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VIRGINIA RACING COMMISSION

January 21, 2014

10700 Horseman's Road

New Kent, VA 23124

Commencing at 9:00 a.m.

COMMISSION MEMBERS:

J. Sargeant Reynolds, Jr., Chairman
D.G. Van Clief, vice Chairman (via telephone)
Carol G. Dawson
Stran L. Trout
Philip T. O'Hara

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary
Kimberly C. Mackey, Office Administrator
Joseph M. Roney, Director of Security & Operations
C. Richard Harden, DVM, Equine Medical Director

ATTORNEY GENERAL'S OFFICE

Joshua E. Laws, Esquire

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1 MR. HETTEL: Okay. I would suggest we go ahead
2 and start with the appeal of trainer Leanne Hester.
3 She is represented by Mr. Petramalo. Frank.

4 MR. PETRAMALO: I know you're not gonna believe
5 this, but I'm gonna be brief.

6 MR. LAWS: I apologize for interrupting, Frank,
7 and especially since you're gonna be brief, but
8 before we get started, do you mind if we move into
9 the record the exhibits and documents that you
10 provided?

11 MR. PETRAMALO: No. Certainly not. What I
12 would do is formally move into the record Exhibits 1
13 through 13 that are attached to the memorandum of
14 Leanne Hester, Anne McDonald and Tonya Withers. I
15 think everybody has got a copy; if not, I've got more
16 copies.

17 MR. LAWS: Any objections from any
18 commissioner?

19 MR. REYNOLDS: No.

20 MR. LAWS: Do I hear a motion?

21 MR. REYNOLDS: Yes. So moved.

22 MR. LAWS: Second?

23 MR. TROUT: Yes.

24 MR. VAN CLIEF: Josh, can you hear me?

25 MR. LAWS: Yes. I can hear you. Can you hear

1 me?

2 MR. VAN CLIEF: I can. I need to let you know
3 I can virtually not hear what's going on there.
4 Unless somebody speaks right into the phone, I'm not
5 going to be able to hear you. I just want you to
6 know that.

7 MR. HETTEL: Let's see if you can turn up the
8 volume.

9 MR. LAWS: D.G., at this point, Frank's moving
10 closer to the phone.

11 So far, we've had a motion to admit Exhibits 1
12 through 13 into the record. Is there a second?

13 MR. TROUT: Second.

14 MR. REYNOLDS: All those in favor, say aye.

15 NOTE: The Commission votes aye.

16 MR. REYNOLDS: Opposed?

17 NOTE: There is no response.

18 MR. REYNOLDS: The ayes have it.

19 MR. LAWS: Without objection, those 13 exhibits
20 are moved into the record.

21 Frank, whenever the technology cooperates, you
22 can proceed when you're ready.

23 MR. PETRAMALO: D.G., can you hear me now?

24 MR. VAN CLIEF: I heard that question. Before
25 that, I didn't hear anything.

1 MR. PETRAMALO: Okay. I didn't say anything.

2 MR. HETTEL: would it be more convenient to
3 stand before the speaker? It's essential for him to
4 hear it.

5 MR. PETRAMALO: Sure. I can do that.

6 MR. LAWS: We lost him.

7 MR. HETTEL: Let me redial it.

8 Frank, take over.

9 MR. PETRAMALO: My name is Frank Petramalo.
10 I'm here today representing Leanne Hester, Anne
11 McDonald and Tonya Withers, in connection with an
12 appeal from two stewards' rulings. Next to me is
13 Leanne Hester.

14 The first ruling under appeal is the stewards' 15
15 day suspension, which would go into effect during
16 this summer's Thoroughbred meet, and a \$1,000 fine
17 against Leanne for a finding in a urine sample of her
18 horse, Good Gracious, which contained a trace amount
19 of Mepivacaine. I'll get to what Mepivacaine is in a
20 minute.

21 The second ruling also relates to the same horse.
22 The owners, Anne McDonald and Tanya Withers, had
23 their horse disqualified from her second place finish
24 and had their \$4,800 share of the purse forfeited.
25 The horse was placed last, again, because of the

1 finding of the trace amount of Mepivacaine in the
2 horse's urine.

3 Now, Mepivacaine is a local anesthetic that is
4 lawfully and often used by veterinarians. To put it
5 most simply, if a horse gets cut for whatever reason,
6 the vet numbs the area around the laceration with
7 Mepivacaine, sews up the horse, end of story.

8 However, Mepivacaine does have -- how should I
9 put it? -- unlawful uses. It can be injected into
10 the joint of a horse or around the nerve to deaden
11 that sensation. So if you have a lame horse and
12 you're unscrupulous, you can, in effect, make the
13 horse run as though it was normal although it is
14 injured. That's very dangerous, because a horse
15 running while he really is lame can severely injure
16 itself.

17 Now, in this case, the urine sample came back
18 from the lab with a finding of 27 nanograms. A
19 nanogram is a billionth of a gram; very, very small
20 amount.

21 Dr. Harden, in his initial report to the stewards
22 upon receiving this, and I think you'll find that at
23 Tab Four, basically said 27 nanograms is well below
24 what would be associated with any anesthetic effect.
25 In Tab Five, his subsequent report, the

1 pharmacological report, the scientific studies show
2 that as long as the concentration is below 65
3 nanograms, there really is no effect on the horse.

