

CHAPTER 188. DRUG USE AND TESTING

Sec.	
188.1.	Use of controlled substances.
188.2.	Urine test.
188.3.	Testing.
188.4.	Test results.
188.5.	Confidentiality

Authority

The provisions of this Chapter 188 issued under section 202 of the Race Horse Industry Reform Act (4 P. S. § 325.202), unless otherwise noted.

Source

The provisions of this Chapter 188 adopted January 16, 1987, effective January 17, 1987, 17 Pa.B. 270, unless otherwise noted.

§ 188.1. Use of controlled substances.

No driver, trainer, groom or official may use a controlled substance as defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) or a prescription drug unless the substance was obtained directly or under a valid prescription or order from a licensed physician while acting in the course of professional practice. The driver, trainer, groom or official is responsible for giving notice to the presiding judge on a form provided by the Commission that he is using a controlled substance or prescription drug under a valid prescription or order from a licensed physician. No driver, trainer, groom or official using a controlled substance or prescription drug under a valid prescription or order will be permitted to participate in racing activities unless the physician has certified that use of the controlled substance or prescription drug will not adversely affect the driver's or official's ability to properly and safely carry out his responsibilities.

Cross References

This section cited in 58 Pa. Code § 188.3 (relating to testing).

§ 188.2. Urine test.

A driver, trainer, groom or official for a race may be subjected to a urine test or other noninvasive fluid test for the detection of controlled substances or prescription drugs. The testing will be conducted and administered on racing days on track premises in a manner prescribed by the Commission. An individual subject to this requirement who refuses to submit to the test if requested to do so by a representative of the Commission is subject to a fine of \$250 and an immediate 10-day suspension to be imposed by the presiding judge or associate judge.

§ 188.3. Testing.

A driver, trainer, groom or official who is selected to submit to a urine test shall provide a urine sample to a representative of the Commission and shall cooperate with the representative. The taking of the sample shall occur in the presence of a Commission representative of the same sex as the tested individual. The sample shall be sealed and tagged immediately using a form provided by the Commission. Evidence of the sealing shall be indicated by the signatures of the tested individual and the representative of the Commission. The portion of the form provided to the laboratory for analysis may not identify the tested individual by name. The sample will be initially tested utilizing a drug detection device approved by the Commission and used at a laboratory approved by the Department of Health under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to conduct urine content drug screening tests.

§ 188.4. Test results.

(a) *Action upon initial positive test result.* A driver, trainer, groom or official who is initially tested positive for a controlled substance or prescription drug as part of a test administered using a portable drug detection device may be prohibited from participating in racing programs by the presiding judge until, in the judgment of the presiding judge, the tested individual is capable of safely participating in racing activities.

(b) *Action upon confirmed positive test result.* Initial positive test results shall be analyzed by a clinical laboratory which is approved by the Department of Health under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to provide confirmatory urine content drug testing specialized laboratory services. If the clinical laboratory analysis confirms an initial positive test for a controlled substance or prescription drug, other than a controlled substance or prescription drug used under a valid prescription or order under § 188.1 (relating to use of controlled substances), the Executive Secretary will:

(1) For the first violation, issue a written reprimand and warning and notify the tested individual that he will be subject to mandatory drug testing for a period of time as determined by the Executive Secretary, and that further violations shall result in the sanctions of paragraphs (2) and (3).

(2) For a second violation, require the tested individual to enroll in a treatment program approved by the Commission upon reasonable terms and conditions as required and at the cost of the tested individual. The tested individual shall be permitted to participate in racing activities prior to completion of the treatment program only if continued participation would not be detrimental to the best interests of racing or would not be unsafe, as determined by the Executive Secretary. The tested individual shall provide the Commission written notice of his enrollment, weekly status reports and written notice of his successful completion of, and discharge from, the program. If a tested indi-

vidual fails to comply with this paragraph, his license will be suspended until compliance is obtained. Upon successful completion of a treatment program, the tested individual will be permitted to participate in racing activities if permission had been denied by the Executive Secretary.

(3) For a third or subsequent violation, inform the tested individual that he may be liable under the penalties in sections 213 and 214 of the Race Horse Industry Reform Act (4 P. S. §§ 325.213 and 325.214), or he may be required to enroll in a treatment program in lieu of the penalties, at the discretion of the Commission.

(c) *Review.* Actions by a presiding judge, associate judge or the Executive Secretary under this section are subject to review by the Commission if review is requested in writing within 10 days of receipt of written notice of the actions. The Commission may affirm, modify or reverse action taken by a presiding judge, associate judge or the Executive Secretary if the action is consistent with the best interests of racing.

(d) *Positive test.* For purposes of this section, a positive test is a test result indicating the presence of any amount of a controlled substance or prescription drug.

§ 188.5. Confidentiality.

(a) *Permitted disclosures.* Information received in the process of obtaining a urine sample, including, but not limited to, medical information, the results of a urine test and reports filed as a result of attending a treatment program, will be treated as confidential, except for use with respect to a ruling issued under this chapter, or an administrative or judicial hearing with regard to the ruling. Access to the information received or reports of positive results or reports from a treatment program will be limited to the Commissioners, the Executive Secretary or a designee, counsel for the Commission and the tested individual. Nothing in this section prohibits the disclosure of a fine, suspension or revocation imposed on a licensee under this chapter.

(b) *Storage and retention of information.* Information received and reports prepared under this chapter will be stored in a locked, secure area in the office of the Executive Secretary for 1 year, after which time they will be destroyed. However, the Commission may maintain the information received and reports on individuals who have violated this chapter for the purpose of recording the number of violations and the results of treatment, and for use if future violations occur.

[Next page is 189-1.]

188-4

(247904) No. 288 Nov. 98

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