

Pennsylvania Medication Rules

§ 163.302. Foreign drugs, medications or substances.

(a) Policy. The purpose of this section and §§ 163.303—163.318 is to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of drugs and medications or substances foreign to the natural horse. In this context:

(1) A horse participating in a race may not carry in its body a substance foreign to the natural horse except as otherwise provided.

(2) A person acting alone or in concert may not administer or cause to be administered a substance to a horse entered to race by injection, oral administration, rectal infusion or suppository, or by inhalation within 24 hours prior to the scheduled post time for the first race, except as otherwise provided.

(3) A person other than a veterinarian may not have in his possession equipment for hypodermic injection of a substance for hypodermic administration. A person other than a veterinarian may not have a foreign substance, within the area of the race track complex, which can be administered internally to a horse by a route, except for an existing condition and as prescribed by a veterinarian. The supply of the prescribed foreign substance, by a veterinarian, shall be limited by ethical practice consistent with the purposes of this paragraph.

(4) A foreign substance may not be found in a test sample of a 2-year-old.

(5) Notwithstanding paragraph (3), a person may have in his possession within a race track complex a chemical substance for use on his own person. If the chemical substance is prohibited from being dispensed by Federal or State law without a prescription, he shall possess documentary evidence that a valid prescription for the chemical substance has been issued to him.

(b) Definitions. The following words and terms, when used in this section and §§ 163.303—163.318, have the following meanings, unless the context clearly indicates otherwise:

Bleeder—A horse which hemorrhages from the respiratory tract during a race or within 1 hour post race, or during exercise or within 1 hour of the exercise.

Bleeder list—A tabulation of bleeders to be maintained by the Commission.

Chemist—An official racing chemist designated by the Commission.

Foreign substances—Substances except those which exist naturally in the untreated horse at normal physiological concentration.

Furosemide—4-chloro-N-(2-furylmethyl)-5-sulfamoylanthranilic acid.

Horse—Horses registered for racing under the jurisdiction of the Commission or Board, and for the purposes of this section and § § 163.303—163.318 mean stallion, colt, gelding, ridgling, filly or mare.

Hypodermic injection—An injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, intraocular (intraconjunctival) injection.

Race day—The 24-hour period prior to the scheduled post time for the first race.

Security area—The area surrounding the security stall delineated by the Commission and controlled by it.

Security stall—The stall assigned by the Commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication, sometimes called the detention stall.

Test level—The concentration of a foreign substance found in the test sample.

Test sample—A body substance including but not limited to blood or urine taken from a horse under the supervision of the Commission veterinarian and in a manner prescribed by the Commission for the purpose of analysis.

Veterinarian—A veterinary practitioner authorized to practice on the race track.

Source

The provisions of this § 163.302 amended July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial page (51667).

Notes of Decisions

In holding that the Commission correctly refused to disqualify from the purse, a horse which showed a prohibited level of phenylbutazone, the Court noted that the present drug regulations are contained in 58 Pa. Codes § § 163.302—163.312. *Meyer v. Horse Racing Commission*, 456 A.2d 1164 (Pa. Cmwlth. 1983).

The discovery of lidocaine in a horse's urine following a race was sufficient to support the imposition of liability upon a trainer under this section and 58 Pa. Code § 163.303. *Sipp v. Horse Racing Commission*, 466 A.2d 296 (Pa. Cmwlth. 1983).

Possession of prohibited drug paraphernalia by a horse trainer was a violation of 58 Pa. Code § 163.302(a)(3) even though there was no evidence that the paraphernalia contained any trace of a prohibited drug. *Paoli v. Horse Racing Commission*, 473 A.2d 243 (Pa. Cmwlth. 1984).

Notwithstanding the fact that a urine sample test disclosed the presence of a prohibited drug,

the court held that 58 Pa. Code § 163.302(a)(1) was not violated because there was no evidence verifying the chain of possession from the sample procured to the horse in question. *Paoli v. Horse Racing Commission*, 473 A.2d 243 (Pa. Cmwlth. 1984).

A horse is prohibited from participating in a race if it is carrying in its body a foreign substance with certain exceptions. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

It was a violation of this section for a horse trainer to negligently allow a horse to ingest caffeine from discarded coffee and cola drinks in the barn; the trainer has a positive duty to protect his horses from the administration of a foreign substance. *Yanofsky v. Horse Racing Commission*, 537 A.2d 92 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.303. Prohibition; prima facie evidence; disqualification.