4 Now, Dr. Harden undertook an investigation,
5 nonetheless, to find out what the situation is with
6 regard to this Mepivacaine. He learned from Dr. Dan
7 Dreyfus, who was Leanne's treating veterinarian for
8 Good Gracious during that period, that he didn't
9 administer that to the horse, and Leanne didn't,
10 either. So the question then became where did it
11 come from.

12 we did our own investigation and we presented our
13 results to the stewards. Basically, it appears that
14 this was likely stall contamination, and here's how
15 that came about.

16 we have and we presented to the stewards and we
17 have here at Tab Six the record for -- the vet's
18 record for Good Gracious for the month of June. You
19 will see there that she never received any
20 Mepivacaine.

21 However, Leanne had another horse that she
22 trained, Sweet Katy O'Grady. Sweet Katy stepped into
23 a stall fan. If you've ever been to the back side,
24 there are fans set up on the ground blowing into the
25 stall. Well, Sweet Katy stepped into one of those

1 and cut herself. Dr. Lockhard, who is in practice
2 with Dr. Dreyfus shows up, the horse is bleeding, he
3 injects the horse with Mepivacaine, sutures up the
4 horse. That record of administration is at Tab 7.

5 Now, after Sweet Katy's injury, Leanne shifted
6 her away from the track. That stall that Sweet Katy
7 was in was kind of a swap stall or a utility stall
8 that many horses went in and out of, including Good
9 Gracious. For example, when Good Gracious comes out
10 of her stall so the groom can go in there and clean
11 the stall, Good Gracious goes into the swap stall or
12 the stall where Sweet Katy used to be. So it seemed
13 that that might be the source.

14 Now, it was reinforced by the following. This,
15 to be fair to the stewards, was not presented to the
16 stewards because I wasn't aware of it at the time.

17 Good Gracious's blood sample, and that's at Tab
18 8, not urine, now, blood sample, came back with a
19 minor trace of Flunixin. Flunixin, the trade name is
20 Banamine, but I'm sure Doc will jump on me for saying
21 this, but it is a nonsteroidal anti-inflammatory. I
22 call it aspirin for horses.

23 well, there was a trace of that in Good
24 Gracious's blood. well, if you look at the
25 medication records, Good Gracious never in the month

1 of June ever received any Flunixin; however, Sweet
2 Katy, at the same time she got Mepivacaine, also got
3 an injection of Banamine. So it seems to me that
4 re-enforces the notion that it's likely that we may
5 have had some stall contamination.

6 The way that comes about, the people here who are
7 familiar with horses know that horses get bored and
8 chew on anything. It's not unprecedented here at
9 Colonial to have a situation like this.

10 I think about four years ago, we had a horse ship
11 in named Coupe Deville, went into a stall. Coupe
12 Deville won the race, comes back with a positive 75
13 nanograms above the 65 level of Mepivacaine.

14 Dr. Harden undertakes an investigation and guess
15 what? The day before, there was a horse in that same
16 stall bleeding from a cut that occurred when the
17 groom cut the bandages that went in there, shot the
18 horse full of Mepivacaine, bingo. The next day the
19 other horse comes in, there's the likely source.

20 Now, we've also had slightly different types of
21 contamination. Last summer, not this past summer,
22 but the racing summer before, we had a horse, I
23 forget what his name is. Serious John or something
24 like that. Again, came up with a positive for
25 Lidocaine, which like Mepivacaine is a local

1 anesthetic. The vet never administered it . The
2 trainer never did. The stewards pretty much
3 concluded that it was probably contamination from
4 either hoof packing or leg pain.

5 So it's infrequent, but it's not unheard of. I
6 would suggest that's what likely happened here,
7 because I don't think there's any dispute that
8 Mepivacaine was not administered either by the
9 trainer or the vet.

10 More importantly, even ascribing the worst
11 possible motivation to someone, there would be no
12 reason to hit that horse with Mepivacaine because it
13 wasn't lame, it was fine. The mare was fine. No
14 problem whatsoever.

15 Now, the problem with the stewards in looking at
16 all this is I think they overlooked the guiding
17 principle by which they are supposed to assess
18 reports from the lab.

19 I quoted it in my memo. I don't know whether I
20 included the actual regulation. Your regulations
21 basically say to the stewards when you get a report
22 back from the lab, in order to determine whether it
23 is a positive in the sense that it's a violation,
24 you've got to do a number of things, including
25 looking at the concentration level, determining

1 whether that had any likely effect on the horse, and
2 also to see whether contamination may have
3 contributed to the result.

4 well, in this case, regretfully, the stewards
5 overlooked that. They disregarded the advice from
6 Dr. Harden. Dr. Harden said 27 nanograms is below
7 any level that would have any effect on the horse,
8 and they disregarded the likelihood of contamination.
9 Rather, they seized on what we call the trainer
10 responsibility rule. That is in your regulations and
11 I included it at Tab 13, saying, well, the horse came
12 back with some medication in its urine, the trainer
13 is absolutely responsible, end of story.

