

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Oakes, :
 :
 Petitioner :
 :
 :
 v. :
 :
 :
 Pennsylvania State Harness Racing :
 Commission, : No. 1475 C.D. 2010
 Respondent : Submitted: May 9, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

Filed: June 14, 2011

Christopher Oakes (Oakes) petitions for review from an order of the Pennsylvania State Harness Racing Commission (Commission) affirming the decisions of the Board of Judges of Pocono Downs (Board) imposing sanctions against Oakes for three violations of the Commission's medication rules because his horses had post-race positive tests for the substance Methocarbamol. Discerning no error in the Commission's decision, we affirm.

This case involves a dispute over the results of post-race drug testing conducted on several race horses. The Commission's regulations require that the winning horse in every race shall be subjected to a saliva, urine or blood test in order

to determine the presence of a drug, stimulant, sedative, depressant or medicine. 58 Pa. Code §183.352(a). In addition, claimed horses and “specials,” horses identified by the Director of Operations, Director of Enforcement or the Executive Secretary, must also be tested. Among the drugs that horses are screened for is Methocarbamol, a muscle relaxant used to treat muscle cramping or spasms. The Commission initially maintained a zero tolerance policy for the presence of Methocarbamol in a horse’s system on race day. However, effective October 1, 2009, the Commission changed its policy and now only requires that sanctions be imposed for post race positives for Methocarbamol exceeding one nanogram per milliliter.

Oakes is a licensed trainer of the Commission who primarily works at Pocono Downs. Among the horses that he trains are “Two Car Lane”, “Fabulous Grin” and “White Cheeks”. “Two Car Lane” placed first in the first race on October 10, 2009, and “White Cheeks” placed first in the seventh race on October 14, 2009, requiring these two horses to automatically undergo drug testing immediately following their respective races. “Fabulous Grin” placed sixth in the third race on October 10, 2009, and was tested because it was a claimed horse. The Commission then shipped the samples to the Pennsylvania Equine Toxicology and Research Laboratory (PETRL) for testing, which indicated that all three horses tested positive for Methocarbamol. Oakes received written notice of the positive tests but waived his right to have a split sample laboratory confirm PETRL’s findings. On November 18, 2009, the Board issued a ruling finding that Oakes was responsible for all three post-race positive tests, fining him \$1,000 for each offense, and disqualifying the horses. Oakes appealed and the Commission granted his request for a stay of enforcement of the fines and penalties imposed.

Before a Commission Hearing Officer, Walter F. Remmert (Director Remmert), Director of Enforcement for the Commission, testified that winners, claimed and special horses are all tested immediately after each race. The blood and urine samples are then sent to PETRL through a courier service and are typically received within 24 hours of the race. Pursuant to the Commission's regulations, each sample is split, with a portion remaining at the racetrack, and every trainer has the ability to have the split sample independently tested to confirm PETRL's results. Director Remmert testified that he is the custodian of the Commission's enforcement records, the records indicated that all three of Oakes' horses tested positive for Methocarbamol, and proper procedures were followed in the gathering of the samples as well as the tests. However, he did admit that the samples from the races on October 10, 2009, were not shipped to PETRL until October 13, 2009. He also admitted that there was no information indicating that the horse trainers were notified of the Commission's policy change regarding Methocarbamol.

Dr. Cornelius Uboh (Dr. Uboh), director of PETRL, gave expert testimony regarding the laboratory's standard drug testing procedures. Dr. Uboh stated that the blood and urine samples arrive from the race track in locked and sealed boxes, which are inspected to make sure they are intact. Each sample is also individually sealed and these seals are also inspected. Only after the samples are checked to ensure their integrity are they then bar coded into PETRL's system and testing may begin. Dr. Uboh testified that these procedures were followed with respect to all three samples at issue and there was no tampering with either the containers or seals because no incident reports were filed with the Commission.

Dr. Uboh testified that upon arrival at PETRL, samples are initially screened for suspect drugs using the Enzyme-Linked Immunosorbent Assay (ELISA).

