

**IN THE MATTER OF THE HORSE RACING LICENCE ACT 2015. S.O. 2015, C.38,  
Sched.9; AND IN THE MATTER OF DR. BRIAN VAN AREM**

**HORSE RACING APPEAL PANEL**

**B E T W E E N :**

**WOODBINE ENTERTAINMENT GROUP**

Appellant

- and -

**ALCOHOL AND GAMING COMMISSION OF ONTARIO  
and DR. BRIAN VAN AREM**

Respondents

**NOTICE OF APPEAL**

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Lawyer for Woodbine Entertainment Group

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TAB 1



### Horse Racing Appeal Panel

**Mailing and Service Address:**90 Sheppard Avenue East  
Suite 200  
Toronto ON M2N 0A4Telephone: 416-326-8700  
Toll free in Ontario: 1-800-522-2876  
Fax: 416-326-8054**Hearings Address:**10 Carlson Court  
Suite 400  
Toronto ON M9W 6L2

## Declaration of Representative

### IMPORTANT INFORMATION

- In accordance with section 3.3 of the Horse Racing Appeal Panel (HRAP) Rules of Procedure, a party may be:
  - o self-represented, or
  - o represented by a person licensed by the Law Society of Ontario (LSO) or by a person authorized to provide legal services in accordance with the *Law Society Act* (LSA) and its regulations and by-laws.
- **Those who have been retained to represent a person before the HRAP are required to complete this form and file it with the HRAP.**
  - o The completed form should also be served upon the other parties to the proceeding.
  - o If there are any changes to representation (i.e. a new representative is retained or else the appellant decides to represent him or herself), the HRAP and all parties must be notified immediately in writing.
- Note that a self-represented party may also be assisted by any person in any aspect of the proceeding.
  - o **Assistants do not have to file a Declaration of Representative form if they do not qualify as a legal representative** (i.e. licensed by the LSO or authorized to provide legal services under the LSA).
  - o It is important to keep in mind that assistants cannot provide legal advice, act on the appellant's behalf or submit material on behalf of the appellant.

**Representative:**

Last Name <b>DUTT</b>	First Name <b>DEEPSHIKHA</b>	Middle Name(s)
Company Name <b>DENTONS CANADA LLP</b>		

**Representative Contact Information:**

Street Number <b>77</b>	Street Name <b>KING STREET WEST</b>	Street Type	Direction	Suite/Floor/Apt. <b>400</b>
Lot/Concession/Rural Route	City/Town/Municipality <b>TORONTO</b>	Province/State <b>ON</b>	Country <b>CANADA</b>	Postal Code/Zip Code <b>M5K0A1</b>
Telephone Number (Home) <b>(416) 863-4550</b>	Telephone Number (Cell) <b>( ) -</b>	Telephone Number (Work) <b>( ) - Ext.</b>	Fax <b>(416) 863-4592</b>	
Email <b>deepshikha.dutt@dentons.com</b>				

**Declaration of Representative:**

I am representing

Name of Party: (First and Last) <b>WOODBINE ENTERTAINMENT GROUP</b>
In the appeal of Order/Decision/Ruling Number (if applicable): <b>TB 10951/18</b>
Order/Decision/Ruling Number Date: <b>2018   09   18 issued on</b>

**Acknowledgement:**

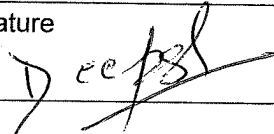
I declare that (check one):

<input checked="" type="checkbox"/> I am licensed by the Law Society of Ontario (LSO) to provide legal services.	My LSO No. is 62846f
--	-------------------------

OR

<input type="checkbox"/> I am authorized to provide legal services under the <i>Law Society Act</i> (LSA).
--

If you do not qualify as a legal representative (i.e. licensed by the LSO or authorized to provide legal services under the LSA), you are not required to complete and submit this form.

Print name (Representative) DEEPSHIKHA DUTT	Signature 	Date yyyy mm dd 2018 10 17
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The Horse Racing Appeal Panel collects the personal information requested on this form under the *Horse Racing Licence Act, 2015*. This information will be used to determine appeals under this Act. After an appeal is filed, all information may become available to the public. Any questions about this collection may be directed to the Horse Racing Appeal Panel at 416-326-8700 or toll-free at 1-800-522-2876.