14 Now, they, I think, went further and said, well,
15 in this case, the situation is aggravated because the
16 horse also on race day was given Sarapin. Now, this
17 Sarapin never came back in any test result. They
18 only knew of that because we voluntarily presented
19 the medication record for the horse. So the stewards
20 were going through it and they saw Sarapin and they
21 got all excited about that.

22 well, it's correct that Sarapin should not have
23 been administered on race day. Why the vet did it, I
24 don't know. But in essence, it's a no-harm, no-foul.

25 Sarapin has been around forever. It's made from

1 the leaves of a pitcher plant, and vets and trainers
2 believe that it's got some analgesic effect. The
3 problem is the science doesn't back that up. Your
4 lab does not test for Sarapin because there's nothing
5 to test for.

6 If you take a look at Dr. Sams, your lab
7 director, I wrote to him and I said, Dr. Sams, do you
8 test for Sarapin, and if not, why not. He said we
9 don't test for it and the reason is it doesn't
10 contain any identifiable substance that affects a
11 horse.

12 I also attached as Tab 12 a paper that Dr. Sams
13 co-authored many years ago, which basically came to
14 that same conclusion. He says in the abstract, it
15 seems clear that Sarapin has no significant classical
16 local anesthetic actions in horses and probably not
17 in any other species. Bottom line, it's a placebo.
18 It probably makes vets and trainers feel good, but it
19 does absolutely nothing for the horse.

20 So I think what the stewards also failed to do
21 was to look at what we lawyers would call the
22 applicable precedent. Remember in the Coupe Deville
23 case I told you was 75 nanograms? well, in that
24 case, the purse was forfeited because it was likely
25 that that level had some effect on the horse and

1 could have affected the outcome, but the trainer was
2 not suspended; he was fined \$500.

3 In the other case, the Silent John case, because
4 the concentration of Lidocaine was so small that it
5 did not likely have any effect on the horse, the
6 purse was not lost. The trainer was certainly not
7 suspended; he was fined \$500.

8 So my argument to the stewards was this case is
9 the same. We have an undisputed finding that the
10 Mepivacaine was not intentionally administered to the
11 horse, either by the vet or the trainer, that the
12 level was a minute trace, not likely having any
13 effect, and there's a probability that it was a
14 result of stall contamination.

15 So my argument was a \$500 fine, that's it. Well,
16 that didn't carry the day. I think the stewards were
17 wrong because they ignored the facts and they ignored
18 the applicable regulation that they should work
19 under.

20 Now, the purpose of your medication regulations,
21 at least as far as I'm concerned, is really two-fold.
22 One, it's to ensure the safety and welfare of the
23 horse. That's number one. Number two is to
24 basically prevent cheating by owners and trainers.
25 They are not allowed to use drugs of any sort that

1 would give them a leg up or an advantage over the
2 rest of the competition.

3 So you ask yourself in this case were either of
4 those purposes served by the harsh and unprecedented
5 penalties levied here, and I suggest no, it wasn't.
6 It seems to me the reasonable thing to do is to
7 follow precedent, a \$500 fine, because Leanne is
8 responsible, but certainly not a 15 day suspension,
9 because practically speaking, here is what would
10 happen there.

11 The suspension from the stewards is set for June
12 of 2014. Given the fact that we have such a short
13 meet, that puts Leanne out of business for this
14 summer. She has a small farm in Gloucester, brings a
15 small group of horses every summer to Virginia to
16 race, mostly Virginia-breds. A 15 day suspension
17 puts her out of business and it's not fair and that's
18 not called for.

19 With respect to the owners, they had almost no
20 contact whatsoever, other than they write the checks
21 and pay the bills, but their horse did not have any
22 competitive advantage over any other horse because
23 the level of Mepivacaine was so small.

24 So in summary, I would suggest that you reverse
25 and modify the stewards' rulings, to the extent of a

1 \$500 fine for Leanne, no suspension, and no
2 forfeiture of the purse.

3 Is that brief enough, Bernie?

4 MR. HETTEL: Well done.

5 MR. REYNOLDS: Question. The stewards who hear
6 these cases, are they different stewards every year
7 when you're trying cases in front of them?

8 MR. PETRAMALO: For the past -- yes and no.
9 Clinton Pitts and Ron Herbstreet have been here for
10 at least two years. This was Mike Pearson's first.
11 Prior years, we had a group of Maryland stewards.
12 I'm having a senior moment here.

13 MR. HETTEL: It was different stewards.

14 MR. PETRAMALO: Yeah. Different stewards.
15 Phil Grove, Jean Chalk and Adam Campola.

16 MR. O'HARA: Campola.

17 MR. PETRAMALO: Campola, correct, and there
18 have been different mixes over the years.

19 MR. REYNOLDS: Go ahead.

20 MR. TROUT: I have one question here, and I
21 think it is answered in Exhibit 4, but is there a
22 lower limit, threshold limit on this particular
23 medicine? Is it 10 nanograms? Is that the lower
24 limit, the recommended limit?

