mr. Anderson had withdrawn his appeal, paid his fine, transferred the horses of which he was the trainer (not owner) to trainer Leonard Anderson and had begun serving his suspension.

The MHRC, in accordance with the rules of racing, has the absolute right, in its sole discretion, to vary the penalty imposed by the Stewards.

THE DRUG

Clenbuterol* (hereafter referred to as the drug), sold under the trade name Ventipulmin, is prescribed for use in horses with breathing problems. It is a bronchodilator which works by causing the muscles to relax thereby increasing the amount of air the horse can take in on each breath. Though not a steroid it is thought to have steroid-like qualities in that it appears to increase the muscle to fat body ratio. There is some controversy over whether or not it is a “performance enhancer” but the evidence seems to be that in a healthy horse it is not. In a healthy horse it does not appear to help lung function. Furthermore there is some evidence to the effect that on a long-term basis it has a negative effect on a horse’s performance in that used regularly it could cause decreases in heart function, exercise capacity, and the horse’s ability to recover from exercise.

Banned substances are classified by Racetrack Commissioners International on a scale of 1-5 depending on their potential for abuse (Class 1 being the most serious). At one time this drug was rated as a Class 2 drug but it has since been downgraded to Class 3. Class 2 drugs have a high potential to affect performance whereas Class 3 drugs are considered to have less potential.

It is a banned substance in that it is illegal to run a horse with a detectable amount of the drug in a horse’s system but it is not illegal to use the drug on a horse in training.

It is generally thought that it takes about 72 hours for the drug to clear a horse’s system.

THE HORSE

Lonesome Warrior is a three-year-old Manitoba bred purchased at the Annual Manitoba Yearling Sale. He did not start as a two-year-old. In his first two starts in 2010 he turned in poor performances. Mr. Anderson explained that the horse had and continues to have respiratory problems and after consulting his vet a decision was made to put the horse on the drug to treat the symptoms. This was done and apparently with some success as in his next start the horse showed much improvement finishing third. In his fourth start—the race in question—he won by seven lengths and was tested positive—as a result of which he was disqualified and therefore was able to run back as a maiden which he did on August 27th. 2010. He was a heavy favourite but faded badly finishing last. Both Mr. Anderson and the MHRC received a complaint about the race.

Mr. Anderson stated that many of his horses have similar breathing problems much like Lonesome Warrior as a result of which many of his horses, on veterinarian advice, train on the drug. Mr. Anderson attributed the development of the breathing problems to the fact that the barn in which he is stabled, along with about five other barns, are totally closed in without adequate ventilation as a result of which the barns are full of mold thereby contributing to the breathing problems. Dr. Meek agreed with that contention.

Mr. Anderson went on to state that when he trained in Saskatchewan he never had reason to use this drug or any similar drug.

EFFECTS OF THE DRUG

a) On the Public:

While the drug may not be a “performance enhancer” if used on a healthy horse on the face of it a case can be made that it is either a “performance enhancer” when used on a chronically unhealthy horse like Lonesome Warrior or at the very least a perception is created that it is a “performance enhancer”.

What would a reasonable person think on learning of all of the facts of this horse’s performance?

1st and 2nd race shows no run- no drug
 Horse commences training on the drug
 3rd race – much improved performance; finishes 3rd
 Use of drug during training continues
 4th race – wins by seven
 Positive test
 5th race – runs badly as heavy favorite

Notwithstanding Mr. Anderson's assertion, which may very well be true, that he used the drug in exactly the same way after as before the positive test, any reasonable bettor would be skeptical of that assertion. Maybe the dosage was slightly decreased; maybe the last application was 90 or 100 hours prior to the race—not 80. Mr. Anderson correctly pointed out that there are many other reasons why a horse could turn in a sub-par performance and specifically in this case the racetrack was much heavier. However, this is not the point. A member of the wagering public must be confident that a horse's performance is not being affected by the use of the drug. Reasonable perception is reality.

b) On the Horse:

The drug does not cure respiratory difficulties. It only deals with the symptoms as a result of which horses with respiratory problems perform better. Furthermore its continuous use on a long-term basis appears to have serious, detrimental effects on the animal's health. While the MHRC recognizes that there may be occasions where the use of the drug is necessary it seems obvious that everything that can reasonably be done to deal with the cause ought to be done prior to or in conjunction with the application of the drug to treat the symptoms of a chronic condition.

c) On the Owner:

It is expensive and for the reasons set out herein is in the long-term counter-productive.

d) In General:

Since the ban on steroids horsemen all over North America have been looking for alternatives. This drug appears to be one of a number of Class 3 drugs with steroid-like qualities that is being used not only on horses with breathing problems but on healthy horses with the intention of obtaining the same advantage that steroids appear to give.

