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AND THE CLERK OF SCALES IN NEW YORK**

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# **THE RULES GOVERNING JOCKEY WEIGHTS AND THE CLERK OF SCALES IN NEW YORK**

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## The Rules Governing Jockey Weights and the Clerk of Scales in New York

As a preliminary matter, the first thing is to forget about any analogy to boxing. In boxing, the weigh in takes place before the fight. In horse racing, the jockeys weigh out before the race. They weigh in after the race.

Basically, the rules are that the clerk of scales – who is a track employee – weighs out the jockey<sup>1</sup> and post any overweights.<sup>2</sup> He is also supposed to weigh in the jockeys and report any rider who refuses to weigh in to the stewards.<sup>3</sup>

A jockey has to declare if he is overweight.<sup>4</sup> If he is more than two pounds overweight, he needs approval of the owner or trainer of the horse to ride.<sup>5</sup> If he is more than two pounds overweight, he has to inform the clerk of scales of this fact at least 45 minutes before the time of the race.<sup>6</sup> No horse can carry more than five pounds of overweight.<sup>7</sup> At the weigh in, the jockey cannot weigh more than one pound less than the weigh out weight.<sup>8</sup> Nor can he weigh in more than two pounds in excess of the weigh out weight unless the stewards are satisfied that the weigh in weight was affected by mud or rain.<sup>9</sup> So if you're declared to race at 114 pounds, you're supposed to weigh in after the race somewhere between 113 and 116 pounds.<sup>10</sup>

So quickly, the track is responsible through the clerk of scales for the correct weights of the riders. Any rider who weighs more than two pounds over the weight specified in the conditions of the race needs approval of the trainer or owner, and the jockey can't ride in excess of five pounds over the assigned weights.

The issues involving a weight problem could involve letting riders weigh out in excess of five pounds over the programmed weight, failing to weigh in riders, and failing to notify the public and/or owners and trainers when the rider is between 1 –5 pounds overweight. These violations could be the result of inadvertence, recklessness, or intentional wrongdoing. If money or some form of consideration was given in order to have someone look the other way, the problems escalate and could amount to criminal violations under the State's bribery laws (Article 180 of the Penal Code).

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<sup>1</sup> 9 NYCRR § 4023.4(a)

<sup>2</sup> 9 NYCRR §4023.4(b)

<sup>3</sup> 9 NYCRR §4023.4 (c)

<sup>4</sup> 9 NYCRR §4033.4

<sup>5</sup> 9 NYCRR §4033.5

<sup>6</sup> Id.

<sup>7</sup> 9 NYCRR §4033.6

<sup>8</sup> 9 NYCRR §4036.3

<sup>9</sup> 9 NYCRR §4036.4

<sup>10</sup> The former NYRA clerk of scales once stated that he had never had experienced a problem with the weights at the weigh in. See Bill Arsenault, "Weighty Responsibilities," Albany Times Union, August 11, 2000 Pg. C1.

It is difficult to believe much of what has happened over the past few days in the course of the investigation of rider weights. First of all, most of NYRA's regular jockeys ride in other locales across the country. There have been no reports or indications of discrepancies between New York weights and the weights of these riders in other jurisdictions.

Secondly, NYRA management has indicated that it was the source of the original complaint of improper weight being carried. While NYRA might need to report potential violations of law to the federal monitor, normally the approach to the weight problem is to terminate or transfer those responsible for weighing riders.<sup>11</sup> There are often fines imposed by the stewards for individuals who violate the weight rules.<sup>12</sup>

Additionally, NYRA and its federal monitor have enough investigators on hand that it could scrutinize the conduct and determine whether violations occurred. If there were rule violations, the matter could be referred to the stewards. If the violations were criminal in nature, they could be referred to local district attorneys.

Was there a need for a raid on the tracks? It's hard to believe that a raid was needed, especially if NYRA itself – as it has indicated - reported the weight issues. Do you only raid the ones you love? Just go to the tracks on a dark day and get the records directly from NYRA. If NYRA is as cooperative as claimed, it could just turn over the records to the prosecutors. It doesn't figure to be a big deal. And what could the records possibly show? Jockey A actually weighed 115, but we weighed him out at 112. The raid makes no sense. It would be like raiding the NFL league offices to find out why referees weren't calling holding penalties.<sup>13</sup>

As to political motivations for the raid, it makes no sense. There's no gain for anyone. While some people view Magna Entertainment as the bogeyman of American racing, there are no political contributions from Magna Entertainment in New York for the past two years. Magna did make some contributions in 2001 and 2002 to the Senate Republican majority, but Magna's political contributions – even then - paled in comparison to those of the NYRA trustees.<sup>14</sup> Also if the raid is performed by the State's Organized Crime Task Force [OCTF], the task force chief is appointed jointly by the Attorney General and the Governor.<sup>15</sup> While the OCTF is technically within the Attorney General's Office,<sup>16</sup> the State Police assigned to the unit are part of a gubernatorial agency. If it's a raid by the OCTF, it's a bipartisan raid. The OCTF can only bring a

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<sup>11</sup> See for example, Jim O'Donnell, "Arlington Takes Action on Weighty Issue," Chicago Sun Times, July 12, 2001.

<sup>12</sup> The five riders who were failed to ride at their reported weights at Arlington were all fined \$100. See Marcus Hersch, "Arlington Demotes Clerk of Scales," Daily Racing Form, July 11, 2001

<sup>13</sup> If there was a hockey season, the NHL offices could have been raided to find out why few penalties are called in the third period of close games.

<sup>14</sup> For a review of NYRA political contributions as of October 2003, see <http://www2.als.edu/glc/wagering/nyracontrib.pdf>.

<sup>15</sup> Executive Law, §70-a.2.

<sup>16</sup> Executive Law, §70-a.1.

criminal case if the governor approves, the local district attorney concurs, and the misconduct took place in more than two counties.<sup>17</sup>

There doesn't appear to be much recourse by the bettors if there was much fooling with the weight. Bettors are traditionally stuck with the official result.<sup>18</sup> But, what about an owner who lost a race and would arguably not have approved of using a jockey who was in actuality more than two pounds overweight? If NYRA knew of the problem and looked the other way, can an owner claim that he or she was damaged by NYRA's knowing failure to adhere to the rules of racing? IF NYRA instead of acting on the problem and/or reporting it to the stewards simply did nothing while awaiting an OCTF investigation, there is some possibility that NYRA has some potential liability to horsemen for failing to disclose overweights.

All in all, this entire NYRA jockey weight issue is a situation that makes almost no sense. Nobody looks good here, and the office of the clerk of scales – which may turn out to be totally innocent – has already been made to appear totally guilty.

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<sup>17</sup> See People v. Rallo, 39 N.Y. 2d 217 (1976). See Executive Law, §70-a.7.

<sup>18</sup> Shapiro v. Queens County Jockey Club, 184 Misc. 295 (Municipal Court, Queens County, 1945); Finlay v. Eastern Racing Ass'n, 308 Mass. 20, 24 (Mass., 1941).