

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,  
DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

vs.

SRDAN SARIC,

Respondent.

Final Order No. BPR-2006-04976 Date: **7-13-06**  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

DBPR Case No. 2005-042972, 2005-039423,  
& 2005-042974

DOAH Case No: 05-4358PL

License #: 2016930-1021

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS  
FILED

FINAL ORDER

THIS CAUSE came before the State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutual Wagering (Division) for the purpose of considering Administrative Law Judge (ALJ) Larry J. Sartin's Recommended Order, a copy of which is attached hereto as exhibit A, in the above styled cause. Both Petitioner and Respondent filed timely exceptions to the Recommended Order.

After a review of the complete record in this matter, including consideration of the Recommended Order, Petitioner's Exceptions to the Recommended Order and Respondent's Exceptions to Recommended Order, the Division makes the following rulings, findings and conclusions:

Respondent's Exceptions to Recommended Order

1. The Respondent's Exceptions to Recommended order are **denied** as there is competent substantial evidence in the record to support the findings addressed by Respondent's exceptions.

Petitioner's Exceptions to the Recommended Order

Exceptions to Finding of Fact

2. **Exception I is denied** as there is competent substantial evidence in the record to support the finding made in paragraph 12 of the Recommended Order.

3. **Exception II is granted** because the finding made in paragraph 24 of the Recommended Order does not comply with the essential requirements of law.

Paragraph 24, page 9 of the Recommended Order states:

Pursuant to Florida Administrative Code Rule 61D-6.008, phenylbutazone, unlike Flunixin, may be administered to a race horse in an amount which, following the running of a race, will result in the horse's blood serum being found to contain less than 8 micrograms per milliliter of serum.

However, Rule 61D-6.008(2)(a), Florida Administrative Code, actually states:

Phenylbutazone may be administered to a horse providing:

1. The phenylbutazone is not administered closer than 24 hours prior to the officially scheduled post time of the race; or
2. The post race serum sample of such horse contains less than 5 micrograms (mcg) of phenylbutazone or its metabolites per milliliter (ml) of serum.

So, while the ALJ correctly stated that Rule 61D-6.008(2)(a), Florida Administrative Code, permits the administration of phenylbutazone to a racehorse under certain conditions, the law is not correctly stated in the Recommended Order. Pursuant to Section 120.57(1), Florida Statutes, an agency is permitted to modify a finding of fact when, after a review of the entire record, it is determined that the finding of fact does not comply with the essential requirements of law. In this case, the finding of fact in paragraph 24 misstates the law by setting the threshold of phenylbutazone in a serum sample at 8 micrograms per milliliter. Since the law is misstated, the agency is permitted to modify the finding of fact contained in paragraph 24 to correctly state the law.

Based on the foregoing, the finding of fact in paragraph number 24 is modified, approved and adopted as follows:

**Pursuant to Florida Administrative Code Rule 61D-6.008, phenylbutazone, unlike Flunixin, may be administered to a race horse in an amount which, following the running of a race, will result in the horse's blood serum being found to contain less than 5 micrograms per milliliter of serum.**

Exceptions to the Conclusions of Law

4. **Exception I is granted** for the following reasons:

Paragraph 77 of the Recommended Order, states that:

Count Five involves the detection of phenylbutazone in the blood serum sample collected from Youngbro Clever (sample number 173675). This is Mr. Saric's fifth violation of Section 550.2415, Florida Statutes, within a 12-month period. He should, therefore, be subjected to the maximum \$1,000.00 fine for Count Five and a 60 day suspension.

This penalty is not in conformance with Florida Administrative Code Rule 61D-6.008(2)(c) which sets forth the penalty to be imposed when a blood serum sample is found to contain phenylbutazone or its metabolites in excess of 8 micrograms per milliliter of serum. Florida Administrative Code Rule 61D-6.008(2)(c) states:

When the post race serum sample contains an amount of phenylbutazone or its metabolites equal to or in excess of 8 micrograms per milliliter of serum, the trainer as the absolute insurer of the horse, shall be subject to the following penalties:

1. First violation in a 12-month period \$500.00 fine and suspension of any division license 0 to 15 days;
2. Second violation in a 12-month period \$1,000.00 fine and suspension of any division license up to 30 days;
3. Third or subsequent violation in a 12-month period \$1,000.00 fine and suspension of any division license up to 60 days;

Although this may in fact be Respondent's fifth violation of Section 550.2415, Florida Statutes, the penalty guidelines contained in Rule 61D-6.008(2)(c), Florida