25 MR. PETRAMALO: There's really no threshold.

1 The RMTc recently has recommended a 10 nanogram
2 threshold. Where that came from, I don't know,
3 because I haven't seen any science to back it. The
4 science backs the higher 65 nanogram level. But in
5 Virginia --

6 MR. TROUT: The 65, that's dealing with the
7 actual effect that can be noticed?

8 MR. PETRAMALO: Yes.

9 MR. TROUT: That's a scientific-type
10 conclusion, as opposed to a legal limit or lower
11 limit?

12 MR. PETRAMALO: Yes, but the whole theory of
13 thresholds is that they're based on science. A
14 threshold basically means the science shows if you're
15 below, it doesn't have any active medicinal effect on
16 the horse, whereas if you're above, then it does and
17 you're in trouble.

18 MR. TROUT: Okay.

19 MR. PETRAMALO: For example, the Flunixin that
20 I talked about, we have a standard here in Virginia
21 of 20 nanograms. The trace amount that was found in
22 Good Gracious was 1.7. When a result like that comes
23 back, you completely disregard it. You don't even
24 look at it because it's so low.

25 MR. TROUT: What the lower limit was and what's

1 used, it's actually by the stewards to determine a
2 lower limit. In other words, if it had been -- well,
3 10 is essentially the threshold, treat it as that.
4 If it had been nine, then it probably would have been
5 a different conclusion in your estimation?

6 MR. PETRAMALO: I'm not sure. I think the
7 stewards ignored that section of the regulations
8 which says consider the concentration and the likely
9 effect it had on the horse. I think they saw it
10 comes back with 27 nanograms, it's in there, end of
11 story, trainer responsibility.

12 MR. TROUT: That's the only question I had at
13 this time.

14 MR. O'HARA: I don't have any questions. I'm
15 comfortable with that.

16 MR. LAWS: Frank, can you check and see if D.G.
17 is still with us?

18 MR. PETRAMALO: Are you still with us?

19 MR. VAN CLIEF: I am, Frank. I think Stran
20 just asked my question. One clarifier. In the
21 Virginia rules, is Mepivacaine allowed at all?

22 MR. PETRAMALO: Yes. It is.

23 MR. VAN CLIEF: What is the threshold again?

24 MR. PETRAMALO: There is no threshold. Am I
25 correct on that?

1 MR. VAN CLIEF: Did he call it a positive? Is
2 that correct?

3 MR. PETRAMALO: Well, he did not call it a
4 positive. He just reported that there was a
5 concentration of 27 nanograms in the urine.

6 MR. LAWS: D.G., hold on one second.

7 NOTE: Dr. Harden is sworn under oath.

8 MR. HETTEL: Come closer to the phone, Doctor.

9 DR. HARDEN: Our new rule going forward, which
10 was just recently established, we will basically look
11 at the RMTc recommendations, which is a 10 nanogram
12 threshold; however, the -- and one other point.

13 The lab reported the 27 nanograms as a failed
14 test. That's how they report the test. They don't
15 tell us positive or negative. It was a failed test
16 with a presence of 27 nanograms of Mepivacaine.

17 Now, the threshold does not necessarily -- if
18 you're over a 10 nanogram threshold, that does not
19 mean that you're automatically guilty. That does
20 refer to the rule that you commented on where the
21 stewards shall consider the concentration and the
22 likely effect of the race.

23 That rule prompted me not to give the stewards
24 advice, as you characterized it, but I gave them
25 information. So in other words, I don't advise the

1 stewards. I give them information that I understand.

2 It is correct that the lowest level of
3 concentration of finding where Mepivacaine would have
4 a physiological effect on the horse at the time of
5 racing would be 63 nanograms, and so this was the
6 advice -- not the advice, this was the information
7 that I conveyed to the stewards.

8 MR. VAN CLIEF: That scientific information
9 that we have indicates that at 27 nanograms,
10 Mepivacaine is not going to have an effect on the
11 horse?

12 DR. HARDEN: That's correct, from the
13 scientific data that we have been able to review.
14 Now, in defense of reporting a positive at say 27
15 nanograms, that enables the Commission staff to
16 investigate the case to see if there is, you know,
17 justification where the horse may actually have
18 needed Mepivacaine or some other similar medication.
19 So it's basically a set point for us to investigate a
20 case and then refer it to the stewards for their
21 judgment.

22 MR. VAN CLIEF: Doctor, was there any -- in
23 your investigation, I take it there was no indication
24 that this mare was lame or needed Mepivacaine?

25 DR. HARDEN: That's correct. Yes, sir. We did

1 not see any justification to use that drug or that
2 there was a need or anything that the trainer would
3 have instituted that use. We didn't see anything
4 else in this case that suggested, you know, that
5 there was a criminal act.

6 MR. VAN CLIEF: The information that we got
7 that neither the trainer nor the attending
8 veterinarian that administered the drug was from
9 them, was that the only information we had and was
10 that taken under oath or an affidavit? How did we
11 get that?

12 DR. HARDEN: It was not taken under oath, but
13 it was taken through a personal conversation that I
14 had with two veterinarians. Personal conversation
15 that I had with them, private conversation, and that
16 was substantiated by their office providing written
17 billing records for the horses.

18 MR. VAN CLIEF: So you are comfortable then
19 that neither the veterinarian nor the trainer
20 administered Mepivacaine; is that correct?

