

**Statement of Authority, Basis and Purpose  
of Amendment of Regulation**

**1 CCR 208-1**

**Rule #5.441**

**Statutory Authority:**

|                          |                          |                          |
|--------------------------|--------------------------|--------------------------|
| §44-32-201(1), C.R.S.    | §44-32-202(3)(g), C.R.S. | §44-32-503(1)(a), C.R.S. |
| §44-32-202(3)(c), C.R.S. | §44-32-202(3)(i), C.R.S. | §44-32-507(1)(a), C.R.S. |
| §44-32-202(3)(f), C.R.S. | §44-32-501(1)(a), C.R.S. | §44-32-507(1)(n), C.R.S. |

**Basis and Purpose:**

To ensure that the Penalty Schedule as adopted by the Colorado Racing Commission is current in its references to the Model Rules and all associated guidelines. Also, the ARCI Model Rules recommended penalties for the drugs “Albuterol” and “Clenbuterol” have significantly increased in an effort to curb use of the frequently used performance enhancers. As such, the purpose of this rule is to partially adopt the Model Rule and increase penalties for a second and third violation of using the identified substances.

This rule is recommended by the Director under his statutory responsibility to do so for the improvement and conduct of racing in Colorado, as well as his statutory responsibility to employ animal drug testing to ensure the health, safety and welfare of horses and ensuring the fairness of races conducted in Colorado. This rule is within the authority of the Commission to promulgate reasonable rules for the control, supervision and direction of owners and trainers who are operating under a Colorado license. This rule defines the Penalty Schedule for licensees found to have administered therapeutic and/or non-therapeutic substances to a horse under the licensee’s care and custody. As a member jurisdiction of the Association of Racing Commissioners International, the Commission had adopted many provisions of the Model Rules and this Rule further elaborates the way that substances are treated in the State of Colorado.

**CURRENT RULE**

- (1) In issuing penalties against individuals found guilty of medication and drug violations, a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.
- (2) The Stewards, Hearing Officers, or the Commission shall use the *Penalty Guideline Listing* as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the *Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances*, available at 1707 Cole Boulevard, Suite 350, Lakewood, Colorado, 80401.

- (3) If a licensed Veterinarian is administering or prescribing a drug not listed in the RCI *Uniform Classification Guide lines for Foreign Substance* or shown in the *Penalty Guideline Listing* (provided below), the identity of the drug shall be forwarded to the official Veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.
- (4) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the most current RCI *Uniform Classification Guidelines for Foreign Substances* shall be assumed to be a RCI Class 1 Drug and the trainer and owner shall be subject to those penalties as set forth in schedule “A” unless satisfactorily demonstrated otherwise by the Racing Medication and Testing Consortium, with a penalty category assigned.
- (5) The penalty categories and their related schedules, if applicable, shall be on the following criteria:
  - (a) Whether the drug is approved by the U.S. Food and Drug Administration for use in the horse;
  - (b) Whether the drug is approved by the U.S. Food and Drug Administration for use in any species;
  - (c) Whether the drug has any legitimate therapeutic application in the equine athlete;
  - (d) Whether the drug was identified as “necessary” by the RMTC Veterinary Advisory Committee;
  - (e) Whether legitimate, recognized therapeutic alternatives exist,
  - (f) The current RCI Classification of the drug, and;
  - (g) Whether there are Multiple Medication Violations in accordance with the ARCI-011-0020 Medications and Prohibited Substances Penalties for Multiple Medication Violations (MMV), from the Association of Racing Commissioners International (provided below).

**PENALTY GUIDELINE LISTING**

The penalty categories “A”, “B” and “C” and their related schedules for Trainers and Owners are shown in the following tables.

