

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA RACING COMMISSION

In the Matter of the
Occupational Licenses
of Kathy W. Hutchinson
and Jack Haymes

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

This matter was heard by Allan W. Klein, Administrative Law Judge, on December 10-12, 1986 and February 19, 1987 in Minneapolis.

Appearing on behalf of the Minnesota Racing Commission was Special Assistant Attorney General Mary B. Magnuson, 200 Ford Building, 117 University Avenue, St. Paul, Minnesota 55155. Appearing on behalf of Respondent Kathy W. Hutchinson were Robert J. Hennessey and Thomas B. Humphrey, Jr., of the firm of Larkin, Hoffman, Daly & Lindgren, Attorneys at Law, 1500 Northwestern Financial Center, 7900 Xerxes Avenue South, Bloomington, Minnesota 55431. Appearing on behalf of Respondent Jack D. Haymes was Thomas F. Miley, of the firm of Graham, Erickson, Hartman & Johnson, Attorneys at Law, 400 Marquette Avenue, Suite 430, Minneapolis, Minnesota 55401.

The record closed on May 12, 1987.

This Report is a recommendation, not a final decision. The Minnesota Racing Commission will make the final decision after a review of the record. The Commission may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commission shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commission. Parties should contact Special Assistant Attorney General Magnuson to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The purpose of this hearing was to determine whether the Minnesota Racing Commission ought to take disciplinary action against Kathy W. Hutchinson, a trainer, and Jack D. Haymes, an assistant trainer, in connection with their use of Inderal on three horses at the Canterbury Downs Racetrack in July and August of 1986.

RULING ON MOTION

On May 4, 1987, counsel for Respondent Kathy W. Hutchinson filed a reply brief. In that reply brief, counsel referred to a deposition of Dr. Ashok Singh which had been taken prior to the hearing. Dr. Singh did not testify at

the hearing itself. The deposition was not used at the hearing, nor was it introduced into the record. The first time it appeared was in the reply brief

On May 8, counsel for the Commission moved to strike the deposition extract from the record and to strike all references to it in the body of Respondent's reply brief.

The Motion to strike is GRANTED, and the deposition and related discussion will not be used in the preparation of this Report. See Minn. Rule pt. 1400.7300, subp. 2.

Based upon all of the proceedings herein, the Administrative law Judge makes the following:

FINDINGS OF FACT

individual Respondent

1. Kathy Walsh Hutchinson was born in 1940. In 1947, she began working with her father (who was a trainer of racehorses) in the summertime, and she continued to do so until 1958. In that year, she began working with him on a year around basis. She worked with him in the states of Arizona, California, Oregon, Washington, Louisiana and the provinces of British Columbia and Alberta.

2. In 1961, Hutchinson received her first assistant trainer's license. from 1963 on, her father ran a very large public stable, with a population of between 30 and 45 racehorses. Her father died in 1970, and she became licensed as a trainer in the state of Washington. She took over her father's operation.

3. Hutchinson has been in the horseracing business, On a fulltime basis, since 1970, with the exception of a brief period between 1981 and 1983, when she got married and quit working.

4. During her career, she has distinguished herself as one of the leading female trainers in the business. She was the first woman allowed to saddle a horse at the Santa Anita Racetrack. Tr. 483. For four years, she was the leading trainer in the state of Washington. Up to the time that she quit in 1981, she was the leading woman trainer in the United States. She won the Steve O'Donnell Memorial Award, as well as the Washington Horse Breeders' Award. Tr. 497-500.

5. In addition to being licensed in Minnesota, Hutchinson is currently licensed in California. Hutchinson has ten horses on the grounds of Santa Anita Park Racetrack in Arcadia, California. She also races at Hollywood Park. She employs three grooms, two hot walkers, an exercise boy, a blacksmith and an assistant trainer. -Tr. 459-477. In addition to those employees, she has relationships with a number of outside contractors, notably veterinarians.

6. Hutchinson describes herself as a "real tough customer", a "very, very fierce competitor". She has stated that she "wants to be on top". Tr. 483, 484 and 496.

7. In September of 1985, a horse which Hutchinson was training at the Canterbury Downs track tested positive for the presence of a medication known as mephentermine. Tr. 705. In lieu of a hearing, the Commission and Hutchinson worked out a plea agreement whereby Hutchinson was placed on probation for a period of six months from March 9, 1986. Tr. 558. Hutchinson was very concerned about violating the terms of that probation. Tr. 559.