21 DR. HARDEN: Yes, sir.

22 MR. VAN CLIEF: Thank you.

23 MR. REYNOLDS: Is there any written report from
24 the stewards for this whole thing? Will there be any
25 stewards here?

1 MR. PETRAMALO: The rulings are at Tabs 1 and
2 2.

3 MR. HETTEL: I've got a statement written by
4 Clinton Pitts that Dave Lermond almost read.

5 NOTE: David Lermond is sworn under oath.

6 MR. LAWS: Can you state your name for the
7 record?

8 MR. LERMOND: David Lermond. This is a
9 document written by the stewards.

10 The stewards are of the understanding that this
11 appeal today of their Ruling 13-031 by Ms. Hester
12 through counsel is to the severity of penalty and is
13 not contesting the findings of fact nor any of the
14 evidence submitted at the stewards' hearing on
15 September 13, 2013.

16 Although the penalty issued to Ms. Hester falls
17 well within the RCI recommended guidelines for a
18 Class Two drug with a penalty Category B, in
19 retrospect, the Board of Stewards feel we were very
20 lenient.

21 Following the 2013 Colonial Downs flat/steeple
22 chase meeting, two Virginia Racing commissioners,
23 Mr. Hettel, Mr. Hicks and Mr. Petramalo attended the
24 Jockey Club round table at Saratoga in August.

25 That day, every single speaker addressed the drug

1 problem in Thoroughbred racing, one of them even
2 going so far as to suggest out-of-competition
3 testing.

4 The following month at its September meeting, the
5 Virginia Racing Commission unanimously adopted the
6 RCI Model Medication Rules and Penalty Guidelines,
7 and on December 11, 2013, the Kentucky Racing
8 Commission also approved these uniform rules and
9 guidelines.

10 In December, there was a damning article in the
11 New York Times and congressional hearings began in
12 Washington as to whether there was a drug problem in
13 horse racing. At the Senate hearings, it was even
14 suggested using the United States Anti-doping Agency
15 to clean up horse racing's use of drugs.

16 Drugs and horse racing are but one of the many
17 issues that plague this great sport and erode the
18 confidence of our fan base.

19 Following the stewards' hearing for Ms. Hester,
20 all three stewards conferred several times,
21 discussing all the issues and mitigating
22 circumstances surrounding this case before reaching a
23 decision and we found the preponderance of the
24 evidence overwhelming.

25 A review of the veterinarian's treatment records

1 for the filly Good Gracious for the month of July
2 clearly shows that between races, treatments for the
3 filly were with the intent of getting her back in the
4 entries as soon as possible, albeit a short meeting,
5 rather than a concern for the filly's longterm health
6 and welfare.

7 There were also blatant and repeated violations
8 of approved race day medication treatment. One, the
9 use of Sarapin, for which there is no known
10 laboratory test as a race day bleeder adjunct.

11 Two, according to Equibase records from 2011
12 through 2013, trainer Hester ran 82 horses and never
13 ran a horse outside the Commonwealth of Virginia in
14 2011 or 2013. This would indicate training horses is
15 not Ms. Hester's main source of income and or she was
16 acting as a program trainer.

17 Since this ruling, federal agents have arrested
18 several licensees in another jurisdiction for drug
19 violations with regard to race horses and their
20 licenses were suspended pending the outcome of these
21 charges.

22 As commissioners of horse racing for the
23 Commonwealth of Virginia, today you have an
24 opportunity to help clean up our own house by
25 affirming the stewards' Ruling 13-031.

1 Respectively submitted, Clinton P. Pitts, Jr.,
2 Senior Commonwealth's steward; Ronald Herbstreet,
3 Commonwealth's steward; and Michael A. Pearson,
4 Commonwealth's steward.

5 MR. PETRAMALO: May I respond to that?

6 MR. REYNOLDS: Yes, sir.

7 MR. PETRAMALO: I have been practicing law for
8 45 years. That's one of the most outrageous
9 statements that I have ever heard. Point number one.
10 Well, let's get Leanne because the New York Times is
11 excited about drugs and horse racing. Give me a
12 break.

13 Secondly, they go through the record, the
14 treatment record, the medication record for Good
15 Gracious and they say, ah-ha. She's running the
16 horse into the ground. That's unmitigated
17 boulderdash.

18 Anybody who knows anything about horse racing,
19 take a look at that. The only thing this horse got
20 in the month of June was every time it raced, it got
21 Lasix, and every time it raced with Lasix, it also
22 got a conjugated estrogen, which is lawful and
23 permitted by this Commission.

24 It's either Premarin or Thylline. That's what
25 they're for. That's what they're for. The only

1 medication that this horse ever got was Bute, 24
2 hours before it got an aspirin. Permitted by
3 regulations here.

4 There was one exception. The horse must have
5 been tying up or cramping its muscles, because if
6 you'll note at Tab 6 on June 28, it gets an injection
7 of Robaxin. That's Methocarbamol. That's a muscle
8 relaxant.

9 That's all this horse got, and for the stewards
10 on their own and for the first time to conclude that,
11 ah-ha, Leanne is doing everything she can to get this
12 horse to the racetrack, absolute boulderdash. No
13 proof of that whatsoever.