*The following are recommended penalties for violations due to the presence of a drug carrying a Category “A” penalty and for violations of ARCI-011-015: Prohibited Practices:*

| LICENSED TRAINER:  |   |   |
|--|---|---|
| 1 <sup>st</sup> offense  | 2 <sup>nd</sup> LIFETIME offense in any jurisdiction  | 3 <sup>rd</sup> LIFETIME offense in any jurisdiction  |
| <ul style="list-style-type: none"> <li>◦ Minimum one-year suspension absent mitigating Circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$10,000 or 10% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$25,000 or 25% of purse (greater of the two).</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> | <ul style="list-style-type: none"> <li>◦ Minimum three-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$25,000 or 25% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$50,000 or 50% of purse (greater of the two).</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> | <ul style="list-style-type: none"> <li>◦ Minimum five-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$50,000 or 50% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 or 100% of purse (greater of the two).</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> |

| LICENSED OWNER:   |  |  |
|---|--|--|
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> LIFETIME offense in owner's stable in any jurisdiction   | 3 <sup>rd</sup> LIFETIME offense in owner's stable in any jurisdiction   |
| ◦ Loss of purse.  | ◦ Loss of purse.   | ◦ Loss of purse and \$50,000 fine.<br><br>AND<br><br>◦ Referral to the Commission with a recommendation of a suspension for a minimum of 90 days.  |
| Horse   |  |  |
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> LIFETIME offense in owner's stable in any jurisdiction   | 3 <sup>rd</sup> LIFETIME offense in owner's stable in any jurisdiction   |
| ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 90 days and must pass a Commission-approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 120 days and must pass a Commission-approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 180 days and must pass a Commission-approved examination before becoming eligible to be entered. |

**PENALTY GUIDELINE LISTING**

*The following are recommended penalties for violations due to the presence of a drug carrying Category “B” penalty, for the presence of more than one NSAID in a plasma/serum sample, subject to the provisions set forth in ARCI-011-020 E.(1)(c) and for violations of the established levels for total carbon dioxide. Except for those violations specified in 5.441(2)(a)\*:*

| LICENSED TRAINER:   |  |  |
|---|--|--|
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> offense (365-day period) in any jurisdiction   | 3 <sup>rd</sup> offense (365-day period) in any jurisdiction   |
| <ul style="list-style-type: none"> <li>◦ Minimum 15-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$1,000.</li> </ul> <p>Minimum fine of \$2,500 and a minimum 180 day suspension absent mitigating circumstances if the presence of a nerve blocking drug or Clenbuterol is detected.</p> | <ul style="list-style-type: none"> <li>◦ Minimum 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$2,500.</li> </ul> <p>Minimum fine of \$2,500 and a minimum 180 day suspension absent mitigating circumstances if the presence of a nerve blocking drug or Clenbuterol is detected.</p> | <ul style="list-style-type: none"> <li>◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$5,000 or 5% of purse (greater of the two).</li> </ul> <p>Minimum fine of \$2,500 and a minimum 180 day suspension absent mitigating circumstances if the presence of a nerve blocking drug or Clenbuterol is detected.</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> |
| LICENSED OWNER:   |  |  |
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> offense in stable (365-day period) in any jurisdiction   | 3 <sup>rd</sup> offense in stable (365-day period) in any jurisdiction   |
| <ul style="list-style-type: none"> <li>◦ Loss of purse.</li> </ul>  | <ul style="list-style-type: none"> <li>◦ Loss of purse.</li> </ul>   | <ul style="list-style-type: none"> <li>◦ Loss of purse, and in the absence of mitigating circumstances a \$5,000 fine.</li> </ul>  |

| HORSE:  |   |   |
|---|---|---|
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> offense in stable (365-day period) in any jurisdiction  | 3 <sup>rd</sup> offense in stable (365-day period) in any jurisdiction  |
| <ul style="list-style-type: none"> <li>◦ Disqualification.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 45 days and must pass a Commission-approved examination before becoming eligible to be entered.</li> </ul> <p>*Prohibited use of Nerve blocking drugs or Clenbuterol, will require a horse to be placed on the Veterinarian's list for 180 days and must pass a Commission approved examination before becoming eligible to be entered.</p> | <ul style="list-style-type: none"> <li>◦ Disqualification.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 60 days and must pass a Commission-approved examination before becoming eligible to be entered.</li> </ul> <p>*Prohibited use of Nerve blocking drugs or Clenbuterol, will require a horse to be placed on the Veterinarian's list for 180 days and must pass a Commission approved examination before becoming eligible to be entered.</p> | <ul style="list-style-type: none"> <li>◦ Disqualification.</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 90 days and must pass a Commission-approved examination before becoming eligible to be entered.</li> </ul> <p>*Prohibited use of Nerve blocking drugs or Clenbuterol, will require a horse to be placed on the Veterinarian's list for 180 days and must pass a Commission approved examination before becoming eligible to be entered.</p> |