(a) A horse participating in a race may not carry in its body a substance except as provided in § 163.304 (relating to substances of therapeutic value).

(b) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that the foreign substance was administered and carried in the body of the horse while participating in a race. This finding shall also be taken as prima facie evidence that the trainer and his agents responsible for the care or custody of the horse has been negligent in the handling or care of the horse.

(c) A finding by the chemist of a foreign substance or an approved substance used in violation of this section and § § 163.301, 163.302 and 163.304—163.308 in a test sample of a horse participating in a race may result in the horse being disqualified from purse money or other awards except for purposes of parimutuel wagering, which shall be in no way affected.

Source

The provisions of this § 163.303 amended through April 24, 1981, effective April 25, 1981, 11 Pa.B. 1391. Immediately preceding text appears at serial page (56247).

Notes of Decisions

The finding of a foreign substance in a test sample from a horse is prima facie evidence that the trainer and his agents responsible for the care or custody of the horse may have been negligent in the handling or care of the horse. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

Since horse was left unattended for two to three daylight hours daily, the fact that horse trainer hired night watchman was insufficient to rebut presumption of negligence created under 58 Pa. Code § 163.303(b) when a prohibited foreign substance was found in a test sample. *Brown v. Horse Racing Commission*, 499 A.2d 1132 (Pa. Cmwlth. 1985).

The discovery of lidocaine in a horse's urine following a race was sufficient to support the imposition of liability upon a trainer under this section and 58 Pa. Code § 163.302. *Sipp v. Horse Racing Commission*, 466 A.2d 296 (Pa. Cmwlth. 1983).

Subsection (c), as it read on March 13, 1981, the date of the race, required a horse which had an impermissible level, as set out in 58 Pa. Code § 163.304(2), of the drug phenylbutazone in its system "shall" be disqualified from purse money, and the Commission's reversal of such a disqualification was clear error even though the section later was changed to "may" be disqualified from purse money. *Bush v. Horse Racing Commission*, 466 A.2d 254 (Pa. Cmwlth. 1983).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.304. Substances of therapeutic value.

A foreign substance of accepted therapeutic value may be administered as prescribed by a veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission.

(1) Only one approved nonsteroidal anti-inflammatory drug (NSAID) may be present in the body of a horse while it is participating in a race. The presence of more than one NSAID at any test level is forbidden.

(2) The test level of phenylbutazone under this section may not be in excess of two micrograms (mcg) per milliliter (ml) of plasma.

(3) The test level of oxyphenbutazone under this section may not be in excess of two micrograms (mcg) per milliliter (ml) of plasma.

(4) The administration of furosemide shall be permitted for the prophylactic treatment of a confirmed bleeder under the conditions and guidelines set forth in § 163.305 (relating to bleeder list), and with the approval of the Commission veterinarian.

Source

The provisions of this § 163.304 amended July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial pages (51667) to (51668).

Notes of Decisions

Paragraph (2), as it read on March 13, 1981, required a horse which had an impermissible level, as set out in 58 Pa. Code § 163.303, of the drug phenylbutazone in its system to be disqualified from purse money was mandatory and the Commission's reversal of such a disqualification was clear error. *Bush v. Horse Racing Commission*, 466 A.2d 254 (Pa. Cmwlth. 1983).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.305. Bleeder list.

(a) In order to obtain approval for the administration of furosemide, the bleeder horse shall be placed on the bleeder list.

(b) Only the following horses shall be placed on the bleeder list:

(1) A horse, which during the race or within the first hour immediately following a race, is observed by the Commission veterinarian to be shedding blood from one or both nostrils or is found to have bled internally. The Commission veterinarian may require an endoscopic examination of the horse in order to confirm inclusion on the bleeder list.

(2) A horse which bled during exercise on the race track or within the first hour following the exercise is subject to the same conditions as in paragraph (1).

(3) A horse may be placed on the bleeder list when the Commission veterinarian, prior to the implementation of this subsection, determined that the horse qualified for bleeder medication in accordance with paragraphs (1) and (2).