**TAB 2**



Alcohol and Gaming Commission of Ontario  
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SUITE 200  
TORONTO ON M2N 0A4  
Tel: 416 326-8700 or 1 800-522-2876 toll free in Ontario  
Fax: 416 326-8711

Ruling Number TB 10951/18

Woodbine

TORONTO, ONTARIO –September 18, 2018

**IN THE MATTER OF THE HORSE RACING LICENCE ACT, 2015,  
S.O. 2015, c.38, Sched. 9;  
AND IN THE MATTER OF DR. BRIAN VAN AREM**

On August 1, 2018, Woodbine Security alerted the Stewards that Veterinarian, Dr. Brian Van Arem, had provided therapy and treated two horses that were in the entries at Woodbine that evening with Extracorporeal Shock Wave Therapy. The report, detailed from Woodbines' Surveillance of Trainer Norm McKnight's barn, that two horses, Brighter Ideas, 3rd race August 1, 2018 and Halo Laelia, 4<sup>th</sup> race August 1, 2018, had received the treatment on July 30, 2018. This was inside of the required time period of four days (96) hours of a horse competing in a race.

The Stewards ordered the horses scratched from their respective races and Dr. Van Arem and Trainer Norman McKnight attended the Stewards office and were informed of the findings and the action taken by the Stewards regarding the two horses that were to participate in racing that night and that an AGCO investigation would commence regarding the allegations. Dr. Van Arem and trainer McKnight informed the Stewards that the horse Constantino had received treatment in the same time period and was entered into the eighth race on August 3, 2018. Constantino was subsequently scratched by the Stewards.

On September 12, 2018, the Stewards convened to hear the matter, Dr. Brian Van Arem attended and was self-represented.

TAKE NOTICE that Veterinarian/Trainer Dr. Brian VAN AREM (116293) is hereby issued a monetary penalty in the amount of \$7,500.00 for misconduct (best interests of racing) providing treatment to horses that were in the entries with Extracorporeal Shock Wave therapy in contravention of the four day, ninety-six hour (96) time period required for horses in racing according to Directive #1, 2018, TB Rule 15.37 (b). The monetary penalty shall be paid on or before October 18, 2018. Alcohol and Gaming Commission Rules: 1.05, 15.09.01, best interests of racing, 15.37 (b) 16.13 (d) and 24.04.

The following conditions are placed on Brian VAN AREM's license for a period of one year, October 4, 2018, through October 3, 2019.

**Alcohol and Gaming Commission of Ontario**  
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TORONTO ON M2N 0A4  
Tel: 416 326-8700 or 1 800-522-2876 toll free in Ontario  
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- 1) Dr. Van Arem shall keep the peace and be of good behavior
- 2) Dr. Van Arem may be subject to AGCO Investigators' requests to seize Veterinarian records of horses treated in racing by him or his associates
- 3) Any violations of a similar occurrence during the probation period, may result in an immediate suspension and subsequent review by the Stewards.

Reasons for Decision:

AGCO Investigations report #18-365, revealed that the daily logs collected from Dr. Van Arem indicated that shock wave therapy was utilized as a pre-race treatment. The horses that were scratched on Wednesday August 1, 2018, were entered at five days out, over 120 hours from racing, as Woodbine has an entry day of Friday for Wednesday's race card. These horses were well outside of the 96 hours and yet were treated inside of 72 hours

Dr. Van Arem provided documentation on the results of some research that has been completed regarding the analgesic effects of shock wave therapy. He contended that the therapy is therapeutic and less evasive than other pre-race treatments. Also, that the rule at hand, 15.37, is only a guideline. The CPMA's booklet that veterinarians refer to for withdrawal times of medications given to horses participating in racing are guidelines to pre-race treatments. Shock wave therapy is not a pre-race treatment. It is a therapy that is ongoing to help relieve some of the ailments horses acquire through training and racing and the cut off time is 96 hours as stipulated in the rule.

The ARCI, Association of Racing Commissioners International's model rule suggests that Extracorporeal Shock Wave therapy for horses in racing should be stopped at ten days out from which the horses are to participate. American racing jurisdictions vary in their rules surrounding the use of shock wave machines but many major racing jurisdictions have adopted the model rule or have modified the model rule to the last administered therapy treatment to a horse to participate in racing, at a 7 day withdrawal.

The Stewards are tasked with a situation that has no previous set precedence. The administration of the shock wave treatments inside of the recommended time could be construed to potentially gain an advantage in racing. The analgesic effects could be masking issues associated with lameness and in doing so jeopardizes equine and human safety in the sport, this is considered to be not in the best interests of racing.



