



COMMISSION HEARING

TORONTO, ONTARIO – JANUARY 17, 2011

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;  
AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY  
STANDARD BRED LICENSEE DR. JOHN FLANIGAN**

Dr. John Flanigan ("Flanigan") sought clarification of the expiration date of the five (5) year suspension ordered pursuant to Ontario Racing Commission ("ORC") Ruling Number COM SB 008/2006.

On January 17, 2011, a Panel of the ORC consisting of Vice-Chair James Donnelly, Commissioner John Macdonald and Commissioner Dan Nixon, convened for the purpose of hearing the request for clarification.

Maureen Harquail appeared as Counsel for the ORC Administration. Gerald Sternberg appeared as Counsel for Flanigan.

After hearing the submissions of Counsel for the ORC Administration and Counsel for Flanigan and after reviewing the exhibits, the Panel ordered that:

- a) the last day of suspension for Flanigan shall be April 30, 2011;
- b) following that time, Flanigan is at liberty to proceed with application for re-licensing subject to the payment of the fine of \$25,000.

The Panel's Reasons for Decision is attached to this Ruling.

DATED at Toronto this 20<sup>th</sup> day of January, 2011.

BY ORDER OF THE COMMISSION

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John L. Blakney  
Executive Director



### REASONS FOR DECISION

1. John Flanigan (Flanigan) seeks clarification of the expiration date of the five-year ORC suspension of his licenses as a standardbred driver/trainer/veterinarian.

2. On September 20, 2005, the Director ordered an immediate suspension and proposed a lifetime suspension based on Flanigan's activity relating to veterinary and pharmaceutical supplies and unlawful and unauthorized drugs. That suspension and proposed order were appealed to a Panel of the Commission. The Hearing proceeded on November 7, December 16, 2005, January 10 and 13, February 1, 2 and 3, 2006. The Panel's decision was:

"We therefore impose a penalty of a five-year suspension of all of the licenses that were held by John Flanigan under the Racing Commission Act, 2000 and impose a fine of \$25,000."

3. Although a Stay was sought prior to the Hearing, none was granted. In consequence, Flanigan's licenses were suspended through the pre-hearing interval and the pre-disposition interval from September 20th, 2005 to the Panel's decision on May 1st, 2006.

4. The issue for determination: - does the five year interval run from September 20th, 2005 or from May 1st, 2006?

5. This is not a rehearing on the penalty issue. There is no jurisdiction for this Panel to superimpose its own view of the penalty. Rather, principled analysis of the intent underlying and the effect of the original decision is required. There is no indication in the Reasons for Decision of an application for credit for "time served". There is no suggestion in the Reasons that such credit was contemplated.

6. The currency of the suspension pending determination of the Hearing was well known to the Panel because on the first day of the Hearing a further application for a Stay was made and dismissed. Further evidence of the Panel's knowledge of the currency of the suspension is found in the use of the past tense as follows:

"We therefore impose a penalty of a five year suspension and the revocation of all of the licenses that were held by John Flanigan."

7. The Reasons detail the nature and extent of the misconduct. The Panel found:

- Flanigan as a customer of one Rogers purchased substances that Rogers was not licensed to sell and products that were not labeled and were not properly labeled.
- Flanigan exposed his racehorses and those of his clients to risk by using unlabeled products, products whose labels were in a foreign language which he could not read and which were not properly approved under the regulatory system.
- Flanigan permitted and assisted Rogers in obtaining substances, not otherwise available to Rogers, through the use of Flanigan's name and veterinary number.



- Flanigan created a prescription after the fact to allay concerns of a Federal Government Regulator.
- The fact that "Dr. Flanigan therefore directly participated in a scheme to undercut the regulatory system that provides confidence in the controlled drugs and substances used for therapeutic equine care. He is a part of a group of professionals who have a very special place in the horse racing industry, and on whom the public, the industry and the regulators place a significant burden of trust." The fact that Flanigan was a qualified licensed veterinarian was an aggravating factor of central significance.
- Flanigan refused to respect the regulatory system put in place to protect horses and the public.
- The Panel rejected Flanigan's evidence that he did not use unlabelled products on horses belonging to others because those bottles formed part of the inventory for his mobile unit.
- The Panel findings went on referencing inexcusable carelessness and willful blindness to the potential harm from his actions.
- The Reasons state: "While Dr. Flanigan's errors did not relate to his driving or training or owning horses, our finding is that all his licenses should be suspended because his errors relate to his attitude towards regulatory systems and his finding ways to circumvent those systems, even if it means providing false information on a form as he did to Vetoquinol or fabricating evidence as he did in the case of Oxytocin prescription.
- The Reasons state: "That Rogers was using Dr. Flanigan's name and status as a licensed veterinarian and sometimes with and sometimes without his actual knowledge, to acquire products for sale to third parties, without being properly licensed. Dr. Flanigan permitted his name to be used to allow Rogers to purchase substances and drugs Rogers would not otherwise have been able to secure because of the limitations on his license."
- The Reasons state: "Dr. Flanigan also acknowledged using EPO on his own racehorses."

8. Having made those findings the Panel made the crucial finding: "We find that the Executive Director was correct in his assessment that Dr. Flanigan will not act with honesty, integrity and in the public interest in carrying out his activities under his licenses."

9. To that stage the Panel carefully made specific findings of wrongdoing and was fully aware of their gravity and their departure from the standards of honesty and integrity so fundamental to the well-being of racing. The core and central theme of those findings was a lack of integrity

10. The Panel dealt with mitigating factors including character references, Flanigan's personal circumstances and his good record with the ORC. The Panel considered the quantum of a fine measured by comparison to the Guidelines for penalties and to fines levied in hidden ownership cases.

11. All of which leads to the conclusion that the Panel was attuned to the relevant factors and assessed their appropriate weight. The misconduct was serious, willful and wide ranging. The



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drug/medication offenses were grave striking at the integrity of racing and the protection of the public and of the horse. There was a specific credibility finding against Flanigan.

12. The Criminal Code is instructive in two aspects.

- Section 719(i): "A sentence commenced when it is imposed except where a relevant enactment otherwise provides."
- Section 719(iii): "A court may take into account time served as a result of the offence."

13. Section 12(6) of the Racing Commission Act, 2000 provides: "An order of the Panel takes effect immediately unless the order provides otherwise."

14. ORC Rules of Procedure Section 11 (3) provides: "A Commission decision or order is effective from the date on which the decision or order is made or released unless the Commission directs otherwise."

15 The Panel may fairly be assumed to have been aware of its Rules of Procedure. The Panel was aware of the gravity of the offence and of the time served. It proceeded with some compassionate input. It granted no express provision for credit for that time and none was sought. A major reduction in the proposed penalty had been achieved and so the matter stood.

16. The Panel stated: "Given the lack of a Stay and the effect of the immediate suspension the Panel made every effort to accommodate counsel to affect an expeditious resolution of the matter." This accommodation is incompatible with a mindset that credit would be given for time served.

17. In result, the underlying principle that the penalty commences when it is imposed has application. The last day of the suspension will be April 30, 2011.

18. Following that time Flanigan is at liberty to proceed with application for re-licensing. As a condition precedent the \$25,000 fine must be paid.

DATED this 18<sup>th</sup> day of January 2011.

A handwritten signature in black ink, appearing to read "James M. Donnelly".

James M. Donnelly  
Vice Chair