

Teach Me How to Derby: The Need for Standardized Regulations in Horse Racing

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AT THE HORSE RACES, spectators expect to see stunningly strong horses, enthusiastic wagering, colorful jockeys, and fancy hats; however, they do not expect to see a horse euthanized on the track. During the summer of 2014, however, equine death was a rather common reality at the Del Mar Thoroughbred Club in Del Mar, California. Between opening day on July 17 and August 28, sixteen horses dropped dead while racing at the Del Mar Racetrack. It is no surprise that horse racing is a brutal sport, but the number of deaths has raised many red flags. It has caused many people to question the priority given to the horses' safety, as well as the testing performed on the safety of the track.¹

Horse racing was once the most watched spectator sport, and it is one of the few sports in the United States that allows for legal betting.² Since gambling is permitted at the event, it is also one of the most regulated sports.³ Its public perception has been tarnished, however, because of the appearance that there is a lack of concern for the health and safety of the horses.⁴ While the gambling aspects are highly regulated, the safety of the horses does not seem to be a priority to officials.⁵ Some of the aspects of horse racing that affect the safety of the horses are: the type of track materials, maintenance of tracks, and regulations on the use of drugs to enhance the horses' performance.

There are three types of horse racing tracks: dirt, turf, and synthetic (also referred to as Polytrack or cushion track).⁶ In 2014, the Breeders' Cup announced a three-year host site, which would require tracks to meet certain criteria to qualify to host the Breeders' Cup.⁷ Del Mar refurbished its turf track be-

fore the racing season in 2014 so that it would qualify for the Breeders' Cup to be held in November 2017.⁸

The turf track at Del Mar was refurbished during the winter and early spring to be ready by opening day in 2014; however, there were many delays due to the high water table.⁹ The delays may have resulted in a track that was too fast and firm, and the rush to open on time seems to have led to less testing, which may have adversely impacted the safety of the track. The president and chief executive officer (CEO) of Del Mar said that he did not believe the delay in construction of the refurbished track was a factor causing the firm and fast conditions of the track.¹⁰

¹See generally Jeff Nahill, *Cause Im a Bigshot 16th to Die at Del Mar*, UT SAN DIEGO (Aug. 28, 2014), available at <<http://www.utsandiego.com/news/2014/aug/28/im-a-bigshot-dies/>>.

²Harry M. Hoffheimer, *Some Horse-Racing Tips for Lawyers*, 50 A.B.A. J. 250, 250 (1964), available at <HeinOnline.org>.

³Luke P. Breslin, *Reclaiming the Glory in the "Sport of Kings"—Uniformity is the Answer*, 20 SETON HALL J. SPORTS AND ENT. L. 297, 314 (2010), available at <HeinOnline.org>.

⁴*Id.* at 317.

⁵*Id.* at 317.

⁶CA HORSE RACING BD., 44TH ANNUAL REPORT OF THE CALIFORNIA HORSE RACING BOARD 22 (2013–2014), available at <http://www.chrb.ca.gov/annual_reports/2014_annual_report.pdf>.

⁷The Breeders' Cup is the world championship for international thoroughbred horse racing each year. It takes place in late October to early November, and the track that the races are held on changes each year. For more information, see Press Release, Breeders' Cup, Breeders' Cup Announces Del Mar as the Host of the 2017 Breeders' Cup World Championship (June 24, 2014), available at <<http://www.breederscup.com/media-center/press-releases/2014-06-24-0>>.

⁸Ed Zieralski, *Horse Deaths Force Del Mar to Close Turf Course*, UT SAN DIEGO (July 26, 2014), available at <<http://m.utsandiego.com/news/2014/jul/26/del-mar-turf-course-deaths/>>.

⁹*Id.*

¹⁰*Id.*

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Most of the fatalities at the track in the 2014 season happened on the refurbished turf track, which forced Del Mar to close the turf track to perform maintenance.¹¹ Even with all the deaths, Del Mar's president and CEO stated that he felt the track was safe and that other issues led to the deaths.¹² One of the pieces of evidence that Del Mar gave in favor of the safety of the course was that the jockeys enjoyed racing on it, and they felt it was a firm and fast track, but not unsafe.¹³ There was no scientific proof, however, offered to demonstrate the safety of the track. Despite officials saying that the track was safe, the rails were moved out farther to give the horses new turf to run on, and Del Mar aerated the entire track to make it slower and give it more bounce.¹⁴ The Polytrack also underwent some changes mid-season, after all the deaths.¹⁵ This included wax being coated onto the track to bind the sand particles together, because when track material is more tightly bound, there is less kickback, which slows the horses down.¹⁶ All of these techniques should, and did, lead to a decline in injuries.¹⁷