14 Then the final thing, let's send a message.
15 Let's send -- let's send the message by severely
16 penalizing a small trainer in her own jurisdiction
17 who races only here, so therefore, she must be
18 incompetent or must be cheating is absolutely
19 outrageous, absolutely, and I would expect that you
20 totally disregard that nonsense.

21 I apologize for getting excited, but boy, that
22 was really something.

23 MR. REYNOLDS: This incident happened before we
24 adopted our --

25 MR. VAN CLIEF: And I have a question about

1 that statement, about the statement, David, the one
2 you just read from the stewards. Was there an
3 implication that there was a linkage between Hester
4 and some owners out-of-state or am I confused with
5 that?

6 MR. PETRAMALO: No. I'm sorry, D.G. That's
7 another good point. Without any evidence whatsoever,
8 because Leanne is a small-time trainer, only races in
9 Virginia, only had 82 starts in the last year, they
10 say she must be a program trainer. She must be
11 fronting for somebody else. Absolute crap. She's
12 been coming here for the last ten years with two or
13 three stalls every year. Anybody who has been on the
14 back side knows she trains her horses and she doesn't
15 front for somebody else.

16 MR. VAN CLIEF: Thank you.

17 MR. PETRAMALO: "Absolute crap", by the way, is
18 a legal term.

19 MR. REYNOLDS: Stran.

20 MR. TROUT: Just one question, and this may be
21 for Dr. Harden. You indicated 63 nanograms -- I
22 guess that's the lowest level where an effect would
23 be anticipated? It might affect the performance of
24 the horse; is that correct?

25 DR. HARDEN: Yes, sir.

1 MR. TROUT: But presumably, as with any
2 medicine, there's a graduation where even down to one
3 it might have some effect, but it would not have, I
4 guess, a significant effect until it got to about 63;
5 is that what we're looking at?

6 what I'm looking at is the 27, or whatever it
7 was, that would have less than the effect of
8 something that might be deliberately given to improve
9 the horse's position, but it would have or could have
10 some effect on the horse's performance; is that
11 correct?

12 DR. HARDEN: The 63 nanograms was from a study
13 done in the Gluck Center at Kentucky, and it was
14 based on the lowest possible dosage that would
15 anesthetize a nerve, and so then you take into
16 consideration the time factor.

17 The horse, hypothetically, could have had 500
18 nanograms two days earlier. So time factors into the
19 concentration that's evident, but the drug also wears
20 off. So any physiological effect of the drug
21 diminishes probably more rapidly than the presence of
22 the metabolites in the system.

23 Now, it is theoretically true that 27 nanograms
24 could have an effect, but it would be an unmeasurable
25 effect.

1 MR. O'HARA: what would be the normal dose that
2 would be administered when using Mepivacaine?

3 DR. HARDEN: It depends on your expertise. Two
4 cc's would be the minimum dose if you had it
5 precisely on the horse's nerve.

6 MR. O'HARA: How long would that take to turn
7 into 27 nanograms?

8 DR. HARDEN: That two cc's, the maximum
9 concentration determined from the two cc's would be
10 63 nanograms.

11 MR. LAWS: Dr. Harden, I apologize for
12 interrupting you. At Tab 5 in the third paragraph,
13 it gives the explanation of how the drug is
14 metabolized by the horse and how long it takes for
15 the horse to actually metabolize the drug, and how
16 much, therefore, would be present when the test was
17 administered.

18 So I think that third paragraph would be very
19 helpful to understand what Dr. Harden is saying.

20 MR. REYNOLDS: Ms. Hester, I believe the memo
21 said that you've never had your license suspended
22 before?

23 MS. HESTER: Never.

24 MR. LAWS: I apologize for interrupting.

25 NOTE: Leanne Hester is sworn under oath.

1 MR. LAWS: Thank you. Can you answer his
2 question one more time?

3 MS. HESTER: I have never had any positive
4 tests or any license suspensions or anything.

5 MR. REYNOLDS: Anywhere?

6 MS. HESTER: Anywhere.

7 MR. REYNOLDS: Any jurisdiction?

8 MS. HESTER: Nowhere.

9 MR. REYNOLDS: This is the first time?

10 MS. HESTER: Yes.

11 MR. REYNOLDS: Dr. Harden, do the stewards
12 confer with you when they're doing this investigation
13 to ask you your opinion of whether these drugs had an
14 effect? Basically, the answer you just gave us, did
15 the stewards talk to you or do they talk to another
16 doctor about these medications?

17 DR. HARDEN: The regulations require that --
18 any finding from a laboratory require that I write up
19 a pharmacological report and submit it to the
20 stewards for their use in the hearing, and you have a
21 copy of that report in there.

22 MR. REYNOLDS: Do you all talk back and forth
23 or do they just accept your report and do with it
24 what they will?

25 DR. HARDEN: We do talk, somewhat. It depends

1 on the circumstance. Sometimes we talk more than
2 others. I don't recall specifically how much
3 communication we had on this particular case.

4 MR. REYNOLDS: Okay. Thank you.

5 MS. DAWSON: Mr. Chairman?

6 MR. REYNOLDS: Yes, ma'am.

7 MS. DAWSON: I have a couple questions, and I'm
8 not sure to whom it should be directed. I wonder if
9 the stewards' ruling was affected by administration
10 of the Sarapin. They commented on it, but they don't
11 specify exactly how it violated the rules, other than
12 it shouldn't have been given on race day.

