



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 15, 2012

**IN THE MATTER OF THE *RACING COMMISSION ACT*, S.O. 2000, c. 20;
AND IN THE MATTER OF AN APPEAL AND REQUEST FOR HEARING OF
STANDARDBRED LICENSEE JUSTIN ROBSON**

On June 14, 2012, the horse, Bob Lee, participated in the 8th race at Mohawk and finished 3rd. Justin J. Robson ("Robson") was the licensed owner and trainer of the horse.

Following the race, the Judges selected Bob Lee to provide blood samples for testing. On June 22, 2012, a Certificate of Positive Analysis of an Official Sample was issued for Bob Lee for furosemide (Lasix) which was quantified at 167 ng/ml. At all material times, Bob Lee was on the EIPH program.

On September 6, 2012, the Judges held a hearing with Robson in respect of the positive test. On September 8, 2012, the Judges issued Standardbred Official Ruling No. SB 45507 to Robson wherein a 7-day full suspension and a fine of \$500 were imposed on Robson for violating Rules 9.09(b), 26.02.01, and 26.02.03(c) of the Rules of Standardbred Racing as a consequence of the positive test. Bob Lee was disqualified and purse money and driver/trainer fees were ordered returned and redistributed pursuant to Rules 18.08.01 and 9.13.

On September 19, 2012, Robson filed a Notice of Appeal. On October 23, 2012, the Deputy Director issued a stay of his fine.

On November 15, 2012, a Panel of the Ontario Racing Commission ("ORC") consisting of Commissioner Dr. Anne Walker as chair, Commissioner Dan Nixon and Commissioner Brenda Walker was convened to hear this matter.

Robson was self-represented. Jennifer Friedman appeared as counsel for the Administration of the ORC.

Upon hearing the testimony of Robson, Senior Judge Tom Miller and Dr. Adam Chambers, reviewing the exhibits filed, and upon hearing the submissions of Robson and counsel, the Panel denied the appeal, but varied the penalty by limiting it to the 7-day suspension already served by Robson. No costs were awarded. Written reasons were to follow.

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

DATED at Toronto this 27th day of November 2012.

BY ORDER OF THE COMMISSION


Steve Lehman
Executive Director



REASONS FOR DECISION

Introduction

1. Standardbred licensee Justin J. Robson appealed a ruling of the Ontario Racing Commission (“ORC”) Judges wherein the horse, Bob Lee, which he owned and trained, received a positive test for the Class V drug, furosemide (Lasix), at Mohawk Racetrack on June 14, 2012. On September 6, 2012, the Judges held a hearing with Robson in respect of the positive test. On September 8, 2012, the Judges issued Standardbred Official Ruling No. SB 45507 to Robson wherein a 7-day full suspension and a fine of \$500 were imposed on Robson for violating Rules 9.09(b), 26.02.01, and 26.02.03(c) of the Rules of Standardbred Racing as a consequence of the positive test. Bob Lee was disqualified and purse money and driver/trainer fees were ordered returned and redistributed pursuant to Rules 18.08.01 and 9.13.

Evidence

2. A de novo hearing was held on November 15, 2012. Jennifer Friedman represented the ORC as legal counsel. Jason Robson was self-represented. The Panel advised Mr. Robson of his right to representation at the hearing, but Mr. Robson confirmed that he was prepared to proceed on his own.

3. Mr. Robson clarified that his Notice of Appeal pertained only to the penalty portion of Standardbred Official Ruling No. SB 45507. He had already served the 7-day full suspension on the grounds that he was not training at the time, but was appealing the \$500 fine. Mr. Robson did not dispute that Bob Lee received a positive test for furosemide in the Official Sample which was quantified at 167 ng/ml.

4. Mr. Robson is presently 25 years of age and has been licensed by the ORC as a trainer for approximately 8 years. He works as an agricultural assistant at the University of Guelph and considers racing to be a hobby. He has raced approximately 12 horses lifetime and has never received any positive drug tests.

5. Mr. Robson claimed the horse Bob Lee on April 19, 2012 and had entered the horse in four races prior to June 14, 2012. He testified that this was the first horse that he had trained on the EIPH program. He admitted that he had not researched the program and had chosen to administer the maximum amount permitted, that being 5 cc of Lasix pre-race. He did not know how much Lasix the horse had received previously. He did not train horses on Lasix and did not purchase Lasix. The horse had never been drug tested while in his ownership.