(c) The endoscopic examination provided for in subsection (b)(1) shall be conducted by a veterinarian licensed by the Commission and employed by the owner or his agent, and shall be conducted in the presence of and in consultation with the Commission veterinarian. The endoscopic examination shall be conducted within 1 hour of the finish of the race or exercise in which the horse has participated and bled, and must reveal hemorrhage in the lumen of the respiratory tract. Endoscopic examination under this subsection shall be at a time and place set by the Commission veterinarian and shall be conducted in his presence.

(d) The confirmation of a bleeder horse shall be certified in writing by the Commission veterinarian and entered by him on the bleeder list. A copy of the certification shall be issued to the owner of the horse or his agent upon request.

(e) Two-year-olds shall be ineligible for bleeder medication.

(f) A confirmed bleeder regardless of age shall be placed on the bleeder list. An up-to-date bleeder list shall be maintained and posted in the office of the secretary by the Commission.

(g) A horse shall be removed from the bleeder list only upon the direction of the Commission veterinarian, who shall certify in writing to the Commission or Commission steward his recommendation for removal.

(h) Once a horse is placed on the bleeder list it shall be presented to the prerace security stall between 4 1/2 and 5 1/2 hours prior to the post time of the race in which the horse is scheduled to start. Once placed in the security area, a horse shall remain in there until it is taken to the paddock to be saddled for the race. The bleeder medication shall be administered no less than 4 hours

prior to post time of the race in which the horse is scheduled to run.

(i) Immediately prior to treatment, a blood sample shall be taken by the Commission veterinarian and delivered to the testing laboratory using the standard procedure for collection, identification and transmittal as is used in routine testing.

(j) Bleeder medication shall be administered by a veterinarian licensed by the Commission and employed by the owner of the horse or by his agent and at a dose level not to exceed that recommended by the manufacturer and approved by the Commission veterinarian. The administration of bleeder medication shall be witnessed by the Commission veterinarian or an inspector assigned by him.

(k) While in the security area, the horse shall be in the care, custody and control of the trainer or a licensed person assigned by him. The trainer shall be responsible for the condition, care and handling of the horse while it remains in the security area.

(l) A bleeder horse shipped into this Commonwealth from another jurisdiction shall comply with the procedure outlined in this section. However, a bleeder horse shipped into this Commonwealth from another jurisdiction may be automatically placed on the bleeder list if the jurisdiction from which it was shipped qualified it as a bleeder using criteria which the Commission determines substantially complies with this section. A current certificate setting forth his qualifications as a bleeder shall be transmitted to the steward at the track in this Commonwealth to which it is shipped, prior to running in a race.

(m) If a horse bleeds during or following a race after being administered bleeder medication, the horse will be placed on the veterinarian's list and will not be permitted to race until the horse is observed during a workout by a State veterinarian. If the horse does not bleed during or following the workout, the State veterinarian may remove the horse from the veterinarian's list.

Source

The provisions of this § 163.305 amended July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial page (51668).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification); 58 Pa. Code § 163.304 (relating to substances of therapeutic value); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.306. Racing soundness examination.

(a) A horse entered to race shall be available for a veterinary examination for racing soundness and health on race day. Horses entered to start in races one through five are required to be present 1 1/2 hours prior to the published post time of the first race. Horses entered to start in races six through the last race are required to be present 1 1/2 hours prior to the published post time of the fifth race.

(b) Commission stewards are granted the discretion to waive the time limits outlined in subsection (a) in proper and exceptional circumstances. They may not waive the prerace soundness examination, which will be conducted on all horses.

(c) The examination shall be referred to as the racing soundness exam.

(d) The examinations shall be conducted in or near the stall to which the animal is assigned and shall be conducted by a veterinarian employed by the Commission or approved by it.

(e) The veterinarian shall cause to be kept a continuing health and racing soundness record of each horse so examined.

(f) A horse which suffers a breakdown on the race track, in training or in competition, and is destroyed, and every other horse which expires while stabled on the race track under the jurisdiction of the Commission, shall undergo an examination at a time and place acceptable to the Commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death.

(g) The examination required under this section will be conducted by a veterinarian employed by the owner or his trainer in the presence of and in consultation with the Commission veterinarian.

(h) Test samples shall be obtained from the carcass upon which the examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances and natural substances at abnormal levels. When practical, samples should be procured prior to euthanasia.

(i) The owner of the deceased horse shall make payment of charges due the veterinarian employed by him to conduct the examination. The services of the Commission veterinarian and the laboratory testing of samples shall be made available by the Commission without charge to the owner.