8. Hutchinson has been fined over the years for various violations of racing rules. A few of these have dealt with medications, However, the medications have been common materials such as lasix and bute. The 1985 Minnesota positive test is the only positive test similar to the one at issue in this proceeding. None of the prior violations suggest an attempt to alter the outcome of a race by the administration of medications Tr. 712-730.

9. Jack D. Haymes was Kathy Hutchinson's assistant trainer. He was licensed by the Minnesota Racing Commission in 1986.

10. Haymes was born in 1936. He has been involved in racing since 1950, having worked as a jockey, exercise boy, groom, assistant trainer and trainer. He has been a licensed trainer since 1963, having been licensed as a trainer in six different states and the province of British Columbia. Tr. 398 and Ex . 3 .

11. Haymes has had only one medication violation in his career. He was fined for failing to list a horse on lasix in the state of California. Tr. 400.

12. Haymes was clearly subordinate to Hutchinson in the operation of the barn during 1986. Hutchinson is very much of a "hands on" manager who is at the barn for many hours each day. She cannot be characterized as a "absentee trainer" who would leave the day-to-day decisions to anyone else, including Haymes. It is Hutchinson, not Haymes, who decides what horse is going to get what medication and when, Tr. 401 and 441. While Haymes was commonly the person who actually administered the medication, Hutchinson was the one who directed it and clearly "called the shots".

13. Haymes kept a calendar book in the barn. He recorded notes about

horses' problems and which horses received what medications on what dates.

This medication log was kept on a daily basis. It provides the best available

evidence of medications administered to Hutchinson's horses,

Horses

14. The charges against Hutchinson and Haymes involve three different horses: Blopo's Nite, Dr, Francis and Grey Writer. During the period in question (August, 1986), there were roughly 20 horses in Hutchinson's barn.

15. Blopo's Nite is a three-year-old filly, worth between \$16,000-\$20,000. She is not a stake horse. Tr. 504.

16. Dr. Francis is a black type stake horse. she is also a filly. Tr. 505. Hutchinson paid \$110,000 for her. Tr. 607.

17. Grey Writer is an allowance horse, who could develop into a stake horse. He is a gelded male. Hutchinson paid \$55,000 for him. Tr. 535.

18. It is not unusual for racehorses to experience hemorrhaging in the lungs. This is an unfavorable condition for a racehorse. A trainer will attempt to avoid having this condition develop in their horses. While it can be treated by drugs such as lasix and furosemide, these drugs have side effects which a trainer would like to avoid. Tr. 46-47 and 510-516,

19. Hutchinson believes that horses become bleeders when placed under stressful conditions. She admits she is not a veterinarian, but she does hold that belief. She attempts to avoid placing her horses in stressful situations in order to avoid bleeding. Tr. 614.

-Propranolol and Inderal

20. Propranolol is the generic name for a drug. Inderal is the trade name for the version of the drug manufactured by Ayerst Laboratories. Inderal LA is a form of propranolol which has been formulated to provide a sustained release of propranolol over time. The "LA" in the name stands for "long acting". Tr. 118, 571 and Ex. 25. Throughout this proceeding, and this Report, the terms "propranolol" and "Inderal" are used interchangeably. The only propranolol formulation used by Hutchinson during 1986 was Inderal LA capsules of 160 mg.

21. Propranolol is one of a number of drugs which are referred to as beta blockers. In humans, propranolol decreases the heart rate, cardiac output, and arterial blood pressure. It is used for hypertension, angina pectoris, Migraine headaches and similar diseases. Id.

22. 4-hydroxy propranolol is a metabolite of propranolol. It is produced by the liver of an animal following the ingestion of propranolol.

23. There have been many studies of the use of propranolol and similar beta blockers on humans. However, there are very few studies concerning the effect of propranolol on horses. One of the few that does exist (Ex. 11, published in February of 1984) indicates that propranolol can be used in dogs, cats and horses to control and reduce rapid heart rates. There are no published studies relating to the use of long acting Inderal in horses.