Administrative Code, as set forth above, are unique to the discovery of phenylbutazone or its metabolites in excess of 8 micrograms per milliliter of serum. In this case, the evidence presented indicated that this is the first instance where Respondent was the trainer of record of an animal that tested positive for phenylbutazone in excess of 8 micrograms per milliliter. Since this is the first time in a 12-month period in which the blood serum sample was found to contain phenylbutazone or its metabolites in excess of 8 micrograms per milliliter, paragraph 77 is modified, approved and adopted as follows:

**Count Five involves the detection of phenylbutazone in the blood serum sample collected from Youngbro Clever (sample number 173675). This is Mr. Saric's first violation, as contemplated in Florida Administrative Code Rule 61D-6.008(2)(c), within a 12-month period. He should, therefore, be subjected to a \$500.00 fine for Count Five and a 15-day suspension."**

5. **Exception II is granted** for the following reasons:

Paragraph 78 of the Recommended Order, states that:

Count Six involves the detection of phenylbutazone in the blood serum sample collected from Swift Courier (sample number 173680). This is Mr. Saric's sixth violation of Section 550.2415, Florida Statutes, within a 12-month period. He should, therefore, be subjected to the maximum \$1,000.00 fine for Count Six and a 60 day suspension.

This penalty is not in conformance with Florida Administrative Code Rule 61D-6.008(2)(c) which sets forth the penalty to be imposed when a blood serum sample is found to contain phenylbutazone or its metabolites in excess of 8 micrograms per milliliter of serum. Florida Administrative Code Rule 61D-6.008(2)(c) states:

When the post race serum sample contains an amount of phenylbutazone or its metabolites equal to or in excess of 8 micrograms per milliliter of serum, the trainer as the absolute insurer of the horse, shall be subject to the following penalties:

1. First violation in a 12-month period \$500.00 fine and suspension of any division license 0 to 15 days;

2. Second violation in a 12-month period \$1,000.00 and suspension of any division license up to 30 days;
3. Third or subsequent violation in a 12-month period \$1,000.00 fine and suspension of any division license up to 60 days;

Although this may in fact be Respondent's sixth violation of Section 550.2415, Florida Statutes, the penalty guidelines contained in Rule 61D-6.008(2)(c), Florida Administrative Code, as set forth above, are unique to the discovery of phenylbutazone or its metabolites in excess of 8 micrograms per milliliter of serum. In this case, the evidence presented indicated that this was the second instance where Respondent was the trainer of record of an animal that tested positive for phenylbutazone in excess of 8 micrograms per milliliter. Since this is the second time in a 12-month period in which the blood serum sample was found to contain phenylbutazone or its metabolites in excess of 8 micrograms per milliliter, paragraph 78 is modified, approved and adopted as follows:

**Count Six involves the detection of phenylbutazone in the blood serum sample collected from Swift Courier (sample number 173680). This is Mr. Saric's second violation, as contemplated in Florida Administrative Code Rule 61D-6.008(2)(c), within a 12-month period. He should, therefore, be subjected to a \$1,000 fine for Count Six and a 30 day suspension.**

#### Findings of Fact and Conclusions of Law

6. The Administrative Law Judge's findings of fact in the Recommended Order that have not been modified by this Final Order, are approved, adopted, and incorporated herein by reference. Said findings are supported by competent substantial evidence. The Administrative Law Judge's conclusions of law in the Recommended Order, that have not been modified by this Final Order, are approved, adopted, and incorporated herein by reference.

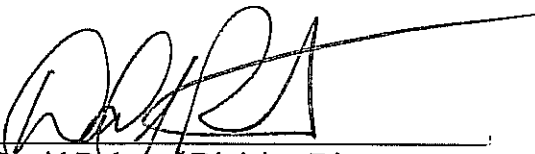
Penalty

7. Although the Administrative Law Judge incorrectly applied the penalty guidelines contained in Florida Administrative Code Rule 61D-6.008(2) (c) in calculating the suggested guideline suspension days for Counts Five and Six, the ultimate recommended penalty of two years suspension is fully supported by competent substantial evidence and very appropriate given that the Respondent committed so many violations. This ultimate penalty is approved, adopted and incorporated herein by reference. The fine is reduced to \$5,500 because the ALJ incorrectly applied the penalty guidelines contained in the aforementioned rule when calculating the total fine for Count Five. This reduced fine amount is supported by competent substantial evidence and is approved and adopted.