## CATEGORY C CHART

*The following are recommended penalties for violations due to the presence of a drug carrying a Category “C” penalty and overages for permitted NSAIDs and furosemide: (All concentrations are for measurements in serum or plasma.)*

|  |   |  |
|--|---|--|
| <b>LICENSED TRAINER</b>                                      | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and no furosemide when identified as administered*       | Phenylbutazone ( >5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen ( >50 ng/ml) and<br>CLASS C Violations  |
| 1 <sup>st</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$250 absent mitigating circumstances.  | Minimum fine of \$1000 absent mitigating circumstances.  |
| 2 <sup>nd</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$500 absent mitigating circumstances.  | Minimum fine of \$1,500 and 15-day suspension absent mitigating circumstances.   |
| 3 <sup>rd</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$1,000 and 15-day suspension absent mitigating circumstances.  | Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances.   |
| <b>LICENSED OWNER</b>  | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and no furosemide when identified as administered*       | Phenylbutazone ( >5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen ( >50 ng/ml) and<br>CLASS C Violations  |
| 1 <sup>st</sup> Offense (365-day period) in any jurisdiction | Horse must pass commission-approved examination before being eligible to run.   | Loss of purse. Horse must pass Commission-approved examination before being eligible to run.   |
| 2 <sup>nd</sup> Offense (365-day period) in any jurisdiction | Loss of purse. If same horse, placed on Veterinarian’s list for 45 days, and then must pass Commission-approved examination before being eligible to run.                       | Loss of purse. If same horse, placed on Veterinarian’s list for 45 days, must pass Commission-approved examination before being eligible to run.                       |
| 3 <sup>rd</sup> Offense (365-day period) in any jurisdiction | Loss of purse. Minimum \$5,000 fine. If same horse, placed on Veterinarian’s list for 60 days, and then must pass Commission-approved examination before being eligible to run. | Loss of purse. Minimum \$5,000 fine. If same horse, placed on Veterinarian’s list for 60 days, must pass Commission-approved examination before being eligible to run. |

| HORSE  | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and<br>no furosemide when identified as<br>administered*                      | Phenylbutazone (>5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen (>50 ng/ml) and<br>CLASS C Violations  |
|--|--|--|
| 1st Offense (365-day period) in any jurisdiction | In accordance with CRCR 5.612, horse required to pass Commission-approved examination before being eligible to run.  | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, horse will be placed on Veterinarian's list for 30 days, and then must pass Commission-approved examination before being eligible to run. |
| 2nd Offense (365-day period) in any jurisdiction | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 45 days, must pass Commission-approved examination before being eligible to run. | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 45 days, must pass Commission-approved examination before being eligible to run.         |
| 3rd Offense (365-day period) in any jurisdiction | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 60 days, must pass Commission-approved examination before being eligible to run. | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 60 days, must pass Commission-approved examination before being eligible to run.         |

\*If the trainer has not had more than one violation within the previous two years, the Stewards/Judges are encouraged to issue a warning in lieu of a fine provided the reported level is below 3.0 mcg/ml, absent of aggravating factors.

After a two year period, if the licensee has had no further violations, any penalty due to an overage in the 2.0 – 5.0 category will be expunged from the licensee's record for penalty purposes.



## Penalties

### Multiple Medication Violations (MMV)

- (a) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-D, as provided in the ARCI Uniform Classification for Foreign Substances shall be assigned points based upon the medication's penalty guideline as follows:

| Penalty Class | Points If Controlled Therapeutic Substance  | Points If Non-Controlled Substance   |
|---------------|---|--|
| Class A       | N/A   | 6  |
| Class B       | 2   | 4  |
| Class C       | ½ for first violation with an additional ½ point for each additional violation within 365 days <sup>1</sup> | 1 for first violation with an additional ½ point for each additional violation within 365 days |
| Class D       | 0   | 0  |

<sup>1</sup> Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.