ELISA is not a confirmatory test; it is merely a preliminary test which only provides an indication that the presence of a particular drug is suspected. PCTRL then uses an independent test known as the Liquid Chromatography/Mass Spectrometer (LC/MS) test to detect and then confirm the presence of suspect drugs, including Methocarbamol. Dr. Uboh testified that LC/MS is a much more sensitive test than ELISA and the results of LC/MS can be utilized in court proceedings because the LC/MS test meets the standards for reliability. All three samples underwent both ELISA and LC/MS testing. With all three samples, the LC/MS initial screening suspected the presence of Methocarbamol. Therefore, confirmation LC/MS testing was done and all three samples were confirmed as positive for Methocarbamol above the Commission's limit of one nanogram per milliliter.¹ Dr. Uboh testified that it was his opinion, to a reasonable degree of scientific certainty, that all three samples were positive for Methocarbamol.

Initially, Dr. Uboh testified that there was no ELISA pre-screening for the substance Methocarbamol. However, on cross-examination after reviewing the Commission's records more closely he admitted that the ELISA test was run for Methocarbamol and that at least one of the samples was not suspected of being positive. However, Dr. Uboh went on to explain that the ELISA and LC/MS tests are independent of one another and that PCTRL always runs the LC/MS test, regardless

¹ Sample number 312518FC from "Two Car Lane" tested positive for Methocarbamol with a plasma level of 6.114 plus or minus 0.118 nanograms per milliliter, and a urine level of 25.332 plus or minus 0.417 nanograms per milliliter. Sample number 312525FC from "Fabulous Grin" tested positive for Methocarbamol with a plasma level of 4.952 plus or minus 0.333 nanograms per milliliter, and a urine level of 13.163 plus or minus 0.469 nanograms per milliliter. Sample number 312569F from "White Cheeks" also tested positive for Methocarbamol with a plasma level of 1.477 plus or minus 0.017 nanograms per milliliter, and a urine level of 6.129 plus or minus 0.156 nanograms per milliliter.

of the results of the ELISA test. This is because LC/MS is a much more sensitive, dependable test, capable of detecting smaller amounts of each drug. Dr. Uboh stated that the tests are run independently of one another to ensure none of the trainers are cheating the system. Dr. Uboh also admitted that one of the forms received by PETRL, titled Sample Delivery Certificate for Lab Report 1165-09, was dated May 14 rather than October 14, 2009, and that this should have been questioned. On cross-examination, Dr. Uboh admitted that the sample numbers for all three of Oakes' horses were changed on one of PETRL's report forms. However, he also testified that the sample numbers were neatly crossed out, dated, and initialed by a laboratory technician and her supervisor, which conformed to PETRL's standard operating procedures.

The Department also called Dr. Lawrence Soma (Dr. Soma), veterinarian and professor at the University of Pennsylvania, as a witness. Dr. Soma teaches pharmacology and anesthesia, he is the principal investigator of the Commission, and he has been conducting research on withdrawal times for Methocarbamol for the Commission. Based upon Dr. Soma's research and recommendations, the Commission issued medical recommendations in September 2009, setting the withdrawal guidelines for Methocarbamol at one nanogram per milliliter. Dr. Soma testified that standardbred horses tend to have muscle spasms quite frequently and that Methocarbamol is often given before a race to help prevent these spasms. He also stated that Methocarbamol has sedative properties and, therefore, could slow down a racehorse. Dr. Soma testified that the dosage prescribed by Oakes' veterinarian was in excess of what Dr. Soma recommended and that the withdrawal time for the dosage given would be greater than 48 hours. Given these facts, Dr. Soma stated that it was his opinion that all three horses would have positive post-race tests for Methocarbamol.

Oakes called his veterinarian, Matthew B. Hennessey (Dr. Hennessey), to testify. Dr. Hennessey is licensed by the Commission and fifty percent of his practice includes treating standardbred racehorses. Dr. Hennessey admitted that he prescribed Methocarbamol for use on all three of Oakes' horses that tested positive. Specifically, he prescribed 4 grams of Methocarbamol to be administered orally 48 hours prior to racing, the amount he usually prescribes. Dr. Hennessey indicated that he came up with this dosage amount and timing based upon past literature and what he claimed other veterinarians were prescribing. Dr. Hennessey stated that he gave Oakes a bottle containing 500mg Methocarbamol tablets, that there were no instructions on the bottle, and that Oakes himself actually administered the drug to the horses. To his knowledge, no client of his had ever had a horse with a positive Methocarbamol test in Pennsylvania prior to Oakes and he could not state how having Methocarbamol in a horse's system on race day would affect its performance.