Hutchinson's Use of Inderal on Horses

24. In 1983, Hutchinson first used Inderal LA on a horse in California. Tr 516. The horse had developed a fear of the starting gate to the point where the starter threatened to place the horse on the starter's list, which would have prohibited the horse from racing. Tr. 518-526. Hutchinson discussed the problem with her veterinarian, Dr. Roy Bishop. He originally suggested steroids to calm the horse down, but Hutchinson resisted the suggestion. He then suggested trying Inderal. Tr. 523. After three or four days of medication, the horse's reaction to the starting gate had improved.

Tr, 531. In addition to this first horse, Max's Lady, Hutchinson also used inderal LA on a horse called More Action in the fall of 1983. She also used it in a horse called Key High. In 1985 and 1986, she used it on Loustros and Staff Action. In summary, Hutchinson had experience with Inderal LA in California before she came to Minnesota.

Blopo's Nite

25. In July of 1986, Hutchinson was experiencing training problems with Blopo's Nite. For unknown reasons, the horse was "spooking" when going through "the tunnel" (a 50-foot long passageway), resulting in her being upset when it came time to saddle her and run. Tr. 602. Hutchinson discussed the training problems with Dr. Meade, who initially recommended putting the mare on steroids. Hutchinson disliked this proposal, and suggested the alternative of using Inderal. Dr. Meade then authorized her to use that medication.

26. Blopo's Nite was given Inderal only once. That was on July 29, 1986, when she was given ten capsules. She was not given any on the 30th, the 31st, or any other date in July or August. The reason for this is that she did not respond to the medication. Tr. 603-606.

27. On August 3, Blopo's Nite raced in the sixth race, taking second place. Pursuant to Commission rules, a test sample of blood and urine was taken from her.

28. Following routine test procedures (the validity of which are not at issue in this proceeding -- as stipulated at Tr. 31-33), the urine was found to contain a metabolite of propranolol identified as 4-hydroxy propranolol. Although five days had passed since the administration of the propranolol, this metabolite of the medication was found in her urine. This positive test result was reported to the Commission and track official, by letter dated September 2, 1986.

Dr. Francis

29. Dr. Francis raced on July 12, July 16, and July 27. In late July, Hutchinson determined that Dr. Francis needed to wear "blinkers" if she were to be a successful racehorse. Between July 27 and August 6, she was in training with blinkers. On August 5, Hutchinson ran her out of the starting gate with blinkers for the first time. Hutchinson was intending to race her on the 10th, and although it was a rigorous training schedule, Hutchinson intended to gallop her every day up to that race and work with her in the paddock area. In order to avoid excessive stress on the horse from this training schedule, Dr. Meade and Hutchinson discussed alternative medications of either steroids or Inderal. Tr. 614-615.

30. On August 7, Dr. Francis was given ten capsules of Inderal LA. She was not given any on the 8th, the 9th or the 10th.

31. On August 10, Dr. Francis ran in the sixth race. She took first place.

32. Routine blood and urine tests were taken from Dr. Francis and

submitted to the Minnesota Racing Analytical Laboratory.

33. On August 29, the laboratory confirmed a positive test for 4-hydroxy propranolol. It had been at least 72 hours between the medication's last administration on August 7 and the sample collection on August 10.

34. Following her win on August 10, Dr. Francis continued in hard training with a view toward a race on August 23. To avoid stress as a result

of a somewhat unusual training schedule, she was given six Inderal tablets on August 17 and ten tablets on August 20. Tr. 619-623.

35. On August 23, Dr. Francis raced in the ninth race, finishing in second place.

36. Blood and urine samples were taken on August 23. They were sent to the laboratory. On September 7, the laboratory confirmed a positive test for

presence of 4-hydroxy propranolol in the urine sample taken on August 23 from Dr. Francis. Again, the positive test appeared despite the 72-hour gap from last administration to testing.

Grey Writer

37. Grey Writer raced in April and in June of 1986. In the June race, he placed second.

38. Following the June race, Grey Writer was involved in a "skirmish" with a loose horse which resulted in Grey Writer being frightened every time he approached a certain point in the track. Tr. 540-541. Hutchinson discussed the problem with Dr. Meade, who recommended ace promazine, a tranquilizer. Hutchinson objected to the tranquilizer because she was still

on probation and did not want any tranquilizers in her barn. Tr. 543. Hutchinson told Meade that she wanted to contact Dr. Roy Bishop, her California veterinarian, because he was acquainted with Grey Writer. Bishop recommended to her that she ask Dr. Meade to prescribe Inderal for Grey Ariter. Bishop told Hutchinson that he had not had any problems with Inderal

-howing up in post-race urine tests in California so long as it was administered at least 48 hours before the race time. Tr. 557. This conversation took place in June of 1986, prior to any use of Inderal in Minnesota.