If the Board or the Commission rules that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

- (b) The points assigned to a medication violation shall be included in the Stewards' or Commission Ruling. Such Ruling shall be included in the ARCI official database and the ARCI shall assign points consistent with section (a) for advisory purposes for medication violations where points have not been assigned by regulatory action. Points assigned by such regulatory ruling or by the ARCI shall reflect, in the case of multiple positive tests as described in paragraph (d), whether they shall thereafter constitute a single violation. Points will be assessed after a ruling is rendered, and penalty enhancement shall be applied to future violations. The Stewards' or Commission Ruling shall be posted on the official website of the Commission and within the official database of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such Ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.
- (c) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained and certified by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the Commission in its determination to subject the trainer to the mandatory enhanced penalties by the Stewards or Commission as provided in this regulation.

- (d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation.
- (e) The official ARCI record shall constitute prima facie evidence of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.
- (f) The Stewards or Commission shall include all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.
- (g) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in his/her official ARCI record:

| Points     | Suspension in Days |
|------------|--------------------|
| 5 – 5.5    | 15 to 30           |
| 6.0 – 8.5  | 45 to 60           |
| 9 – 10.5   | 90 to 180          |
| 11 or more | 180 to 360         |

This MMV policy is not a substitute for the current penalty system and is intended to be an additional penalty when the licensee:

- (i) Has more than one violation for the relevant time period, and
- (ii) Exceeds the permissible number of points.
- (h) The suspension periods as provided above, shall run consecutive to any suspension imposed for the underlying offense.
- (i) The Stewards' or Commission Ruling shall distinguish between the penalty for the underlying offense and the enhancement based upon the trainer's cumulative points.
- (j) Any trainer who has received a medication violation may petition the ARCI to expunge the points received for the violation for the purpose of the MMV system only. The points shall be expunged as follows:

| Penalty Classification | Time to Expire |
|------------------------|----------------|
| A                      | 3 years        |
| B                      | 2 years        |

|   |         |
|---|---------|
| C | 1 years |
|---|---------|

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

- (6) The recommended penalty for a violation involving a drug that carries a Category “D” penalty is a written warning to the trainer and owner. Multiple violations may result in fines and/or suspensions.
- (7) On Multiple Medication Violation (MMV) offenses, the Division, Board of Stewards, and Hearing Officer shall consider points given in all other States, regardless of whether they have formally adopted the ARCI-001-020 Medications and Prohibited Substances Penalty Chart for Multiple Medication Violations (MMV). The Division shall consider all cumulative points, and such enhanced penalty shall run consecutive to the Colorado penalty assessment.
- (8) Any licensee of the Commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.
- (9) The licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition their presence may be required at any and all hearings relative to the case.
- (10) Any veterinarian found to be involved in the administration of any drug carrying the penalty category of “A” shall be referred to the State Licensing Board of Veterinary Medicine for consideration of further disciplinary action and/or license revocation. This is in addition to any penalties issued by the Stewards or the Commission.
- (11) Any person who the Stewards or the Commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the Stewards or the Commission in no way prohibits a prosecution for criminal acts committed.
- (12) A licensed trainer shall not benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

The Commission hereby incorporates as part of Rule 5.441 of the Colorado Racing Commission Rules the following guideline by reference:

(1) Version 13.4 January 9, 2018 of the Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule issued by the Association of Racing Commissioners International, 1510 Newtown Pike, Suite 210, Lexington, Kentucky, USA 40511. This rule does not include any later Amendments or Editions of the *ARCI Uniform Classification Guidelines for Foreign Substances*.

Certified copies of the complete text of the referenced materials are maintained at the Colorado Department of Revenue Division of Racing Events, 1707 Cole Boulevard, Suite 350, Lakewood, Colorado, 80401, and may be inspected at that address during normal business hours. Copies are available from Division of Racing Events at a reasonable charge. Copies are also available online at: <http://www.arci.com/>. Certified copies may be obtained from the Association of Racing Commissioners International, 1510 Newtown Pike, Suite 210, Lexington, Kentucky, USA 40511 (859-224-7070).