**WHEREFORE , IT IS ORDERED AND ADJUDGED** that:

Respondent, Srdan Saric's license shall be suspended for a period of two years beginning from the date of this Final Order. Further, Respondent Srdan Saric is fined \$5,500 due to the Division within 30 days from the date of this Final Order.

DONE AND ORDERED this 13<sup>th</sup> day of July, 2006.




David Roberts, Division Director  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty days from rendition of this Order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been provided to Respondent Srdan Saric, 3404 Spring Street #1, Pompano Beach Florida 33062, Attorney for Respondent, Rose Robbins, Esquire, Post Office Box 1967 Pompano Beach, Florida 33061, Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and Stefan Thomas Peavey Hoffer, Assistant General Counsel, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202, this 13<sup>th</sup> day of July 2006.

  
Agency Clerk

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

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April 27, 2006

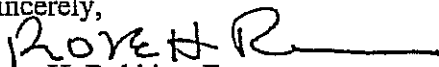
David J. Roberts, Director  
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Cc: Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

RE: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,  
DIVISION OF PARI-MUTUEL WAGERING V. SRDAN SARIC, DOAH Case No. 05-  
4358PL

Dear Mr. Roberts:

Enclosed please find the written exceptions of Respondent Srdan Saric to the  
Recommended Order.

Sincerely,  
  
Rose H. Robbins, Esq.  
Attorney for Respondent Srdan Saric  
Cc: Stefan Thomas Hoffer, Esquire



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DIVISION OF  
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HEARINGS

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING vs. SRDAN SARIC, DOAH Case No. 05-4358PL**

**Respondent's Exceptions to Recommended Order of April 14, 2006**

#26. Dr. Cole testified that if the horses were not sick then the medication would have no effect on their performance. The only testimony as to the health of the horses was by Respondent and he testified that the horses were healthy that race day. Thus, it is not correct to say in paragraph 26 that the horses would have raced better in the instant circumstance. Instead, according to the testimony of Dr. Cole, the medication would have had no effect whatsoever on their performance. (Hearing, pg 26, lines 3-8; pg 120, lines 14 -21)

#s 29 & 30 Mr. Saric testified that on both occasions a veterinarian had prescribed the medication for Youngbro Clever and that Mr. Saric had stopped the medication 36 hours before the race. However, because of Youngbro Clever's small stature, he still tested positive. (Hearing, pgs. 130, lines 8-23)

#31 Mr. Saric successfully proved that Jeremy Glowacki was responsible for all of these violations in the Complaint.

#32. Mr. Saric took all measures possible to protect the horses and there is no evidence in the record to support the statement that he did not do so. There are no witnesses and no documentary evidence. Furthermore, the fact that he had 2 prior fines regarding the same horse does not support an inference that he failed to exercise due care in this instance. Mr. Saric had testified that Youngbro Clever was small in stature and thus needed less medication than the usual amount. Thus, even when stopping the proper application of prescribed medicines 36 hours before a race it was not possible to stop a drug positive test.

43. a, b, & c. Although the "absolute insurer rule" as interpreted currently by case law does not require a showing that the trainer actually committed the acts, it certainly could be taken into consideration in substantially mitigating the application of any penalties. Fundamental due process and fairness dictates such reasoning.

59. The evidence presented by Mr. Saric did prove that Mr. Saric did not place the syringes in his tack box and that he did not administer the drugs and the evidence did prove that Jeremy Glowacki was the perpetrator of both.

60. Mr. Saric met his responsibility in that there were no applicable rules of care which he failed to follow. The complaint did not allege any lack of care by Mr. Saric which caused the incident. Security was provided by Pompano Race Track. No one locked their tack boxes and the stalls were not allowed to be kept locked. There is nothing that Mrs. Saric failed to do.

70. In light of the Judge's admission in paragraph 68 that Mr. Saric did present enough evidence to cause the trier of fact to question the veracity of the sole witness and informer Jeremy Glowacki's testimony and in light of the fact that there is no penalty guideline for Counts 1 & 2, there should be no penalty amount imposed here.

77 & 78 . These two paragraph incorrectly state that this is Mr. Saric's "fifth" violation within a 12-month period. Mr. Saric's had 2 prior Class IV drug violations for the same horse. Mr. Saric testified that the horse was under a veterinarian's care at the time and that he had stopped all medication 36 hours before race time. Mr. Saric testified that because of the horse's small stature, he tested positive on those 2 occasions.

79. The penalty amount is too harsh and should be reduced substantially with the elimination of a penalty amount for Count 1 and 2 and a reduction of penalty for Courts 5 and 6 to the lowest amount .