39. Hutchinson told Meade what Bishop had suggested. Meade was not familiar with Inderal at the time, but looked it up in his reference books (Physicians' Desk Reference). He also read the package insert for the drug, Ex. 25. He wrote a prescription for it to be administered to Grey Writer. His directions on the bottle (Ex. 15, Bottle No. 1) read, "Ten caps daily as indicated. Withdraw seventy-two hours before racing." Tr. 662. The 72-hour figure was his attempt to be conservative because he was not familiar with the drug and felt the extra 24 hours would be "padding", Tr. 561 and 664.

40. The first administration of Inderal to Grey Writer took place in June of 1986. Tr. 535. Dr. Meade reported it to the Commission on his daily veterinarian report of June 20, 1986. Ex, 8.

41. The drug was used for a period of time in June on Grey Writer. The record does not contain exact details of its administration before July 29, but it is clear that Grey Writer received no Inderal on July 29, 30 or 31.

Then, on August 1 he received ten capsules, On August 2 he received eight. On August 3 he received eight. On August 4 he received eight. He received none on August 5, 6 or 7. On August 7, Grey Writer raced in the eighth race. He finished in second place.

42. After the race on August 7, Grey Writer had blood and urine samples taken. These were forwarded to the Minnesota Analytical Racing Laboratory pursuant to routine procedures.

43. On August 8, Grey Writer received eight Inderal capsules. He received eight more on August 9, eight more on August 10, and eight more on August 11. He received no capsules on August 12, 13 or 14. He raced on August 14, but did not place and was not tested.

44. On August 19, Grey Writer received six capsules, on August 20 he received six, on August 21 he received six, on August 22 he received six, and finally, on August 23 he received six, He was scheduled to race on August 27.

Reaction to the Positive Test on Grey_Writer

45. On August 21, which was a Thursday, the Minnesota Racing Analytical Laboratory confirmed a positive test on the urine sample which was taken from Grey Writer following the August 7 race. This was the first positive test which the laboratory had confirmed for any of Hutchinson's horses during the 1986 season. This test was different from later tests on Blopo's Nite and Dr. Francis because the August 21 test revealed the presence of both the parent drug, propranolol, as well as its metabolite, 4-hydroxy propranolol.

46. On the morning of Sunday, August 24, the stewards and other officials at Canterbury Downs learned of the positive test on Grey Writer. This occurred as the result of a letter to the chief steward, Mr. Mike Seba, from Dr. Ashok Singh at the Minnesota Analytical Racing Laboratory. The letter stated that a sample taken on August 7, 1986 was found to contain both propranolol and 4-hydroxy propranolol.

47. Upon receipt of this letter, the stewards and track veterinarian identified the horse which had produced the sample as Grey Writer, and ascertained that its trainer was Kathy Hutchinson. Tr. 170 and Exs. 4-7,

48. At approximately 11:00 a.m. on August 24, 1986, Janice Johnson, Assistant Director of Security for the Commission, and Timothy Thompson, Chief of Security for the Thoroughbred Racing Protection Bureau, proceeded to Kathy Hutchinson's barn for the purpose of conducting a search. They were met there by Jack Haymes. The three of them entered Hutchinson's tackroom/office and

located a medicine cabinet. It contained three Inderal LA bottles. Two additional bottles of Inderal LA were found in a desk in the office. The search was thorough. Johnson and Thompson seized the five bottles (Ex. 15), wrote out receipts (Ex. 13) and removed the bottles from the premises. Tr. 178-195.

49. After the two officials had removed the five bottles of Inderal from Hutchinson's barn, there was no more Inderal LA, plain Inderal or any other form of propranolol in the barn, Tr. 432 and 599.

50. Hutchinson was not at the barn at the time of the search, but Haymes telephoned her at her Burnsville apartment. During the conversation, she spoke with Thompson who informed her of what was happening and asked her permission to interview Dr. Meade and Jack Haymes, which permission she granted. Tr. 582.