While there is no indication or suspicion that this is the case with Mr. Anderson the industry cannot be blind to the pervasive public perception that horseracing has become addicted to the use of drugs and that in fact the misuse of legal drugs is probably more of a problem than the use of illegal drugs.

CARL ANDERSON

He has had a trainer's licence for 46 years—since 1964. He estimates that he has had approximately 1400 horses tested and has never had a positive test. In this instance a thorough barn search was conducted and nothing illegal was found. Every medication was prescribed and labeled by his veterinarian.

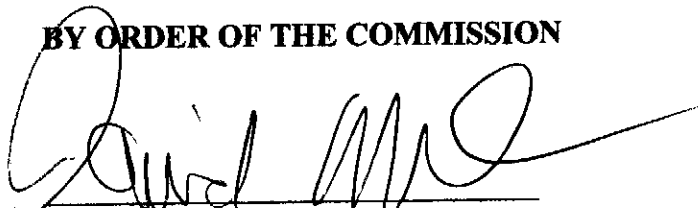
PENALTY

Notwithstanding the strongly held belief of all of the MHRC members that everything that can be done to curtail the use of drugs must be done it is also our view that Mr. Anderson must not be made a scapegoat for the ills of the industry as a whole. It must be remembered that he is not being penalized for the use of an illegal drug but rather for the careless use of a legal drug. Prior to the Review Hearing MHRC requested that Professor of Law, David Deutscher, an authorized person under the Rules of Racing, submit his recommendations as to penalty. His report was submitted to all of the parties at the hearing. In making his recommendation he reviewed and summarized penalties imposed by other jurisdictions. His report is attached to this ruling.

The MHRC is satisfied that the penalty imposed by the Stewards and supported by the authorized person is fair and reasonable and would have been accepted by the MHRC in its entirety had not Mr. Anderson filed an appeal and received a stay. By receiving the stay he avoided part of the penalty in that a number of his horses scheduled to run would have been scratched. Mr. Anderson, by appealing the decision, received a monetary benefit. For that reason the MHRC hereby increases the fine from \$1000 to \$3000. The 15-day period of suspension will be set by the Stewards.

*The veterinary information set out in this ruling was taken from not only the evidence of Dr. Meek but from various articles obtained by the MHRC which were referred to and read from during the course of the review hearing.

BY ORDER OF THE COMMISSION



David Miles, Chair

Memorandum

To: David Miles, Chair Manitoba Horse Racing Commission

From: David Deutscher, Authorized Person

Date: 8/26/2010

Re: Review of Carl Anderson Suspension

In accordance with your request, I have reviewed the above suspension by comparing it to penalties imposed in other jurisdictions when Clenbuterol is found in the horse's system. The information given to me included harness and quarter horse decisions, but the vast majority involved thoroughbreds.

I somewhat arbitrarily divided the penalties into categories. Below, is a list of the categories with the number of penalties imposed in that category beside it.

Fine only -	3
Suspension of less than 15 days plus fine -	5
Suspension of 15 days with no fine -	7
Suspension of 15-30 days plus fine -	1
Suspension of 30 days with no fine -	1
Suspension of 30 days plus fine -	17
Suspension of more than 30 days plus fine -	3

Recommendation

As can be seen, the most common penalty imposed is a 30 day suspension plus a fine. If I were looking at this information at first instance, my inclination would be to impose such a penalty. However, the penalty imposed on Mr. Andersen of a 15 day suspension plus a fine of \$1000.00 is within the range of penalties imposed for this violation. Given that information, together with Mr. Andersen's clear record and

August 26, 2010

the fact he co-operated with the investigation into the matter, my recommendation would be to let the penalty imposed by the stewards stand.

I am enclosing the originals of the information provided to me divided into the above categories.