(j) A record of an examination shall be filed with the Commission by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

(k) Each owner and trainer shall accept the responsibility for the examination provided for in this section as a requisite for maintaining the occupational license issued by the Commission.

Source

The provisions of this § 163.306 amended through November 7, 1980, effective November 8, 1980, 10 Pa.B. 4298. Immediately preceding text appears at serial page (51668).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.307. Examination by veterinarian.

(a) An owner or his authorized agent or trainer of a horse entered to race on a race track licensed by the Commission shall immediately when requested by the Commission or its agents, submit a horse, of which he is the owner or authorized agent or trainer to a veterinary surgeon designated by the Commission for the examination or tests as the veterinarian may deem advisable to make.

(b) During the taking of the sample by the veterinarian representing the Commission or his delegate, in a detention area designated by the Commission, the owner, trainer, authorized agent or chemist representing them may be present and witness the procedure. In no event may a person be present in the area during a testing procedure who does not hold a valid current occupational license from the Commission. The sample shall be immediately sealed and the evidence of the sealing may be indicated thereon by the signature of the representative of the owner or trainer. The owner or trainer or chemist representing them shall have the right to attend and witness the examination and testing.

Source

The provisions of this § 163.307 amended through July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial page (51669).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.308. Official laboratory.

(a) The Commission will have authority to direct the official laboratory to retain and preserve by freezing samples for future analysis.

(b) The fact that purse money has been distributed prior to the issuance of a laboratory report may not be considered a finding that no chemical substance has been administered, in violation of this section and §§ 163.302—163.307 and 163.309—163.318, to the horse earning the purse money.

(c) The Commission will bear the costs of necessary testing equipment exclusive of testing equipment located at the designated horse racing laboratory. The Commission will also bear the costs of personnel, supplies and testing necessary for the implementation, operation and enforcement of the drug control program.

(d) The racing associations shall bear the cost of a facilities, including but not limited to designated detention areas, necessary for the implementation, operation and enforcement of the drug control program.

Source

The provisions of this § 163.308 amended through July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial page (51669).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.303 (relating to prohibition; prima facie evidence; disqualification).

§ 163.309. Responsibilities to guard against administration of drugs.

The owner, trainer, groom or other person who is charged with the responsibility of the horse shall protect the horse against the administration or attempted administration, either internally or externally, of a drug to the horse. If the stewards determine that an owner, trainer, groom or other person has failed to protect the horse they may immediately suspend the trainer, groom or other person and refer the matter to the Commission for final disposition.

Notes of Decisions

Since horse was left unattended for 2 or 3 daylight hours daily, the fact that horse trainer hired night watchman was insufficient to rebut presumption of negligence created under 58 Pa. Code § 163.303(b) when a prohibited foreign substance was found in a test sample *Brown v. Horse Racing Commission*, 499 A.2d 1132 (Pa. Cmwlth. 1985).

Horse trainers are specifically charged with the obligation to guard against the administration of any drug to his horse. *Worthington v. Horse Racing Commission*, 514 A.2d 311, 312 (Pa. Cmwlth. 1986).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.310. Persons found guilty of administration of drugs.

A person found guilty by the Commission of participation in or knowledge of the fact that a narcotic, stimulant or drug has been administered to a horse shall be ruled off of all tracks in this Commonwealth. If a person licensed by the Commission to operate a race track, or if an officer or director of an association or corporation licensed by the Commission to operate a race track is found guilty by the Commission of participation in or knowledge of the fact that a narcotic, stimulant or drug has been administered to a horse, the license of the person or association shall be revoked.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.311. Suspension of horses.

Horses suspended under this section, in which the person suspended or ruled off holds an interest, aside from the trainer's percentage, in order to be eligible for reinstatement shall be sold, the sale subject to the approval of the stewards at the track where the horses are to be entered to race. Horses trained by a suspended person, in which he has no interest, are automatically reinstated when placed in the hands of a licensed trainer and the transfer is approved by the stewards of a meeting and the Commission.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.312. Possession of illegal drug devices.

The stewards or the Commission, or both, or their designees, shall have the right to enter buildings, stables, rooms or other places within the grounds of an association, and to examine them and to inspect and examine the personal property and effects of a person, within these places. A person granted a license by the Commission, by accepting his license, consents to the search and seizures of hypodermic syringes, hypodermic needles or other devices, and drugs, stimulants or narcotics which could be, used in connection therewith, or appliances—electrical, mechanical or otherwise—other than the ordinary equipment, of the nature as could affect the speed or racing condition of a horse.