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As a licensed trainer and practicing Veterinarian, Dr. Van Arem is responsible to have full knowledge of the rules of racing and abide by them. The penalty set out in this ruling is on the basis of the violation of the rule. Ignorance of the rule, or rules, cannot be accepted as an excuse for their violation.

By Order of the Stewards

  
F. PLATTS

  
J. DORION

  
P. NIELSEN

**TAB 3**



**Horse Racing Appeal Panel**  
 90 SHEPPARD AVE E, SUITE 200  
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 Fax: 416 326-8054

# Notice of Appeal

## INSTRUCTIONS AND IMPORTANT INFORMATION

- All sections of this form must be completed and submitted along with any additional information and/or documents attached as required within 15 days from the date of the order, decision or ruling which is being appealed.
- You must attach a copy of the order, decision or ruling that you wish to appeal.
- If this form is incomplete and/or documents are missing, your request for an appeal may be delayed.
- All parties have the right to representation. If you have a representative, have your representative complete the 'Declaration of Representative' form and attach it to this form.
- If you wish to bring forward a motion to request an order of the Horse Racing Appeal Panel (HRAP) granting a stay of the order, decision or ruling you are appealing until such time that your appeal is heard, complete Section B of this form.
- If you wish for your matter to be heard in French, please complete the French Notice of Appeal. (Pour obtenir une audience en français, veuillez remplir la formule Avis d'appel.)

### SECTION A: NOTICE OF APPEAL

#### Appellant Information

Last Name <b>WOODBINE ENTERTAINMENT GROUP</b>	First Name	Middle Name(s)
AGCO Licence Category/Class (e.g. Owner / Driver / Trainer)	<i>See attached Notice of</i>	
AGCO Licence Number	<i>appeal for details</i>	

#### Address Information (Current Residence)

Street Number	Street Name	Street Type	Direction	Suite/Floor/Apt.
Lot/Concession/Rural Route	City/Town/Municipality	Province/State	Country	Postal Code/Zip Code
Telephone Number (Home) ( )	Telephone Number (Cell) ( )	Telephone Number (Work) ( ) Ext.	Fax Number ( )	
Email Address		Preferred method of communication with HRAP (check all that apply) <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Mail		

#### Ruling Number(s) under Appeal

*TB 10951/18*

#### Reasons you are making this appeal

(In this section, briefly state the reasons you disagree with the attached order, decision or ruling. If you agree with some parts of the order, decision or ruling please provide details).


*See attached notice of appeal for details*

(Continue on separate sheet if necessary)

**Acknowledgement**

Read carefully then check each box to confirm the statement and sign and date the form.

- I have completed all pages of this form and attached all the required documentation. I understand that if I submit an incomplete form or do not attach required documents, my appeal may not be processed.
- I have served a copy of this Notice of Appeal and all additional attached documents upon the Registrar of Alcohol, Gaming and Racing.

Signature 	Date    YYYY    MM    DD 2018   10   17
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**SECTION B: Notice of Motion (Requesting a stay of an order, decision or ruling)**

Complete this section if you wish to request a stay of an order, decision or ruling.

1. I wish to bring forward a motion to request an order of the HRAP granting a stay of the order, decision or ruling I am appealing until such time that my appeal is heard:
- Yes     No

If yes, please complete sections a) to b) below:

**a) Reasons you are bringing this motion:**

Describe in detail why you are bringing this motion and provide details explaining why you believe the HRAP should grant your request.

(Continue on separate sheet, if necessary)

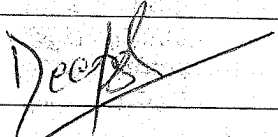
**b) Additional documents needed to consider your Notice of Motion:**

- I have attached a copy of the order, decision or ruling this motion relates to and any previous stays granted by the Panel.

**Acknowledgement**

Read carefully then check each box to confirm the statement and sign and date the form.

- I have completed all pages of this form and attached all the required documentation. I understand that if I submit an incomplete form or do not attach required documents, my motion may not be processed.
- I have served a copy of this Notice of Motion and all additional attached documents to the Registrar of Alcohol, Gaming and Racing.

Signature 	Date    YYYY    MM    DD 2018   10   17
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The Horse Racing Appeal Panel collects the personal information requested on this form under the *Horse Racing Licence Act, 2015*. This information will be used to determine appeals under this Act. After an appeal is filed, all information may become available to the public. Any questions about this collection may be directed to the Horse Racing Appeal Panel at 416 326-8700 or toll-free at 1 800 522-2876.