6. On June 14, 2012, Bob Lee was entered in the 8th race at Mohawk. Mr. Robson stated that he took the horse to the test barn where he received an injection of 5cc (250 mg) of Lasix into the right jugular vein. He stated that he was not paying attention to the injection process. No adverse events were recorded on the EIPH Medication Administration Record by the veterinary technician. Mr. Robson trailered the horse back to the shipping barn at which time he noticed that the horse had a quantity of blood on the right side of his neck. He wiped off the blood with a towel. Sometime later he felt a lump on the horse’s neck which he attributed to the injection. He admitted on cross-examination that he should have reported this problem to the veterinary technician, the Judges, or the Commission veterinarian, but failed to do so. He stated that there was no one in the shipping barn to report the problem to, and he would have been required to return to the Lasix barn to notify the veterinary technician that the horse



was bleeding. In addition, he did not want to criticize the veterinary technician and never thought about the possibility of having a positive drug test as a consequence of this event. Bob Lee finished 3rd in the race and a blood sample was obtained from the left jugular vein for drug testing. Mr. Robson testified that the same veterinary technician obtained the blood sample. Mr. Robson neither advised his regular veterinarian, Dr. Goodrow, that the horse had bled and that a lump had developed in the region of the injection, nor did he seek veterinary attention for the horse.

7. On June 22, 2012, Maxxam laboratory issued a Certificate of Positive Analysis of an Official Sample for furosemide which was quantified at 167 ng/ml. Effective March 26, 2008, the Canadian Pari-Mutuel Agency ("CPMA") added a quantitative limit for furosemide for horses in the EIPH program of 85 ng/ml which was disseminated to the industry on April 14, 2008.

8. The ORC notified Mr. Robson of the positive test on June 22, 2012. Mr. Robson stated that he was very shocked by this information. It was his position that the positive test was not the result of any actions on his part.

9. Mr. Robson testified that following notification of the positive test, he contacted Dr. Goodrow, to discuss the matter. He asked Dr. Goodrow whether missing the vein could result in a positive test. Dr. Goodrow did not examine the horse at that time. The appellant then retained Dr. Allison Moore, Diplomate, American College of Veterinary Internal Medicine, who examined Bob Lee on July 2, 2012 along with another horse which had received a positive furosemide test. Mr. Robson testified that it took approximately one week to schedule the examination.

10. Dr. Moore prepared a Medical Report dated July 16, 2012 which was filed. On examination, Dr. Moore noted that Bob Lee was mildly dehydrated. "A soft fluctuant swelling was present over the mid-cervical area of the right jugular vein with some mild edema travelling ventrally at that location. Ultrasound of the right jugular vein, over the area of the fluctuant swelling, revealed a hypoechoic area just dorsal to the vein which was consistent with a previous penetration of the vein and seroma formation. This area was easily identified with color flow imaging showing a communication with the jugular vein." She concluded that "it is possible that perivascular administration to both these horses with the respective changes to their jugular veins could have resulted in abnormally high readings...In the case of "Bob Lee" there is ultrasonic evidence of perivascular puncture. If furosemide was deposited in this perivascular area, it too would cause a longer elimination time and increased blood levels."

11. Mr. Robson testified that Bob Lee had not received any medications or injections following the race on June 14, 2012 up until the veterinary examination on July 2, 2012. He did not produce the veterinary records for the horse although he stated that these were available. He did not obtain a statement from Dr. Goodrow. He admitted that he knew that he was required to maintain medication records for the horse, but did not produce these. He stated that he would have to look for the records at home.

12. Mr. Robson admitted that he purchased electrolytes from Dr. Goodrow, and that he normally administered electrolytes intravenously to his horses 1 to 2 days following a race. He did not administer electrolytes to the Bob Lee following the June 14, 2012 race, and could not offer any explanation for this change in procedure. He did not race the horse after June 14, 2012 and has now sold the horse.



13. Senior Judge Tom Miller testified that he chaired a Judges hearing on September 6, 2012 with respect to the Certificate of Positive Analysis. Mr. Robson, Dr. Moore and Dr. Michael Weber, CMPA, testified at the hearing. He stated that after considering the evidence, the Judges issued Standardbred Official Ruling 45507 to Mr. Robson, ordering a penalty consisting of a 7 full day suspension from September 17 to 23, 2012 inclusive and a \$500 fine, based on Standardbred Rules of Racing 9.19(b), 26.03.01, 26.02.02 and 26.02.03(c). Purse money and driver/trainer fees were ordered returned and redistributed pursuant to Rules 18.08.01 and 9.13.