Oakes himself testified that he has been a trainer for approximately 25 years and is currently licensed in 5 or 6 states. He admitted that he has been using the same dosage of Methocarbamol to treat the horses he trains for the past 15 to 20 years and never had a positive Methocarbamol test before these three. He admitted that Dr. Hennessey prescribed the drug but that he himself administered eight 500mg tablets of Methocarbamol to each of the three horses approximately 50 hours prior to their races. Oakes testified that he did not know of the Commission's change in Methocarbamol recommendations prior to being notified of the positive tests. While Oakes did not contest administering the drug, he did challenge the chain of custody of the samples and pointed out irregularities in their documentation. Oakes admitted that he waived his right to have the split sample tested by an independent laboratory.

The Commission affirmed the Board's decision, noting that its regulations clearly state that a trainer is responsible for the condition of the horses trained by him. 58 Pa. Code §183.357. In addition, whenever a post-race test indicates the presence of a drug, the regulations state that it shall be presumed that the drug was administered by the person having the control or care of the horse and that the administering was done with the intent to affect the speed or condition of the horse and the result of the race in which it participated. 58 Pa. Code §183.355. As the trainer of the three horses at issue, the Commission found that Oakes was presumed to have administered the Methocarbamol with the intent to affect their speed or condition. Oakes failed to fulfill his responsibility to guard his horses against the improper administration of drugs or medications. 58 Pa. Code §183.357. The Commission found the testimony of Dr. Uboh credible that Methocarbamol was in the blood and urine samples taken from the three horses. This was prima facie evidence that Oakes was negligent in the horses' handling and care. The Commission also held that the collection, preservation, and handling of the samples and the preparation of the reports were proper.

The Commission rejected Oakes' argument that the irregularities in the documentary evidence regarding the samples required that the Board's ruling be overturned. It noted that Oakes failed to introduce any evidence that the clerical error in recording the date on the Sample Delivery Certificate for Lab Report had a material affect upon the integrity of the testing or that the samples which tested positive for Methocarbamol were not the actual samples taken from his horses and transmitted to PETRL. In addition, Dr. Uboh testified that the lab technician followed proper procedure when she corrected the sample numbers. Finally, the Commission noted that the testimony of Dr. Soma and Oakes' admission that he administered the drug to the horses corroborated PETRL's findings. Based on all of

the above, the Commission affirmed the decisions of the Board. This appeal followed.²

Oakes' main argument on appeal is that there was not substantial evidence to support the Commission's decision. According to Oakes, the alleged mishandling of his horses' samples and numerous procedural irregularities render the test results worthless. We disagree and will address each of Oakes' arguments in turn.

Oakes points out that while two of the samples were collected on October 10, 2009, they were not shipped to the lab for testing until October 13, 2009. While standard procedure is that the samples will be shipped from the racetrack to PETRL within 24 hours of the race, there was absolutely no testimony or even a suggestion by any of the witnesses that this delay compromised the samples or the testing. Oakes also points out that one lab report indicates a delivery date of May 14, 2009, rather than October 14, 2009. While Dr. Uboh testified that this clerical error should have been caught and questioned by his staff, again there is no indication that this was a material defect in the records or that it compromised the samples or testing procedures.