13 MR. PETRAMALO: That's correct.

14 MS. DAWSON: Anybody else? I mean, Dave, can
15 you comment on that?

16 MR. LERMOND: No. I really cannot.

17 MS. DAWSON: Is Sarapin always prohibited? Is
18 that a contributing factor here, is what I'm asking.

19 MR. PETRAMALO: In my reading, I think it's
20 fair to say that the stewards were very concerned
21 when reading the vet records that Sarapin was
22 administered on race day.

23 Technically, a horse should not receive anything
24 on race day except Lasix and its adjuncts, and I
25 agree that that's what the rules said, and the

1 veterinarian should not have given Sarapin, but on
2 the other hand while we are not excusing it, it's a
3 no-harm no-foul, because Sarapin is, in my opinion,
4 snake oil. I has no effect on the horse whatsoever.

5 MS. DAWSON: Is the same true for Premarin?

6 MR. PETRAMALO: No. Premarin is a lawful
7 adjunct to Lasix.

8 MS. DAWSON: It can be administered on race
9 day?

10 MR. PETRAMALO: Yes. Yes.

11 MS. DAWSON: That's why I had the question
12 about Sarapin. It should not have been administered?

13 MR. PETRAMALO: Sarapin should not have been
14 administered.

15 DR. HARDEN: If I could just make one comment.
16 Our regulations in 2013, they have changed going
17 forward. So looking back, our regulations on race
18 day also permit the administration of intravenous
19 electrolytes or fluids and vitamins, and that has in
20 some ways opened the door for veterinarians to give a
21 vitamin jug to a horse on race day, and it was in
22 this context that the Sarapin, which is a plant
23 product, and so some people could --

24 MS. DAWSON: Sort of like a supplement?

25 DR. HARDEN: Yeah. So some people could argue

1 that this was more of a supplement than a drug. I
2 don't want to personally go into that argument, but
3 some people may present that argument.

4 MS. DAWSON: So with the new medication rules
5 that we have, that would clearly be prohibited?

6 DR. HARDEN: Going forward, the veterinarian is
7 not permitted to be in the stall with the horse or
8 touch a horse on race day.

9 MS. DAWSON: But at this time, that wasn't the
10 case?

11 DR. HARDEN: That's correct. Yes.

12 MR. LAWS: I'm sorry. Dr. Harden, just so the
13 record's clear, when Sarapin was administered on the
14 three days in June of 2013, was it against the rules
15 on the days that Sarapin was administered in June
16 2013?

17 DR. HARDEN: In my opinion, yes. There is --
18 someone may argue that it's a vitamin or a supplement
19 or a fluid, and that argument would be another day,
20 but my opinion, it is against the rules.

21 MR. LAWS: Frank, is it your position -- I'm
22 sorry, Mr. Chairman. Can I ask a question?

23 MR. REYNOLDS: Yes, sir.

24 MR. LAWS: Frank, is it your position that it
25 wasn't a violation of the rules to administer Sarapin

1 on those three days in June 2013, or are you all
2 acknowledging that it was improper to do that?

3 MR. PETRAMALO: I would be willing to concede
4 at this point that sarapin should not have been
5 administered. I did not explore the supplement
6 argument. I was more concerned on seeing under the
7 regulations whether this had any impact on the horse,
8 whether it was cheating, and it basically was snake
9 oil.

10 MR. LAWS: Okay.

11 MR. REYNOLDS: Are there any other questions
12 from the commissioners?

13 MR. TROUT: Just one. I was looking through
14 the 13-031, and it does list the administration of
15 Sarapin as part of what led to their conclusion. It
16 mentions it as something in there.

17 MR. PETRAMALO: Yes.

18 MR. TROUT: It's not something that came to
19 light after that point?

20 MR. PETRAMALO: No, no, no. They clearly said
21 it in their --

22 MR. TROUT: It's not something about the
23 caine-type administration?

24 MR. PETRAMALO: Yes. What I pointed out in my
25 memo, what the stewards believed aggravated the

1 Mepivacaine situation was the administration of
2 Sarapin, which they found out when we supplied the
3 records, the vet records.

4 But at the same time, I supplied two of the
5 stewards the abstract of the science article that Dr.
6 Sams wrote, which basically said Sarapin is useless
7 in a horse. So they were aware of that.

8 MR. REYNOLDS: You told them that you
9 administered the Sarapin, or did they find it in the
10 records that you turned over?

11 MR. PETRAMALO: No. They found it in the
12 records.

13 MR. REYNOLDS: Okay.

14 MR. PETRAMALO: Because there was never any
15 report back from the lab. The lab doesn't test for
16 the stuff.

17 MR. REYNOLDS: Right. I understand. Okay.
18 Anything else?

19 MR. VAN CLIEF: Frank, what would the
20 motivation be to administer Sarapin if both the vet
21 and trainer are not aware or are aware that it is no
22 more than a placebo effect?