51. When Hutchinson arrived at the track, she met with Thompson, Jan Johnson, and two other officials. They showed her the bag containing the five pill bottles seized from her barn, and asked her to identify them, which she did. They asked her a number of other questions, and informed her there would be a hearing the next morning. At the conclusion of the meeting, they told Hutchinson that they had logged in the bag of Inderal, and offered it back to her. She told them that she did not want it back. They kept it from that date to the date of the hearing on December 10, at which time it was introduced into evidence. Tr. 195 and 598-599. Ex. 15.

The Experiment on Grey_Writer

52. Following the interview, Hutchinson went back to the Track area, as she had a horse running in the sixth race. She met two of the owners of Grey Writer, Mr. and Mrs. John Roy, and told them of the positive test result. After the race, at approximately 5:00 p.m., Hutchinson and the Roys went back to Hutchinson's barn. They discussed the positive test result and Hutchinson's surprise that it had occurred in light of her understanding (from Dr. Bishop) that there would be no positive test result after 48 hours. John Roy then asked whether Grey Writer had received any Inderal lately, and Hutchinson informed him that Grey Writer had been given Inderal for the past several days. In fact, Grey Writer had received Inderal on the 19th, 20th, 21st, 22nd and 23rd, but had not received any on the 24th. Roy then proposed that Grey Writer be tested to see if the same positive result would occur again. Tr. 593-596.

53. Hutchinson telephoned Thompson and asked if a special test could be run on Grey Writer right away. Thompson indicated that he would have to call the stewards and get permission from them to have it done. Subsequently, he called Hutchinson back and indicated that the stewards agreed to have the test run. This return phone call occurred just after the last race on August 24. Hutchinson was instructed to bring the horse over to the detention barn for purposes of having a urine sample taken. She instructed Haymes to halter the horse, and her nephew, Ed Walsh, took Grey Writer to the detention barn. At approximately 8:00 p.m. on August 24, a urine sample was obtained from Grey Writer. Tr. 96 and 596-599.

54. The sample taken from Grey Writer on the evening of August 24 was analyzed by the laboratory. It was found to contain both propranolol and its metabolite, 4-hydroxy propranolol. This result was communicated to track officials on August 28, 1986. Ex. 12.

55. It was Hutchinson's and Haymes' policy and practice that medications

were administered between 3:00 and 4:30 p.m. each day. Tr. 595-596. The last administration of propranolol to Grey Writer occurred between 3:00 p.m. and 4:30 p.m. on Saturday, August 23. Tr. 424 and 595. The urine sample was taken at 8:00 p.m. on August 24. That is between twenty-seven and one-half and twenty-nine hours after the administration of the medicine.

56. The search and seizure of the Inderal on August 24 occurred at about 11:00 a.m., immediately upon track officials' receipt of the laboratory's confirmation of a positive test result. The search occurred before Hutchinson knew of the positive test result. This was the first positive test result for propranolol or 4-hydroxy propranolol which they had received for any of Hutchinson's horses.

57. Subsequent to August 24, information was received from the laboratory that positive tests had occurred for Blopo's Nite racing on August 3, Dr. Francis racing on August 10, and Dr. Francis racing on August 23. In each of those three cases, however, the test showed only 4-hydroxy propranolol, not the parent drug propranolol. Tr. 31-33.

58. Soon after learning of the first positive test result resulting from Grey Writer's August 7 sample, Hutchinson asked track officials to verify the laboratory analysis by having some of the sample analyzed in a different laboratory. It was agreed that the University of Kentucky Laboratory would analyze a sample of the August 7 urine. The parties stipulated that this laboratory had a very good reputation. Tr. 67. this was done and the results were that the urine was found to contain both the parent propranolol and the metabolite 4-hydroxy propranolol. Tr. 67. This confirmed the findings of the Minnesota laboratory.

Subsequent Commission Actions

59. On August 27, 1986, Hutchinson was served with a Notice of Stewards Hearing and a Summons, setting a hearing for 10:00 a.m. in the stewards' office.

60. Following that meeting, the stewards suspended Kathy Hutchinson for 30 days, from August 29 through September 27, 1986, imposed a \$500 fine, and referred the matter to the Racing Commission for additional action. During the term of the suspension, Ms. Hutchinson was ordered off all grounds under the jurisdiction of the Commission. All horses owned in whole or in part, or leased or trained by her, were declared ineligible to enter or start in races. Grey Writer specifically was declared disqualified and unplaced for all purposes except for parimutuel wagering, and the purse from the eighth race on August 7 was ordered forfeited and redistributed.