### **PROPOSED MODIFICATION**

- (1) In issuing penalties against individuals found guilty of medication and drug violations, a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.
- (2) The Stewards, Hearing Officers, or the Commission shall use the *Penalty Guideline Listing* as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the *Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances*, available at 1707 Cole Boulevard, Suite 350, Lakewood, Colorado, 80401.
- (3) If a licensed Veterinarian is administering or prescribing a drug not listed in the *RCI Uniform Classification Guide lines for Foreign Substance* or shown in the *Penalty Guideline Listing* (provided below), the identity of the drug shall be forwarded to the official Veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.
- (4) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the most current *RCI Uniform Classification Guidelines for Foreign Substances* shall be assumed to be a RCI Class 1 Drug and the trainer and owner shall be subject to those penalties as set forth in schedule “A” unless satisfactorily demonstrated otherwise by the Racing Medication and Testing Consortium, with a penalty category assigned.
- (5) The penalty categories and their related schedules, if applicable, shall be on the following criteria:

- (a) Whether the drug is approved by the U.S. Food and Drug Administration for use in the horse;
- (b) Whether the drug is approved by the U.S. Food and Drug Administration for use in any species;
- (c) Whether the drug has any legitimate therapeutic application in the equine athlete;
- (d) Whether the drug was identified as “necessary” by the RMTC Veterinary Advisory Committee;
- (e) Whether legitimate, recognized therapeutic alternatives exist,
- (f) The current RCI Classification of the drug, and;
- (g) Whether there are Multiple Medication Violations in accordance with the ARCI-011-0020 Medications and Prohibited Substances Penalties for Multiple Medication Violations (MMV), from the Association of Racing Commissioners International (provided below).

**PENALTY GUIDELINE LISTING**

The penalty categories “A”, “B” and “C” and their related schedules for Trainers and Owners are shown in the following tables.

*The following are recommended penalties for violations due to the presence of a drug carrying a Category “A” penalty and for violations of ARCI-011-015: Prohibited Practices:*

| LICENSED TRAINER:  |   |   |
|--|---|---|
| 1 <sup>st</sup> offense  | 2 <sup>nd</sup> LIFETIME offense in any jurisdiction  | 3 <sup>rd</sup> LIFETIME offense in any jurisdiction  |
| <ul style="list-style-type: none"> <li>◦ Minimum one-year suspension absent mitigating Circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension.</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$10,000 or 10% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$25,000 or 25% of purse (greater of the two).</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> | <ul style="list-style-type: none"> <li>◦ Minimum three-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period.</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$25,000 or 25% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$50,000 or 50% of purse (greater of the two).</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> | <ul style="list-style-type: none"> <li>◦ Minimum five-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period.</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$50,000 or 50% of total purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 or 100% of purse (greater of the two).</li> </ul> <p align="center">AND</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> |

| LICENSED OWNER:   |  |  |
|---|--|--|
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> LIFETIME offense in owner's stable in any jurisdiction   | 3 <sup>rd</sup> LIFETIME offense in owner's stable in any jurisdiction   |
| ◦ Loss of purse.  | ◦ Loss of purse.   | ◦ Loss of purse and \$50,000 fine.<br><br>AND<br><br>◦ Referral to the Commission with a recommendation of a suspension for a minimum of 90 days.  |
| Horse   |  |  |
| 1 <sup>st</sup> offense   | 2 <sup>nd</sup> LIFETIME offense in owner's stable in any jurisdiction   | 3 <sup>rd</sup> LIFETIME offense in owner's stable in any jurisdiction   |
| ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 90 days and must pass a Commission-approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 120 days and must pass a Commission-approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br>AND<br><br>◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian's list for 180 days and must pass a Commission-approved examination before becoming eligible to be entered. |

**PENALTY GUIDELINE LISTING**

*The following are recommended penalties for violations due to the presence of a drug carrying Category “B” penalty, for the presence of more than one NSAID in a plasma/serum sample, subject to the provisions set forth in ARCI-011-020 E.(1)(c) and for violations of the established levels for total carbon dioxide. Except for those violations specified in 5.441(2)(a)\*:*