**TAB 4**

**IN THE MATTER OF THE HORSE RACING LICENCE ACT 2015, S.O. 2015, C.38,  
Sched.9; AND IN THE MATTER OF DR. BRIAN VAN AREM**

**HORSE RACING APPEAL PANEL**

**BETWEEN:**

**WOODBINE ENTERTAINMENT GROUP**

Appellant

- and -

**ALCOHOL AND GAMING COMMISSION OF ONTARIO  
and DR. BRIAN VAN AREM**

Respondents

**NOTICE OF APPEAL**

**THE APPELLANT, WOODBINE ENTERTAINMENT GROUP, APPEALS** to the Horse Racing Appeal Panel (the “**Panel**”) from the Decision of the Alcohol and Gaming Commission of Ontario (“**AGCO**”) dated September 18, 2018, issued on October 4, 2018, made at Toronto, Ontario, Ruling Number TB 10951/18.

**THE APPELLANT ASKS** that the Decision be set aside and that the Panel, in addition to the monetary fine of \$7,500 and conditions on licence of Dr. Van Arem’s licence grant an order:

- (i) Sentencing Dr. Brian Van Arem to a suspension of six (6) months from the date of the decision of the Panel or ninety (90) days from the date live racing commences on April 20, 2019;

- (ii) Extending the time to file and serve this Notice of Appeal, if required;
- (iii) The appeal be heard on an expedited basis given the issues of public interest and the serious impact on the integrity of the horse racing industry; and
- (iv) Such further and other relief as the Appellant may request and the Panel may deem just.

**THE GROUNDS OF APPEAL** are as follows:

**Background**

- 2. Woodbine Entertainment Group (“WEG”) is the owner and operator of the Woodbine racetrack.
- 3. On August 1, 2018, WEG Security alerted the Stewards that Veterinarian, Dr. Brian Van Arem, provided Extracorporeal Shock Wave Therapy to two thoroughbred horses, Brighter Ideas and Halo Laeila on July 30, 2018.
- 4. Brighter Ideas and Halo Laelia, both were scheduled to race in the 3<sup>rd</sup> and 4<sup>th</sup> race respectively on August 1, 2018. Providing Extracorporeal Shock Wave Therapy to racehorses within the prohibited time period of four days (96 hours) of a horse competing in a race is in contravention of the AGCO Rule 15.37.
- 5. Further, providing horses with Extracorporeal Shock Wave Therapy within the prohibited time also provides an advantage to the horse when racing.
- 6. Accordingly, the Stewards ordered that Brighter Ideas and Halo Laeila be scratched from their respective races.

7. Dr. Van Arem subsequently informed the Stewards that horse Constantino had also received Extracorporeal Shock Wave Therapy in the same time period and was entered in the 8<sup>th</sup> race on August 3, 2018. Constantino was also subsequently scratched by the Stewards.
8. An investigation followed into the practices of Dr. Van Arem and specifically in regard to his practice to provide Extracorporeal Shock Wave Therapy to the three horses mentioned above.
9. The hearing took place before the AGCO on September 12, 2018.

#### **The AGCO's Decision**

10. In a decision dated September 18, 2018 (the "**Decision**"), which was issued on October 4, 2018, the AGCO convicted Dr. Van Arem of misconduct (best interests of racing) for providing Extracorporeal Shock Wave Therapy to horses that were entered in races in contravention of the four day (96 hour) time period required for horses in accordance with Directive #1, Rule 15.37 of the *Rules of Thoroughbred Racing 2016* ("**Thoroughbred Racing Rules**").
11. In addition to contravening the *Thoroughbred Racing Rules*, the use of Extracorporeal Shock Wave Therapy is also prohibited by the Association of Racing Commissioners International Model Rules of Racing.
12. The AGCO concluded that the use of Extracorporeal Shock Wave Therapy: (i) provides a potential advantage to the horses in the race; (ii) potentially masks issues associated with lameness and jeopardizes equine and human safety in the sport; and (iv) is not in the best interests of racing.