61. On August 29, 1986, a Notice of Appeal together with a request for a stay of the ruling of the stewards was filed with the Commission on behalf of Hutchinson.

62. On September 12, the Board of Stewards suspended Jack Haymes for 30 days, fined him \$500, and ordered him off all grounds controlled by the Commission.

63. On September 15, Haymes filed a Notice of Appeal and request for a stay.

64. On September 23, 1986, a panel of the Commission heard both appeals. Based upon the arguments of counsel and the agreement of the parties, the appeals were amended to include later positive test results from Blopo's Nite and Dr. Francis. The panel stayed all actions of the stewards pending a resolution of the appeals by the Commission following the contested case hearing that gave rise to these Findings. This stay was issued on September 25, 1986. Hutchinson had been suspended 28 days by the time that the stay was issued, Haymes had been suspended for 13 days.

65. On October 10, 1986, the Commission issued Statements of Charges, and subsequently issued Notices and Orders for Hearing, setting the hearings in this matter for November 13, 1986. The two cases were consolidated. That

hearing date was subsequently continued to December 10 to accommodate the schedule of an expert witness for the Commission.

66. On the first day of the hearing, the charges were amended to clarify certain matters. The charges in effect for this proceeding, as so amended, are as follows:

That Kathy Hutchinson did start or permit the horse Grey Writer to race with medication in violation of Minn Rule 7877.0170, subp. 2 C, subp. 2 C(1) and Rule 7890.0110.

That Kathy Hutchinson started or permitted the horses Blopo's Nite, Grey Writer and Dr. Francis to race with medication in their systems and being responsible for such positive test samples pursuant to Minn. Rule 7890.0130, subp. 1 and 7877.0170, subp. 2 C(2).

That Kathy Hutchinson failed to guard the horses Grey Writer, Blopo's Nite and Dr. Francis in such a manner and for such time prior to racing them to prevent the administration of medication in violation of Minn. Rule 7877.0170, subp. 2 C(3).

That Jack Haymes started or permitted the horses Blopo's Nite and Dr. Francis to race with medication in their systems and being responsible for such positive test samples pursuant to Minn. Rule 7890.0130, subp. 1 and 7877.0170, subp. 2 C(2).

That Jack Haymes failed to guard the horses Blopo's Nite and Dr. Francis in such a manner and for such time prior to racing them to prevent the administration of medication in violation of Minn. Rule 7877.0170, subp. 2 C(3)

PERTINENT STATUTORY AND RULE EXCERPTS

Minn. Stat. 240.24, subd. 1 (1986) provides in pertinent part:

The Commission shall make and enforce rules governing medication and medical testing for horses running at licensed racetracks. The rules must provide that no medication, as the Commission defines that term by rule, may be administered to a horse within 48 hours of a race it runs at a licensed racetrack.

Minn. Rule pt. 7890.0110 provides as follows:

No person shall administer or cause to be administered to a horse within 48 hours of a race it is scheduled to run any medication (except as is expressly permitted, which exceptions are not applicable in this case) by injection, oral or topical administration . . .

Minn. Rule pt. 7890.0100, subp. 13, defines "medication" as:

. . . a substance, compound, or element, or combination thereof, which is or can be administered to a horse for the purpose of preventing, curing, or alleviating the effects of any disease, condition, ailment or infirmity, or symptom thereof, or for altering in any way the behavior, attitude, temperament or performance of a horse, including athletic performance. The term medication includes all analgesics, anesthetics, depressants, narcotics, stimulants, tranquilizers, and other classifications of medications. Nothing herein shall be deemed to include [bute, lasix and other specific items not relevant to this case]

Minn. Rule pt. 7890.0100, subp. 15, defines "positive test" as:

. . . the detection of any medication or metabolites thereof in a test sample . . .

Minn. Rule pt. 7890.0130, subp. 1, provides that:

A finding by a chemist that any medication or bute exceeding the allowable test level provided in part 7890.0100, subp. 13, item A, shall be considered prima facie evidence that such medication or substance was administered and carried in the body of the horse while participating in a race. Such finding shall also be considered prima facie evidence that the trainer and, if applicable, the assistant trainer or substitute trainer was negligent in the handling or care of the horse.