| <b>LICENSED TRAINER:</b>   |   |  |
|--|---|--|
| <b>1<sup>st</sup> offense</b>  | <b>2<sup>nd</sup> offense (365-day period) in any jurisdiction</b>  | <b>3<sup>rd</sup> offense (365-day period) in any jurisdiction</b>   |
| <ul style="list-style-type: none"> <li>◦ Minimum 15-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$1,000.</li> </ul> <p>Minimum fine of \$2,500 and a minimum 180 day suspension absent mitigating circumstances if the presence of a nerve blocking drug, <b>ALBUTEROL</b> or Clenbuterol is detected.*</p>                 | <ul style="list-style-type: none"> <li>◦ Minimum 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$2,500.</li> </ul> <p>Minimum fine of <del>\$2,500</del> <b>\$5,000</b> and a minimum 180 day suspension absent mitigating circumstances if the presence of a nerve blocking drug, <b>ALBUTEROL</b> or Clenbuterol is detected.*</p> | <ul style="list-style-type: none"> <li>◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension.</li> </ul> <p align="center"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$5,000 or 5% of purse (greater of the two).</li> </ul> <p>Minimum fine of <del>\$2,500</del> <b>\$10,000</b> and a minimum <del>180</del> <b>365</b> day suspension absent mitigating circumstances if the presence of a nerve blocking drug, <b>ALBUTEROL</b> or Clenbuterol is detected.*</p> <ul style="list-style-type: none"> <li>◦ May be referred to the Commission for any further action deemed necessary by the Commission.</li> </ul> |
| <p><b>* ALBUTEROL OR CLENBUTEROL DETECTED IN A QUARTER HORSE OR IN A HORSE OF ANY BREED PARTICIPATING WITH QUARTER HORSES HAVE BEEN RECLASSIFIED AS DRUGS CARRYING A CATEGORY “A” PENALTY. TRAINERS OF A QUARTER HORSE OR OF A HORSE OF ANY BREED PARTICIPATING WITH QUARTER HORSES FOUND IN VIOLATION OF HAVING THESE BANNED SUBSTANCES PRESENT IN A POST-RACE SAMPLE SHALL BE SUBJECT TO THE CORRESPONDING CATEGORY “A” PENALTIES LISTED ABOVE. IN ACCORDANCE WITH CRCR 5.612, THE HORSE SHALL BE PLACED ON THE VETERINARIAN’S LIST FOR 180 DAYS AND MUST PASS A COMMISSION-APPROVED EXAMINATION BEFORE BECOMING ELIGIBLE TO BE ENTERED.</b></p> |   |  |



| LICENSED OWNER:  |  |  |
|--|--|--|
| 1 <sup>st</sup> offense  | 2 <sup>nd</sup> offense in stable (365-day period) in any jurisdiction   | 3 <sup>rd</sup> offense in stable (365-day period) in any jurisdiction   |
| ◦ Loss of purse.   | ◦ Loss of purse.   | ◦ Loss of purse, and in the absence of mitigating circumstances a \$5,000 fine.  |
| HORSE:   |  |  |
| 1 <sup>st</sup> offense  | 2 <sup>nd</sup> offense in stable (365-day period) in any jurisdiction   | 3 <sup>rd</sup> offense in stable (365-day period) in any jurisdiction   |
| ◦ Disqualification.<br><br><p style="text-align: center;">AND</p> ◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian’s list for 45 days and must pass a Commission-approved examination before becoming eligible to be entered.<br><br>*Prohibited use of A Nerve blocking drugs, <b>ALBUTEROL</b> or Clenbuterol, will require a horse to be placed on the Veterinarian’s list for 180 days and must pass a Commission approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br><p style="text-align: center;">AND</p> ◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian’s list for 60 days and must pass a Commission-approved examination before becoming eligible to be entered.<br><br>*Prohibited use of A Nerve blocking drugs, <b>ALBUTEROL</b> or Clenbuterol, will require a horse to be placed on the Veterinarian’s list for 180 days and must pass a Commission approved examination before becoming eligible to be entered. | ◦ Disqualification.<br><br><p style="text-align: center;">AND</p> ◦ In accordance with CRCR 5.612, Horse shall be placed on the Veterinarian’s list for 90 days and must pass a Commission-approved examination before becoming eligible to be entered.<br><br>*Prohibited use of A Nerve blocking drugs, <b>ALBUTEROL</b> or Clenbuterol, will require a horse to be placed on the Veterinarian’s list for 180 days and must pass a Commission approved examination before becoming eligible to be entered. |