14. Mr. Miller testified that when assessing the penalty, the Judges considered the class of drug, the participant's history, and mitigating or aggravating factors. The penalty guidelines for a first offence for a Class V drug positive range between 15 and 75 days plus \$1,000 fine, however, Mr. Miller stated that because furosemide is quantified, penalties are generally below the guidelines. The Judges held that Mr. Robson had the responsibility to notify them or the Commission veterinarian had bleeding occurred or a lump developed following the injection of Lasix, particularly to ensure that it was safe for the horse to race. This had not occurred. There were no remarks on the EIPH Medication Administration Record as to adverse events.

15. As set out in the Judges Remarks section of the Positive Test Case Report, filed, and referred to by Mr. Miller in his testimony, Dr. Weber did not see any inconsistencies in Dr. Moore's testimony and agreed that a faulty injection could cause this type of positive test. However, there was nothing definitive to enable the Judges to conclude with certainty that the swelling examined 3 weeks following the race was due to the faulty injection of furosemide between the vein and the muscle. However, they recognized that the drug would be metabolized more slowly in this location.

16. Of note, Mr. Miller indicated that for an unknown reason, there are now more positive tests for furosemide. Two horses were positive on June 14, 2012. He was unable to state whether 167 mg/ml of furosemide would have a performance enhancing effect on the horse.

17. Dr. Adam Chambers testified on behalf of the Administration. He is a Commission veterinarian and is presently the manager of veterinary services at CPMA. He works with Dr. Weber. Neither he nor Dr. Weber examined Bob Lee.

18. Dr. Chambers confirmed that Dr. Weber provided a veterinary opinion at the Judges hearing that if the injection of furosemide did not enter the vein but entered the perivascular tissue, elimination of furosemide from the horse would be retarded. Dr. Chambers referred to Dr. Moore's opinion that if there had been a bad injection of furosemide, a seroma could form on top of the vein which could still be present at the time of Dr. Moore's examination. In Dr. Chambers' opinion however, this could not be a definitive conclusion. For him to make a definitive conclusion that the perivascular injection resulted in a seroma, he would have needed to examine the horse on the day that the injection occurred. In his opinion, mild edema ventral to the injection location would not be present 3 weeks post-injection and Lasix itself should reduce swelling.

19. Dr. Chambers was unable to provide a definitive estimate as to the amount of furosemide which would be required to be injected intravenously pre-race to produce a blood concentration of 167 ng/ml in a post-race sample. He stated that a maximum of 500 mg (or 10 cc) of Lasix may be administered pre-race in the U.S. to meet the 100 ng/ml limit. He stated that the timing of the injection is also important, as



higher levels would be anticipated the closer to the start of the race that the drug is administered. He stated that other than a perivascular injection of Lasix, a positive test could be caused by the administration of more than 250 mg of Lasix. Lasix is available in several forms which can be administered by routes other than intravenously. Had additional Lasix been administered to Bob Lee, it would have been required to have been done prior to his admission to pre-race quarantine. Lasix does not concentrate in the system if given weekly. He was unable to state whether higher levels of Lasix would be performance enhancing, but opined that Lasix is “hard on horses”.

20. Dr. Chambers testified that if Bob Lee was bleeding after the Lasix injection or if a lump was detected on the neck following the injection, he would have expected Mr. Robson to have contacted the Lasix team, the official veterinarian or the Judges.

21. Dr. Chambers confirmed that there has been an unexplained increased number of Lasix positive tests this year, in the range of 6 or 7. There were no positive tests last year. As a result of this increase, he ran tests on 4 samples to ensure that the CPMA testing program was working properly. He was confident that there were no errors in the laboratory test procedures, and no changes in testing procedures have been made since November 2010. There have not been any efforts to correlate the positive results with the administering technician(s).

22. Of note, during final submissions, Mr. Robson advised the Panel that trainer Richard Moreau, whose horse had been examined by Dr. Moore for a positive furosemide test at the same time as Bob Lee, had attended a Judges hearing and the penalty had been waived. The Panel took note of the Administration’s failure to make this information available to the Panel during the hearing. Following a short recess, the Administration located a copy of Standardbred Official Ruling 45508 and it was entered as an exhibit.