Minn. Rule pt. 7877.0170, subp. 2 C provides that

A trainer shall be responsible for horses he or she enters as to eligibility..... absence of prohibited medication

(1) No trainer may start or permit a horse in his or her custody, care or control to be started if he or she knows, or might have known, or has cause to believe, that the horse has received any medication in contravention of the provisions of chapter 7890.

(2) The Commission shall consider any positive test sample to be prima facie evidence that the trainer is responsible for such positive test sample unless he or she can show by substantial evidence that neither the trainer nor any employee or agent of the trainer was responsible for the administration of the medication.

(3) A trainer must guard each horse trained by him or her in such a manner and for such time prior to racing the horse as to prevent the administration of any medication prohibited by chapter 7890.

Based upon the foregoing Findings, the Administrative Law judge makes the following:

CONCLUSIONS

1. That the Minnesota Racing Commission has authority to license trainers and assistant trainers pursuant to Minn. Stat. 240.08, subd. 1(e) (1986). The Commission has authority to suspend or revoke trainers' and assistant trainers' licenses pursuant to Minn. Stat. 240.08 subd

2. That the Commission and the Administrative Law Judge have jurisdiction to consider this proceeding under Minn. Stat 240.08, subd, 5 id 14.50 (1986).

3. That the Commission has complied with all relevant substantive and procedural requirements of statute and rule.

4. That the Respondents herein, Kathy Hutchinson and Jack Haymes, received proper notice of the hearing in this matter.

5. That propranolol and 4-hydroxy propranolol are both "medications" as defined in Minn. Rule pt. 7890.0100, subp. 13.

6. That Kathy Hutchinson did not violate Minn. Rule pt. 7890.0100 cause it has not been shown that propranolol was administered with!! 48 hours of a race.

7. That Kathy Hutchinson did not violate Minn. Rule pt. 7877.0170, subp. 2 C because the medication which was carried by her horses was not "prohibited medication". Similarly, she did not violate subp. 2 C(1) by starting her horses with the medications because they were not medications "in ontravention of the provisions of chapter 7890".

8. That Kathy Hutchinson did not violate Minn. Rule pts. 7890.0130, subp. I and 7877.0170, subp. 2 C(2) because both of those rules merely set forth evidentiary standards, rather than prohibitions.

9. That Kathy Hutchinson did not violate Minn. Rule pt, 7877.0170, 2 C(3) because the medications which were administered were not prohibited by chapter 7890".

10. That Jack Haymes did not violate Minn. Rule pts. 7890.0130, subp, I and 7877.0170, subp. 2 C(2) because those rules create evidentiary standards, not prohibitions.

11. That Jack Haymes did not violate Minn. Rule pt. 7877.0170, subp. 2 C(3) because the medications involved were not "prohibited by chapter 7890".

12. That the attached Memorandum is incorporated herein.

Based upon the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Minnesota Racing Commission dismiss the above-described charges against Kathy Hutchinson and Jack Haymes.

Dated this 11th of June, 1987.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, Transcribed by Mary Ann Hintz

MEMORANDUM

I,

The central issue of this case boiled down to whether or not any of the Inederal LA which was administered to the three horses was administered within 48 hours before a race. The Commission argued that because propranolol was found in the August 7 test of Grey Writer, it must have been administered within 48 hours because propranolol would not show up in a sample unless it had been administered shortly before the sample were drawn. Respondents, on the other hand, argued that there is insufficient scientific knowledge to support the Commission's inference, and that the factual evidence available (the medication log and the August 24 experiment with Grey Writer), as well as numerous pieces of circumstantial evidence, suggest that the medication was given well before the 48-hour cut-off.

An equally important aspect of this case, however, is what it showed concerning the lack of coherence in the Commission's rules. There is no problem with the 48-hour rule. It clearly and unequivocally prohibits the administration of any medication (with exceptions not applicable here) within 48 hours of a race. However, the other rules which were alleged to have been violated are not prohibitions. They are definitions and evidentiary presumptions. For example, there is a presumption that if the State's chemist finds a positive test, the trainer has been "negligent" in caring for the horse. What is missing is a rule which prohibits trainers from being "negligent" in caring for horses. There is a presumption, but no parallel prohibition. Similarly, there is a presumption that a positive test means that a drug was administered and carried in the body of a horse during a race. However, there is no parallel rule that prohibits the carrying of a

drug in the body of a horse during a race.