## CATEGORY C CHART

*The following are recommended penalties for violations due to the presence of a drug carrying a Category “C” penalty and overages for permitted NSAIDs and furosemide: (All concentrations are for measurements in serum or plasma.)*

|  |   |  |
|--|---|--|
| <b>LICENSED TRAINER</b>                                      | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and no furosemide when identified as administered*       | Phenylbutazone ( >5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen ( >50 ng/ml) and<br><b>CLASS C Violations</b>   |
| 1 <sup>st</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$250 absent mitigating circumstances.  | Minimum fine of \$1000 absent mitigating circumstances.  |
| 2 <sup>nd</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$500 absent mitigating circumstances.  | Minimum fine of \$1,500 and 15-day suspension absent mitigating circumstances.   |
| 3 <sup>rd</sup> Offense (365-day period) in any jurisdiction | Minimum fine of \$1,000 and 15-day suspension absent mitigating circumstances.  | Minimum fine of \$2,500 and 30-day suspension absent mitigating circumstances.   |
| <b>LICENSED OWNER</b>  | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and no furosemide when identified as administered*       | Phenylbutazone ( >5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen ( >50 ng/ml) and<br><b>CLASS C Violations</b>   |
| 1 <sup>st</sup> Offense (365-day period) in any jurisdiction | Horse must pass commission-approved examination before being eligible to run.   | Loss of purse. Horse must pass Commission-approved examination before being eligible to run.   |
| 2 <sup>nd</sup> Offense (365-day period) in any jurisdiction | Loss of purse. If same horse, placed on Veterinarian’s list for 45 days, and then must pass Commission-approved examination before being eligible to run.                       | Loss of purse. If same horse, placed on Veterinarian’s list for 45 days, must pass Commission-approved examination before being eligible to run.                       |
| 3 <sup>rd</sup> Offense (365-day period) in any jurisdiction | Loss of purse. Minimum \$5,000 fine. If same horse, placed on Veterinarian’s list for 60 days, and then must pass Commission-approved examination before being eligible to run. | Loss of purse. Minimum \$5,000 fine. If same horse, placed on Veterinarian’s list for 60 days, must pass Commission-approved examination before being eligible to run. |

| HORSE  | Phenylbutazone (2.0- 5.0 mcg/ml)<br>Flunixin (21-99 ng/ml)<br>Ketoprofen (2.00- 50.0 ng/ml)<br>Furosemide (>100 ng/ml) and<br>no furosemide when identified as<br>administered*                      | Phenylbutazone (>5.0 mcg/ml)<br>Flunixin (>100 ng/ml)<br>Ketoprofen (>50 ng/ml) and<br>CLASS C Violations  |
|--|--|--|
| 1st Offense (365-day period) in any jurisdiction | In accordance with CRCR 5.612, horse required to pass Commission-approved examination before being eligible to run.  | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, horse will be placed on Veterinarian's list for 30 days, and then must pass Commission-approved examination before being eligible to run. |
| 2nd Offense (365-day period) in any jurisdiction | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 45 days, must pass Commission-approved examination before being eligible to run. | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 45 days, must pass Commission-approved examination before being eligible to run.         |
| 3rd Offense (365-day period) in any jurisdiction | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 60 days, must pass Commission-approved examination before being eligible to run. | Disqualification.<br><br>AND<br><br>In accordance with CRCR 5.612, If same horse, placed on Veterinarian's list for 60 days, must pass Commission-approved examination before being eligible to run.         |

\*If the trainer has not had more than one violation within the previous two years, the Stewards/Judges are encouraged to issue a warning in lieu of a fine provided the reported level is below 3.0 mcg/ml, absent of aggravating factors.

After a two year period, if the licensee has had no further violations, any penalty due to an overage in the 2.0 – 5.0 category will be expunged from the licensee's record for penalty purposes.

## Penalties

### Multiple Medication Violations (MMV)

- (a) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-D, as provided in the ARCI Uniform Classification for Foreign Substances shall be assigned points based upon the medication's penalty guideline as follows:

| Penalty Class | Points If Controlled Therapeutic Substance  | Points If Non-Controlled Substance   |
|---------------|---|--|
| Class A       | N/A   | 6  |
| Class B       | 2   | 4  |
| Class C       | ½ for first violation with an additional ½ point for each additional violation within 365 days <sup>1</sup> | 1 for first violation with an additional ½ point for each additional violation within 365 days |
| Class D       | 0   | 0  |

<sup>1</sup> Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.