23 MR. PETRAMALO: Well, Leanne's testimony before
24 the stewards was basically she said I've got a
25 fractious filly and I'm not sure why. We started

1 giving her Lasix and she washes out, but in the
2 paddock she's very fractious. She asked Dr. Dreyfus
3 whether there was something he could give, and he
4 said, well, I recommend Sarapin. This was the
5 testimony.

6 Now afterwards, the horse was more relaxed in the
7 paddock. Now whether it was from the administration
8 of Sarapin or the horse getting used to going to the
9 paddock, who knows, but that's basically what the
10 testimony showed.

11 MR. REYNOLDS: Is that it? Do we need go into
12 closed session?

13 MR. LAWS: We do. At this point, Mr. Chairman,
14 would you like to make a motion to go into closed
15 session to receive legal advice on the case that you
16 just heard?

17 MR. REYNOLDS: Yes, I would.

18 MR. TROUT: So moved.

19 MR. REYNOLDS: Second?

20 MR. O'HARA: Second.

21 MS. DAWSON: Second.

22 MR. REYNOLDS: All right, then we will go into
23 closed session.

24 MR. HETTEL: We could move the phone to the
25 conference room and he could be a part of the

1 conversation.

2 NOTE: The Commission adjourns for a
3 closed session at 9:55 a.m.

4 MR. LAWS: We are back from the closed session,
5 if anybody wants to make that motion to come back
6 from closed session.

7 MR. O'HARA: So moved.

8 MS. DAWSON: Second.

9 MR. REYNOLDS: We just deliberated and we are
10 going to take a vote. Excuse me. Sorry. First day
11 on the job.

12 There's a motion on the table to reopen the
13 session, reconvene. There's been a second, so we'll
14 take a vote. All in favor, say aye.

15 NOTE: The Commission votes aye.

16 MR. REYNOLDS: All opposed?

17 NOTE: There is no response.

18 MR. REYNOLDS: Hearing none, we'll move
19 forward.

20 MR. LAWS: would the motion also confirm that
21 we only discussed the case and nothing else that was
22 inappropriate to discuss in closed session.

23 Regarding the two stewards' rulings, there will
24 be a written ruling issued for each ruling. Ruling
25 Number 13-031 and 13-032, there will be two separate

1 written rulings. Regarding the first stewards'
2 ruling, the Commission has voted to uphold the \$1,000
3 penalty to trainer Hester, but to remove the 15 day
4 suspension. The only penalty to the trainer would be
5 the \$1,000 fine. The suspension has been overturned.

6 Regarding the second ruling, the Commission has
7 voted again unanimously to uphold the forfeiture of
8 the purse, and reasons for each decision will be in
9 writing and will be distributed within the time frame
10 allowed by the applicable law.

11 So Frank, if you have any questions about
12 that --

13 MR. PETRAMALO: No.

14 MR. LAWS: -- just give me a call. At this
15 point, we need to get Ms. Nelson on the line.

16 MR. HETTEL: She may very well be.

17 MR. LAWS: I don't know how to use that thing.

18 MR. HETTEL: Ms. Nelson, have you joined the
19 conference call?

20 NOTE: There is no response.

21 MR. LAWS: Apparently not.

22 MR. HETTEL: She had said she was going to send
23 correspondence to you that she was going to dial in
24 at 9:30?

25 MR. LAWS: Correct.

1 MR. HETTEL: Okay. why don't I just do this?
2 why don't I just call her?

3 MR. LAWS: Sure. Sure.

4 NOTE: Ms. Nelson joins via telephone.

5 MR. LAWS: Ms. Nelson -- just for the record,
6 this is the appellant's attorney, Christine Nelson,
7 she's on my personal cell line right now.

8 Ms. Nelson, I have conferred concerning the
9 hearing scheduled to take place today concerning her
10 client's appeal of the stewards' ruling.

11 Ms. Nelson, it's my understanding that we're both
12 gonna make an agreed motion to continue the hearing
13 and for the Commission to issue a stay of the
14 stewards' ruling so the hearing can be heard at the
15 next scheduled Commission meeting, and the stay will
16 expire on that day when the hearing is held.

17 Do you agree with that motion, Ms. Nelson?

18 MS. NELSON: Yes, I do. Thank you.

19 MR. LAWS: Commission members, the motion is on
20 the table. Do you all have any comment before we
21 take a vote?

22 NOTE: There is no response.

23 MR. LAWS: Hearing none, Commission members,
24 what is your vote on the motion that's on the table?
25 Everyone who is in agreement, say aye.

1 NOTE: The Commission votes aye.

2 MR. LAWS: Opposed?

3 NOTE: There is no response.

4 MR. LAWS: None. The motion carries
5 unanimously. Ms. Nelson, since the Governor has
6 closed the offices, I will get in touch with you
7 within the next couple of days and we'll talk about
8 the hearing that will take place in the future.
9 Okay?

10 MS. NELSON: Okay. Thank you so much.

11 MR. LAWS: Sure. Thank you, and thank your
12 client for his patience and willingness to agree to
13 the motion as well.

14 MS. NELSON: Thank you.

15

16

17 NOTE: This hearing is adjourned.

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CERTIFICATE OF COURT REPORTER

I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 31st day of March, 2014.

SANDRA G. SPINNER

COURT REPORTER