13. The AGCO fined Dr. Van Arem \$7,500 for his misconduct (the “**Penalty**”).

#### **The Panel’s Jurisdiction to hear this Appeal**

14. Pursuant to both s. 8(1) of the *Horse Racing Licencing Act, 2015* and Rule 13.17 of the *Thoroughbred Racing Rules*, a person who considers themselves aggrieved by a decision of “the Stewards” may appeal that decision to the Panel.
15. As a racetrack owner, WEG is committed to providing a racing product which has a high assurance of integrity in order to attract the wagering public, and to assure competitors that they are competing on a fair and level playing field.
16. Dr. Van Arem’s misconduct at Woodbine racetrack, has brought the conduct of Woodbine into disrepute and has impacted their ability to carry on business. Trainers on Woodbine backstretch are considering moving to other racetracks as a direct result of practices similar to those of Dr. Van Arem. WEG has been aggrieved by Dr. Van Arem’s misconduct and the Decision. It therefore has a right to appeal the Decision to the Panel.

#### **The AGCO’s Errors**

17. Horse racing is, necessarily, a heavily regulated industry. Both the *Horse Racing Licencing Act* and the *Thoroughbred Racing Rules* contain rules for the conduct of horse racing. Any breach of those rules compromises the integrity of the racing industry.
18. Dr. Van Arem was found to have breached the *Thoroughbred Racing Rules* when he provided Extracorporeal Shock Wave Therapy to certain horses within the prohibited time period before their respective races.

19. The Penalty imposed by the AGCO does not reflect the seriousness of the offence at issue. WEG submits that the AGCO failed to take into account the following factors in arriving at the Penalty:
  - (a) the interests of the wagering public and other participants at the Woodbine racetrack;
  - (b) the integrity of WEG as the owner of a racetrack and the importance of a level playing field to the public's perception of the horse racing industry in Ontario;
  - (c) the degree of culpability and intentional perpetration of the prohibited treatment by Dr. Van Arem;
  - (d) deterring the type of misconduct at issue; and
  - (e) the breach of Dr. Van Arem's professional obligations as a veterinarian and the fact that horsemen in fact rely on veterinarians to prevent this type of misconduct.
20. There is overriding public interest in maintaining manifestly good and fair racing which is attractive to the betting public, and which encourages and funds participation in racing by all of the participants.
21. WEG's integrity as a racetrack depends on the fact and appearance of a fair and level playing field for participants. When that integrity is compromised, it harms WEG's business and live racing domestically as well as hinders its ability to promote its product internationally. Further, such conduct impacts and causes disrepute to the Canadian horse racing industry at large.

22. The consequences are enormous. Without integrity, the business of horse racing will die because the wagering public will not bet on a product that is not demonstrably fair. Thoroughbred wagering revenues and attendance will decline, the purses will get smaller and wages and profits will decline.
23. Accordingly, there is a public interest in strict enforcement of the *Rules of Thoroughbred Racing* in order to publicly demonstrate the integrity of the racing product and the racing business.
24. There is also a public interest in demonstrably deterring any behaviour by racing participants which is contrary to the *Rules of Thoroughbred Racing*;
25. Veterinarians have a key role in providing medical care for racing horses during and between competitions, including a duty to prevent such conduct that is prohibited by the *Rules of Thoroughbred Racing*. Lack of integrity and breach of professional conduct on the part of Dr. Van Arem brings the conduct of racing at Woodbine into disrepute.
26. Accordingly, the Penalty imposed by the AGCO should be much more severe in order to deter such behaviour from occurring in the future and restore the integrity of the racing industry.
27. WEG relies on the following:
  - (a) rules 15.09.01,15.37 and 16.13 of the *Thoroughbred Racing Rules*;
  - (b) rules 2.1(b) & (c), 2.4 and 2.5 of the Rules of Procedure of HRAP;
  - (c) s. 8(1), 40, 41(1) (c) and 41(4) of the *Horse Racing Licencing Act, 2015*, SO 2015, c. 38, Sch 9; and

(d) s. 4(1) of the *Statutory Powers and Procedure Act*, RSO 1990, c S. 22.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPEAL:**

1. The Decision of the AGCO (attached);
2. The Affidavit of Jonathan Zammit, Vice President, Thoroughbred Racing Operations at WEG which will be provided prior to the hearing in accordance with the Rules of Procedure of HRAP;
3. Such other documentary evidence as counsel may propose and the HRAP may permit.

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Lawyer for Woodbine Entertainment Group

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WOODBINE ENTERTAINMENT GROUP  
Appellant

- and -

Alcohol and Gaming Commission et al  
Respondents

**IN THE MATTER OF THE HORSE RACING  
LICENCE ACT 2015. S.O. 2015, C.38, Sched.9; AND  
IN THE MATTER OF DR. BRIAN VAN AREM**

**HORSE RACING APPEAL PANEL**

**NOTICE OF APPEAL**

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Lawyers for Woodbine Entertainment Group