Issue

23. The issue to be determined in this appeal is whether the penalty imposed by the Judges was fair and reasonable given the circumstances for the June 14, 2012 positive test result for the Class V drug furosemide.

Decision

24. Upon hearing the testimony of Justin Robson, Senior Judge Tom Miller and Dr. Adam Chambers, reviewing the exhibits filed, and upon hearing the submissions of Mr. Robson and counsel, the Panel denied the appeal, but varied the penalty by limiting it to the 7-day suspension already served by Mr. Robson. No costs were awarded.

Reasons for Decision

25. Under the Rules of Standardbred Racing, a positive test result for furosemide carries an absolute liability offence as to the positive test for the trainer and the horse. The Rules allow for a strict liability defence as it relates to penalty. There is no dispute that the horse received a positive test for furosemide, and only the penalty is the subject of the appeal. The issue to be determined is whether



Mr. Robson demonstrated due diligence with respect to the condition of the horse, including that there was no negligent or willful conduct in relation to the horse, sufficient to vary or nullify the penalty.

26. It is the Administration's position that the onus shifts to the appellant to demonstrate that he engaged in due diligence, which the Administration alleges he has failed to do. Ms. Friedman stated that there is compelling evidence to show that Mr. Robson did not demonstrate due diligence. Based on evidence provided by the Administration and the appellant himself, if it is accepted that the horse bled or developed a neck lump, reasonable diligence would suggest that the trainer would notify a racing official and have the horse examined by a veterinarian. It is the Administration's position that nothing was done for 3 weeks until an examination was performed in an attempt to prove that the lump was caused by furosemide. Mr. Robson did not seek the assistance of his own veterinarian, Dr. Goodrow, and did not seem to sense any urgency to the situation. According to the Administration, a reasonable person would have obtained an expert opinion or notified someone regarding his concerns. Furthermore, Mr. Robson did not have the veterinary records for the horse, contrary to the trainer's requirement to maintain the records in his possession.

27. It is the position of the Administration that the penalty ordered by the Judges at the hearing on September 6, 2012, was reasonable. As Bob Lee was a participant in the EIPH program, the positive furosemide result was not considered a Class III drug offence. It was submitted that a 7-day suspension and a \$500 fine were consistent with and lower than precedents, and was in fact much lower than the Penalty Guidelines for Class V drugs. The Administration distinguished the Moreau precedent on the basis that this horse was determined to be an outlier which metabolized furosemide more slowly, and that the trainer demonstrated due diligence.

28. It is Mr. Robson's position that he satisfied the requirements for a strict liability defence by demonstrating sufficient due diligence in having done all that he could to comply with the Rules. He stated that had he administered a drug to a horse, he would not have appealed the order. He was upset that he was not the person who administered the Lasix, yet was being penalized for the positive test result. It is his position that the Moreau penalty had been waived in what he claims was a similar situation. No further submissions were made by Mr. Robson, and it was left to the Panel to obtain the necessary evidence from him in order to arrive at a fair and reasonable decision.

29. The Panel found Mr. Robson to be an honest witness. He had never had a prior positive test. Mr. Robson agreed with Ms. Friedman on cross-examination that he was required to demonstrate reasonable conduct in order to reduce the penalty below the Guidelines. The Panel accepts that he observed blood on the right side of his horse's neck after returning to the shipping barn, and later a swelling in the area. The Panel accepts his testimony that he did not notice the blood at the time of injection, and held that it was not reasonable for him to return to the Lasix barn to report what he believed to be a relatively minor problem to the veterinary technician. The Panel further accepts his testimony that it did not cross his mind to report these issues to the Judges or the Commission Veterinarian prior to racing. Mr. Robson admitted on cross-examination that he did not seek veterinary attention after he noticed that the horse was bleeding and that a lump had developed, and he agreed with Ms. Friedman that he should have done so. The Panel finds that it would have been prudent for Mr. Robson to alert the Judges or the Commission veterinarian to the presence of blood and swelling on the neck pre-race. However, the Panel finds it unlikely that a reasonable trainer would later have sought veterinary attention for a minor swelling on the horse's neck in the site of an injection.