If the Board or the Commission rules that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

- (b) The points assigned to a medication violation shall be included in the Stewards' or Commission Ruling. Such Ruling shall be included in the ARCI official database and the ARCI shall assign points consistent with section (a) for advisory purposes for medication violations where points have not been assigned by regulatory action. Points assigned by such regulatory ruling or by the ARCI shall reflect, in the case of multiple positive tests as described in paragraph (d), whether they shall thereafter constitute a single violation. Points will be assessed after a ruling is rendered, and penalty enhancement shall be applied to future violations. The Stewards' or Commission Ruling shall be posted on the official website of the Commission and within the official database of the Association of Racing Commissioners International. If an appeal is pending, that fact shall be noted in such Ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.
- (c) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained and certified by the Association of Racing Commissioners International. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the Commission in its determination to subject the trainer to the mandatory enhanced penalties by the Stewards or Commission as provided in this regulation.

- (d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation.
- (e) The official ARCI record shall constitute prima facie evidence of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.
- (f) The Stewards or Commission shall include all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.
- (g) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in his/her official ARCI record:

| Points     | Suspension in Days |
|------------|--------------------|
| 5 – 5.5    | 15 to 30           |
| 6.0 – 8.5  | 45 to 60           |
| 9 – 10.5   | 90 to 180          |
| 11 or more | 180 to 360         |

This MMV policy is not a substitute for the current penalty system and is intended to be an additional penalty when the licensee:

- (i) Has more than one violation for the relevant time period, and
- (ii) Exceeds the permissible number of points.
- (h) The suspension periods as provided above, shall run consecutive to any suspension imposed for the underlying offense.
- (i) The Stewards' or Commission Ruling shall distinguish between the penalty for the underlying offense and the enhancement based upon the trainer's cumulative points.
- (j) Any trainer who has received a medication violation may petition the ARCI to expunge the points received for the violation for the purpose of the MMV system only. The points shall be expunged as follows:

| Penalty Classification | Time to Expire |
|------------------------|----------------|
| A                      | 3 years        |
| B                      | 2 years        |

|   |         |
|---|---------|
| C | 1 years |
|---|---------|

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

- (6) The recommended penalty for a violation involving a drug that carries a Category “D” penalty is a written warning to the trainer and owner. Multiple violations may result in fines and/or suspensions.
- (7) On Multiple Medication Violation (MMV) offenses, the Division, Board of Stewards, and Hearing Officer shall consider points given in all other States, regardless of whether they have formally adopted the ARCI-001-020 Medications and Prohibited Substances Penalty Chart for Multiple Medication Violations (MMV). The Division shall consider all cumulative points, and such enhanced penalty shall run consecutive to the Colorado penalty assessment.
- (8) Any licensee of the Commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.
- (9) The licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition their presence may be required at any and all hearings relative to the case.
- (10) Any veterinarian found to be involved in the administration of any drug carrying the penalty category of “A” shall be referred to the State Licensing Board of Veterinary Medicine for consideration of further disciplinary action and/or license revocation. This is in addition to any penalties issued by the Stewards or the Commission.
- (11) Any person who the Stewards or the Commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the Stewards or the Commission in no way prohibits a prosecution for criminal acts committed.
- (12) A licensed trainer shall not benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

The Commission hereby incorporates as part of Rule 5.441 of the Colorado Racing Commission Rules the following guideline by reference:

(1) Version ~~13.4 January 9, 2018~~ **14.0, JANUARY 2019** of the Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule issued by the Association of Racing Commissioners International, 1510 Newtown Pike, Suite 210, Lexington, Kentucky, USA 40511. This rule does not include any later Amendments or Editions of the *ARCI Uniform Classification Guidelines for Foreign Substances*.

Certified copies of the complete text of the referenced materials are maintained at the Colorado Department of Revenue Division of Racing Events, 1707 Cole Boulevard, Suite 350, Lakewood, Colorado, 80401, and may be inspected at that address during normal business hours. Copies are available from Division of Racing Events at a reasonable charge. Copies are also available online at: <http://www.arci.com/>. Certified copies may be obtained from the Association of Racing Commissioners International, 1510 Newtown Pike, Suite 210, Lexington, Kentucky, USA 40511 (859-224-7070).