80. This paragraph offers no rational for severe hiking of the license suspension term to 2 years. Mr. Saric has not been allowed to work at Pompano Race Track since July 2005 and has already suffered that punishment. Furthermore, any suspension dates should be allowed to run concurrently.

1 MS. ROBBINS: Yes.

2 BY MS. ROBBINS:

3 Q: If the horse is not injured or lame or  
4 incapacitated in any way, what is the effect of using  
5 the -- this type of drug on the horse's performance?

6 A: If the horse is totally sound and without any  
7 injuries or lamenesses, the effects would be  
8 negligible on his performance.

9 Q: Okay. Can these drugs also be administered  
10 without syringes, in feed or in the animal feed?

11 A: They can, but they would have to have been  
12 administered in very large doses outside of 24 hours  
13 to produce those concentrations.

14 Q: Okay.

15 A: Or they could have been fed orally very close  
16 to that time as well. So, yes, they can be  
17 administered orally but, again, it would have to be  
18 close to the race or close to the time these samples  
19 were collected to produce that high of a concentration  
20 in the system.

21 MS. ROBBINS: No further questions.

22 MR. HOFFER: I have a couple of more  
23 questions, Your Honor.

24 BY MR. HOFFER:

25 Q: You mention that it's possible to feed

1 A: No, they didn't have a chance of winning.

2 Q: I ask you to look at the race sheet here. One  
3 is for Youngbro Clever --

4 A: Yes.

5 Q: -- and what are his odds and what are the odds  
6 for Swift Courier?

7 A: Swift Courier, that's the horse that's at 20:1  
8 and Youngbro Clever is 12:1.

9 Q: And is that -- what kind of chance did those  
10 horses have of winning the races?

11 A: Swift Courier was the worst horse in the race,  
12 as I can look at these papers, and Youngbro Clever was  
13 third of the worst, so like eight of the worst horses.

14 Q: Were your horses, did they have any  
15 inflammation that evening?

16 A: Not at -- not at race night.

17 Q: Not at race night?

18 A: No.

19 Q: Okay. So you would say that they were in  
20 pretty good health that night?

21 A: Right.

22 Q: And the medication we're talking about, is that  
23 medication that is given to horses when they have  
24 inflammations or they're ill?

25 A: For phenylbutazone, as I consult veterinarian,

1 ready to discuss them.

2 THE COURT: Petitioner's One and Two are  
3 admitted.

4 Mr. Rivera if you could go ahead and start  
5 that.

6 MR. RIVERA: Sure, Judge.

7 BY MR. HOFFER:

8 Q: A minute ago you were asked if you had had any  
9 drug positives. I believe you first answered no and  
10 then said you had one which resulted in a two-hundred  
11 and fifty dollar fine for Methylecrotanol (phonetic).  
12 Is it not true there's actually another one as well  
13 for Methylecrotanol on Youngbro Clever which resulted  
14 in a five-hundred dollar fine?

15 A: Ah, yes.

16 Q: Which was -- go ahead.

17 A: That's correct. That was in, I think, a short  
18 period of time. That my veterinarian prescribed pills  
19 to be given to a horse and I guess he was -- as much  
20 as I was told, that was overdose. Because I think in  
21 the rules it said that you're allowed to use it not 24  
22 hours or something -- 36 hours before the race. That,  
23 I was told by veterinarian.

24 Q: Well, let's not speculate as to what the law  
25 says right now.

STATE OF FLORIDA  
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DEPARTMENT OF BUSINESS AND )  
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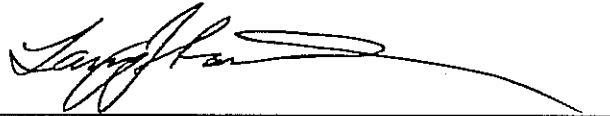
CORRECTION OF SCRIVENER'S ERROR IN RECOMMENDED ORDER

Paragraph 78 of the Recommended Order entered in this case on April 14, 2006, is amended to correct a scrivener's error.

Paragraph 78 should provide the following:

78. Count Six involves the detection of phenylbutazone in the blood serum in the blood serum sample collected from Swift Courier (sample number 173680). This is Mr. Saric's sixth violation of Section 550.2415, Florida Statutes, within a 12-month period. He should, therefore, be subject to the maximum \$1,000.00 fine for Count Six and a 60 day suspension.

DONE AND ENTERED this 26th day of April, 2006, in  
Tallahassee, Leon County, Florida.



---

LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of April, 2006.

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