30. The Panel placed significant weight on the opinion of Dr. Moore that on July 2, 2012, there was ultrasonic evidence of a perivascular puncture, and had furosemide been deposited in this perivascular area, a longer elimination time and an increased blood level of furosemide could have resulted. Evidence of the CPMA veterinarians supports the theory that perivascular injection of furosemide would extend elimination time and could result in an increased level of furosemide at the time of sampling. The Panel does not accept that the appellant failed to act in a timely manner in obtaining a veterinary opinion following his notification of the positive test on June 22, 2012, particularly as scheduling was required around the holiday weekend.

31. There was no evidence introduced to suggest that Mr. Robson gave additional Lasix to the horse pre-race, which according to Dr. Chambers was the only other cause for a positive test result. Although the Panel understood that furosemide can be administered by methods other than intravenously, based on the testimony of Dr. Chambers, a considerable amount of Lasix would have been required to produce a result of 167 ng/ml had Mr. Robson chosen to administer the drug himself. The Panel accepts that the appellant did not purchase or train on Lasix, although veterinary and trainer medication records would have been helpful to substantiate this evidence.

32. The Panel took note of the failure by the Administration to call the veterinary technician who injected the furosemide into Bob Lee. The Administration has not investigated whether the increase in the number of positive tests is correlated with the identity of veterinary technician administering the furosemide or the existence of any adverse events associated with these injections.

33. Mr. Robson's decision not to administer fluids 1 to 2 days after the June 14, 2012 race is unexplained and therefore problematic. If Mr. Robson or his veterinarian had inappropriately administered intravenous substances between June 14, 2012 and July 2, 2012, the possibility exists that the seroma visualized on July 2, 2012 bore no relationship to the Lasix administration on June 14, 2012. The filing of a statement from Dr. Goodrow and/or the provision of veterinary and trainer medication records would have provided assistance in this regard, and the Panel takes note of their absence. However, the Panel finds the failure to file these records is attributable more to the inexperience of the trainer and the withdrawals of his legal counsel and industry representative sometime prior to the hearing date, than to a deliberate attempt to hide unfavourable evidence.

34. The Panel recognizes that it would have been prudent for the appellant after receiving the positive test, to have re-tested the horse with a dose of furosemide to determine whether he failed to metabolize furosemide in a normal fashion. However, the Panel noted that the appellant did not claim that the positive test was the result of his horse being an outlier. Mr. Robson's lack of knowledge regarding the past history of the horse's performance on Lasix is also problematic.

35. With respect to the penalty, the Panel distinguishes the Whelan decision 055/2010 relied on by the Administration on the basis that there is no claim that Bob Lee is an outlier with respect to furosemide metabolism. The other precedents provided by Ms. Friedman demonstrating the same or higher penalties than the one imposed by the Judges on Mr. Robson, state that the licensees failed to exercise reasonable precautions to safeguard the horse and do not point to any due diligence efforts, which do not characterize the actions of Mr. Robson.



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36. It is not clear to the Panel why the appellant would have accepted a 7-day suspension when he intended to appeal the penalty. However, it recognizes the honesty of the appellant who admitted that he was not jeopardized in any way by taking the suspension.

37. In conclusion, the Panel accepts that the appellant satisfied his onus, on a balance of probabilities, to demonstrate that he exhibited due diligence, albeit with some limitations, and that he conducted himself in accordance with the standards of a reasonable trainer. Therefore, the Panel considers that a penalty lower than that prescribed by the Guidelines is warranted. As the owner and trainer of the horse, Mr. Robson has been deprived of purse money and the disqualification is noted on the horse's record. Similarly, the positive test has been recorded on his ORC license. In consideration of all of these factors, both aggravating and mitigating, the Panel denies the appeal but varies the penalty. The Panel is of the opinion that the 7-day suspension was warranted, as the trainer was responsible for the condition of the horse and the penalty shall remain on the trainer's record. However, the penalty should be varied by waiving the \$500 fine.

38. The Administration sought costs in the amount of \$750 on the basis that the appeal was frivolous and that the appellant failed to introduce new evidence in support of his claim. While the Panel recognizes that the Administration has a duty to protect limited industry resources, the success of the appellant in achieving a variation in the penalty should be taken into consideration. No costs are awarded.

39. In conclusion, the Panel advised Mr. Robson that should he be required to attend a hearing in the future, he should be better prepared to present his case and should bring all relevant documentation with him. The Panel recommends that a Notice to the Industry be prepared outlining appeal procedures and the preparation required of an appellant, including submission of evidence.

DATED this 27th day of November 2012.

Original signed by

Anne Walker

Anne Walker
Panel Chairman