Source

The provisions of this § 163.312 amended through July 3, 1980, effective July 26, 1980, 10 Pa.B. 2883. Immediately preceding text appears at serial page (51670).

Notes of Decisions

A jockey who obtains a license from the commission consents to a warrantless search and seizure of drugs and drug paraphernalia whether or not the drugs might be used to affect the speed or racing condition of the horse. *Luzzi v. State Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.313. Urine samples.

A urine sample of the winner of each race and of a horse running an unusual or abnormal race and of any other horse as the stewards or the Commission may direct shall be taken. In the event of difficulty in taking or securing a sample:

(1) A veterinarian may inject an amount up to and including 2 cc. of an approved diuretic for the purpose of enhancing the securing of a sample upon securing written consent from the trainer.

(2) If a urine sample cannot be obtained within 2 hours after a horse has been received at the detention barn, a blood sample shall be secured by a veterinarian.

(3) The veterinarian in charge of the detention barn may, in his sole discretion, take a blood sample in lieu of a urine sample at any time if he believes it physiologically to be for the best interest of the horse.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.314. Horses with desensitized nerves.

A horse that has been nerved, blocked with alcohol or other medical drug that desensitizes the nerves above the ankle is not be permitted to race.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.315. Test reports.

Urine or blood test reports prepared by the official chemist of the Commission shall be deemed prima facie correct and all steps undertaken in the collection, preservation, handling and testing thereof shall be presumed correct in the absence of affirmative proof to the contrary.

Source

The provisions of this § 163.315 amended March 4, 1977, effective March 5, 1977, 7 Pa.B. 611.

Notes of Decisions

The purpose of the presumption in this section, which places an affirmative burden of proof on the alleged violator and deeming urine or blood test reports prepared by official chemists of the Commission to be prima facie correct is to simplify the Commission's burden by eliminating the necessity for the attendance at the hearing of every person involved in the procurement and actual testing of the samples. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

Blood and urine tests are accorded prima facie correctness to eliminate the necessity for the attendance at the hearing of every person involved in the procurement and testing of the sample. *Wise v. Horse Racing Commission*, 514 A.2d 308 (Pa. Cmwlth. 1986).

The petitioner did not meet his burden of proof in showing that straws, containing cocaine, were not sealed in a plastic bag after seizure and, therefore, supporting his argument that the chain of custody was broken as the steps taken in collecting, preserving and handling a specimen tested by the Commission's official chemist are deemed proper unless affirmative proof to the contrary is shown. *Luzzi v. State Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.316. Repeated offenses by owners and trainers.

An owner or trainer who once having been suspended for a violation of this chapter, or of the same or similar rule in another racing jurisdiction, and who is thereafter found guilty of a further violation by this Commission, or another racing commission or turf governing body shall be considered guilty of a second offense, and the owner or trainer or both shall be ruled off the tracks in this Commonwealth.

Source

The provisions of this § 163.316 adopted July 14, 1972, effective July 15, 1972, 2 Pa.B. 1341.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.317. Mistreatment of horses.

A licensee or other person under the jurisdiction of the Commission may not alone or in concert with another person permit an animal under his control to be subjected to a form of cruelty, mistreatment, neglect or abuse or abandon, or to injure, maim or kill or administer a noxious or harmful substance to or deprive an animal of necessary care, sustenance, shelter or veterinary care.

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).

§ 163.318. Split samples.

(a) The test sample of the winner of each race and of horses finishing in the money in a race for which there is exotic wagering shall be taken, and a test sample shall be taken from other horses as the Commission or stewards may direct. If there is a problem in securing a test sample, the following procedures apply:

(1) A veterinarian may inject up to 1/2 cc. of Lasix to enhance securing a sample upon the written approval of the trainer.

(2) If a urine sample is not obtained in 2 hours and either the trainer or the veterinarian elects not to induce the sample by Lasix, a blood sample shall be taken upon the written approval of the trainer.

(3) In all cases a urine sample, a urine sample induced by Lasix or a blood sample shall be secured, regardless of delay involved.