Oakes also claims that the initial ELISA drug screening performed by PETRL failed to indicate the presence of Methocarbamol in the samples and, therefore, the subsequent LC/MS testing should not have been conducted and the

² Our scope of review of an adjudication of the Commission is limited to determining whether an error of law was committed, constitutional rights were violated, or whether the necessary findings of fact are supported by substantial evidence. *Luzzi v. State Horse Racing Commission*, 548 A.2d 659, 662 n.6 (Pa. Cmwlth. 1988).

results are invalid. However, Oakes fails to comprehend the nature of the different tests and the meaning of their results. Dr. Uboh clearly testified that ELISA is not a confirmatory test but merely an initial screening procedure utilized by PETRL. The lab also utilizes the LC/MS test, which Dr. Uboh testified is a much more sensitive and dependable test. While he admitted that the ELISA results for at least one of the samples indicated that Methocarbamol was not suspected, the LC/MS initial screening for that sample suspected the presence of Methocarbamol and the confirmation LC/MS test confirmed the sample was positive at a level in excess of one nanogram per milliliter. Dr. Uboh testified that the ELISA and LC/MS tests are completely independent of one another and that LC/MS testing is performed on all samples, regardless of the results of the ELISA test. Therefore, Oakes' reliance upon the initial ELISA screening is misplaced and his argument flawed.

Finally, Oakes raises several issues in an attempt to challenge the chain of custody of the blood and urine samples. He states that while a laboratory technician extracted the sample for confirmatory testing on October 19, 2009, the confirmatory test was not actually performed until October 22, 2009. Also, PETRL's reports do not indicate the exact whereabouts of the samples during this delay. Oakes also puts a great deal of emphasis on the fact that on one of the laboratory forms, the sample numbers were crossed out and replaced with different numbers, and that no reason was offered for the alteration.

However, our Supreme Court has indicated that “[i]t is not necessary that the [sample] sent away for chemical analysis be so identified as to preclude the possibility of doubt.” *Luzzi v. State Horse Racing Commission*, 548 A.2d 659, 662 n.6 (Pa. Cmwlth. 1988) (quoting *Commonwealth v. Mazarella*, 279 Pa. 465, 472, 124 A. 163, 165 (1924)). Physical evidence may still be admitted despite the fact that

there are gaps in the chain of custody because gaps go to the weight to be given the evidence, not its admissibility. *Wise v. Pennsylvania State Horse Racing Commission*, 514 A.2d 308, 311 (Pa. Cmwlth. 1986). In addition, the Commission's regulations state:

Urine or blood test reports prepared and issued hereunder by the official chemist of the Commission shall be deemed *prima facie* correct and all steps undertaken in the collection, preservation, handling and testing thereof shall be presumed proper and correct in the absence of affirmative proof to the contrary.

58 Pa. Code §163.315.

Admittedly, Dr. Uboh could not provide the reason why the sample numbers were changed. However, he testified that the laboratory technician who made the change followed PETRL's standard operating procedures, which state that the technician must neatly cross out the error, write in the correct information, initial and date the form, and obtain a supervisor's initials indicating approval for the change. All of these steps were properly conducted. The fact that the numbers were changed and the samples were not tested for several days simply does not reach the level of affirmative proof that the samples were not handled properly, as required by the regulations.

The fact of the matter remains that Oakes *admitted* that he personally administered Methocarbamol to the three horses at issue approximately 50 hours prior to their respective races. Dr. Soma testified that the dosage of Methocarbamol Oakes administered was in excess of the recommendations Dr. Soma provided to the Commission in his withdrawal study. In Dr. Soma's expert opinion, which the

Commission found credible, the dosage Oakes administered would have had a withdrawal time in excess of 48 hours, meaning the horses would have post-race positive tests. Finally, Dr. Uboh testified that it was his opinion, to a reasonable degree of scientific certainty, that the samples from all three horses were indeed positive for Methocarbamol. This is overwhelming evidence to support the post-race positive tests for Methocarbamol. Oakes did nothing to rebut the presumption which arises under the Commission's regulations that he administered the Methocarbamol with the intent to "affect the speed or condition of the horse and the result of the race in which it participated." 58 Pa. Code §183.355. Therefore, there is more than substantial evidence to support the Commission's findings.

Accordingly, the order of the Commission is affirmed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Oakes, :
 :
 Petitioner :
 :
 :
 v. :
 :
 :
 Pennsylvania State Harness Racing :
 Commission, :
 Respondent : No. 1475 C.D. 2010

ORDER

AND NOW, this 14th day of June, 2011, the order of the Pennsylvania State Harness Racing Commission, entered June 24, 2010, is hereby affirmed.

DAN PELLEGRINI, JUDGE