The 1987 Legislature rectified at least some of these problems by the adoption of Laws of Minnesota 1987, Chapter 69. It amends Minn. Stat.

240.24, subd. 1 (1986) by adding a sentence which provides that, "The rules must also provide that no horse participating in a race shall carry in its body any substance foreign to the natural horse." This statutory change has no retroactive effect to races in 1986, but it will enable the Commission to cure some of the problems with the rules.

II.

The one clear rule which the Commission attempted to prove was the 48-hour rule. The Commission had to show, by a preponderance of the evidence, that

the Inderal had been given within 48 hours of a race, Proving that is relatively easy when dealing with a drug which is commonly used in horses and whose characteristics are well known to veterinarians, trainers, laboratory analysts and regulatory commissions. The record discloses numerous experiments which have been conducted over several years on

phenylbutazone (bute) and furosemide. Their behavior in horses is now well known.

However,

the use of propranolol/Inderal is so new and so unusual in horses that there

have not been the kinds of studies published in the literature which would allow the Commission to assert that if, for example, parent propranolol is found in the urine of a racehorse, then we know that the drug must have been administered within "x" hours of sampling.

The most telling experiments on propranolol/inderal in horses were done solely for the purpose of this hearing. The first was the August 24 experiment on Grey Writer. He had been given Inderal on August 23. He was

sampled on August 24 to see if propranolol showed up or not, It did

The second was an experiment run in mid-November, 1986, in preparation for the hearing. That experiment involved two horses at Ohio State University.

An attempt was made to replicate the dosage of inderal LA which had been given

to Grey Writer by giving each of them the same number of capsules. Urine

samples were taken from the two horses at 24 hours after administration, 48 hours after administration, and 72 hours after administration. In both the urine samples revealed the presence of 4-hydroxy propranolol,

but

not the parent drug propranolol. Since the parent drug was found in Grey Writer's August 7 test sample, and since it had not been found in the two experimental horses after 24 hours, the Commission hypothesized that

proranolol must have been administered to Grey Writer sometime within hours of the sampling. But that hypothesis is belied by the experiment run

Grey Writer himself on August 24, where propranolol was found in a urine sample taken between 27.5 and 29 hours after the last administration. There with numerous explanations given for this divergence, ranging from the fact that Grey Writer may not metabolize propranolol the same way that the Ohio Stdte horses did, to the fact that if the Ohio experiment had used a larger number of horses, a greater range of responses would have been seen, to differences due to a horse in training compared to a sedentary horse.

[he long and the short of all of the scientific evidence and testimony is that we do not know enough yet about the behavior of propranolol in horses to explain why Grey Writer still had it in his urine, but the two Ohio test horses did not. The record contains numerous theories and speculations by experts on both sides. But the conclusion drawn from all of it is that we lost cannot answer the crucial questions yet. Therefore, the theories are not liven any significant weight.

The Findings contain very little from the testimony of Drs. Sams, Stowe and Tobin. This is because their testimony was speculative and inconclusive to the point that it was not reliable. This is no reflection on their credibility or their scientific abilities. Rather, it reflects the current -Otte of knowledge.

The Judge was impressed by the credibility of Kathy Hutchinson and the unusual posture she was in at the time of the alleged violations -- she was on Probation. She gave the appearance of telling the truth. Moreover, the circumstances of her probation make it more likely than not that she was avoiding medicating within 48 hours. It is extremely unlikely that a trainer with her experience, with the knowledge that if her horses won they would be tested for drugs, with the substantial concern which she expressed for the carryover effect of the drugs, and with the advice of her local veterinarian to play it safe and cease medication 72 hours before a race -- it is unlikely that she would administer a drug within 48 hours of post time. It does not make sense that she would jeopardize her career by taking that risk. The circumstances suggest that the medication log is correct and that the propranolol that was administered was given well beyond 48 hours.

Finally, the Commission suggested that Hutchinson only gave Inderal to affect the outcome of races, rather than for therapeutic purposes. That theory is belied by the fact that the horse who received the most Inderal of all -- Loustros -- never raced during the period of medication covered by the medication log. Although Loustros received 106 capsules during August, he did not race at all in that month. Therefore, the Commission's allegation is not supported.

A.W.K.