(b) The urine or blood sample secured under the procedures as set forth in subsection (a), shall be split into two parts. One portion shall be delivered to the Commission's official chemist for testing. The remaining portion shall be maintained at the detention barn from where it was secured. Both portions shall be stored and shipped at the same range of temperatures and kept and transported in similar fashion.

(1) Urine will not be split if less than 50 cc. are obtained. In these instances, either a blood sample shall be taken or the horse detained until an adequate urine sample can be secured. In every event, "primary" and "split" portions of a sample shall always be taken at the same time and shall be of the same substance.

(2) Blood samples shall initially be taken in a quantity to insure that ample portions shall be obtained.

(c) Upon application by the trainer or owner of the horse in question, the split portion of the sample taken shall be tested by a laboratory designated by the Commission and approved by the Horsemen's Benevolent and Protective Association.

(d) If the test confirms the findings of the original laboratory, it is considered to be a prima facie violation of the applicable provisions of this chapter.

(1) If the test of the split portion does not substantially confirm the findings of the original laboratory, the Commission will not consider the sample to constitute a prima facie violation of this chapter and no penalty will be imposed.

(2) In order that the split sample be tested, the owners or trainers of the horse in question shall request in writing to the Commission that the split sample be retested. The request shall be received by the Commission within 48 hours after notification of the initial positive test or within

a reasonable period of time established by the Commission after consultation with the original laboratory. The reasonable time is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance. If the findings of the split sample laboratory substantially confirm the findings of the original laboratory, the owners or trainers requesting the testing of the split sample shall be responsible for the payment of expenses involved in the testing of the split sample. If the findings of the split sample laboratory do not substantially confirm the findings of the original laboratory, the Commission will assume testing costs of the split sample.

(3) If the Commission is unable to secure the services of a laboratory to test the split portion of a sample, the Commission will have the option of having the split sample retested at the laboratory which tested the original sample. The owner and trainer affected will be notified by the Commission. If the owner or trainer does not wish to have the split sample retested at the laboratory conducting the original test, the individual may, within 24 hours, attempt to secure the services of a laboratory acceptable to the Commission to conduct the split sample retesting.

(4) If the Commission, within 24 hours, is unable to contact the trainer or owner affected by calling him at the telephone number on his latest license application or track location at the track where the sample was taken, the Commission will have the retesting undertaken by the laboratory which tested the original sample.

(e) If an Act of God, power failure, accident, strike or other action prevents a retest from being made which is beyond the control of the Commission, the results of the primary official test shall be accepted as prima facie evidence.

(f) During the pendency of a proceeding involving a claim that a horse has run with proscribed medication, the stewards shall see that notice of the proceeding is posted in the office of the Secretary at tracks in this Commonwealth where the horse may run or be offered for sale. The obligation shall continue until the horse is sold or transferred or until a final determination of the medication violation is handed down which is not appealed, whichever occurs first.

Source

The provisions of this § 163.318 amended through January 22, 1982, effective January 23, 1982, 12 Pa.B. 394. Immediately preceding text appears at serial pages (56257) and (60185).

Notes of Decisions

Loss of the Split Sample

The State Horse Racing Commission was entitled to consider the findings of the primary sample to constitute prima facie evidence of a violation sufficient to impose a fine or permanently revoke the race horse trainer's license even though there was no confirming test results from the split sample, where the split sample was stolen while in the custody and control of the commission's agent, Airborne Express, and the theft, barring active participation, was an act that was outside the control of the Commission. *Monaci v. State Horse Racing Commission*, 717 A.2d 612 (Pa. Cmwlth. 1998).

The action of throwing away and thus destroying a split sample by employees of the Commission after the samples had been covered with soot by a fire was tantamount to a denial of administra-

tive due process. *Delaney v. State Horse Racing Commission*, 535 A.2d 719 (Pa. Cmwlth. 1988).

Prima Facie Violation

Verification of a positive horse blood or urine sample by an independent laboratory shall establish a prima facie violation of these regulations. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

Split Samples

Test samples of blood or urine must be obtained from every horse winning a race, and from all horses finishing “in the money” in a race for which there is exotic wagering. The samples shall be split in two parts, one of which is to be delivered to the Commission’s official chemist for testing, with the remaining portion of the sample held at the detention barn for independent testing if required. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

Cross References

This section cited in 58 Pa. Code § 163.302 (relating to foreign drugs, medications or substances); and 58 Pa. Code § 163.308 (relating to official laboratory).