Despite Del Mar's denial of responsibility for the deaths, the turf course underwent major changes in the off-season.¹⁸ Some areas of track were widened, and all the grass was replaced.¹⁹ The California Horse Racing Board (CHRB) investigated the deaths and inspected both the synthetic track and turf tracks.²⁰ The CHRB never officially determined that the turf course was the reason so many horses were injured; regardless, it requested that Del Mar make improvements.²¹ The improvements included allowing the grass to get taller, more water, and aeration.²² During the Fall Meet at Del Mar, there were no fatalities, which was a huge improvement, but it raised suspicion about the previous condition of the track during the summer of 2014.²³

On May 25, 2006, California's Horse Racing Board mandated that by the end of 2007, all dirt tracks would have to be switched over to synthetic track because it believed that this would reduce injuries.²⁴ Hollywood Park was the first to convert.²⁵ It opened its new track in September 2006 and hosted the first race on November 1.²⁶ California was not the only state to start using synthetic tracks; Keeneland in Kentucky installed a synthetic track as well.²⁷ While the number of injuries and deaths dropped, not everyone liked the idea of the synthetic track.²⁸

Synthetic tracks can lead to slower race times, which frustrates both owners and riders.²⁹ Furthermore, the weather often influences synthetic tracks,

which can lead to irregular maintenance schedules.³⁰ Synthetic track material holds in the heat, and in places where the temperatures get into the 100s, this can be a serious issue.³¹ Synthetic tracks are also stickier than a dirt or turf track.³² This can lead to broken legs, because if a horse changes direction or takes an awkward turn, its hooves could stick to the track, and the momentum of the horse's body could cause it to fall.³³ The maintenance of a synthetic track requires it to be watered down each day, and getting the right amount of water can be tricky; however, there is research being done on automatic watering systems, much like those used in farming.³⁴

The way to make races more enjoyable and safer for the riders and horses is to make the tracks consistent for every race, at every track.³⁵ The same

¹¹Turf Races Moved to Polytrack for Remainder of Week, DEL MAR MEDIA NEWS (July 31, 2014), available at <<https://www.dmtc.com/media/news/turf-races-moved-to-polytrack-for-remainder-of-week-184>>.

¹²Zieralski, *Horse Deaths*, supra note 8.

¹³*Id.*

¹⁴*Id.*

¹⁵Ed Zieralski, *Del Mar Takes Steps for Safer Racing*, UT SAN DIEGO (July 29, 2014), available at <<http://www.utsandiego.com/news/2014/jul/29/horse-racing-del-mar-safe/2/?#article-copy>>.

¹⁶*Id.*

¹⁷Zieralski, *Horse Deaths*, supra note 8.

¹⁸CA HORSE RACING BD., 44TH ANNUAL REPORT, supra note 6, at 3.

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴CA HORSE RACING BD., 36TH ANNUAL REPORT OF THE CALIFORNIA HORSE RACING BOARD, at 3 (2005–2006), available at <http://www.chrb.ca.gov/annual_reports/2006_annual_report.pdf>.

²⁵*Id.* at 3–4.

²⁶*Id.* at 3–4.

²⁷Daniel Ross, *Scratching the Surface: US Racing Looks to Track Conditions to Lower Injury Rates*, GUARDIAN (New York) (Sept. 23, 2014), available at <<http://www.theguardian.com/sport/2014/sep/23/racing-racetrack-surfaces-horse-deaths>>.

²⁸*Id.*

²⁹Lance Pugmire, *Concerns Still Surface Over Del Mar Track*, L.A. TIMES (Sept. 4, 2008), available at <<http://articles.latimes.com/2008/sep/04/sports/sp-horse4>>.

³⁰*Id.*

³¹Ross, supra note 27.

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵*Id.*

effort was not put into all the tracks when they were being converted; therefore, there is great inconsistency between tracks.³⁶ One horse owner, Jerry Jamgotchian, now refuses to bet or race on California tracks because of the inconsistency in how the tracks were built and maintained.³⁷ He specifically noted the rush to get tracks completed in the required amount of time, without losing racing days.³⁸ Beyond rushing to finish jobs, track operators overacted to slow race times and overhauled their tracks, even though it led to unsafe racing surfaces for the horses.³⁹ Jamgotchian said that “shoddy, inconsistent tracks are the enemy” of handicappers, trainers, horse owners, and bettors.⁴⁰

When tracks were originally changed from dirt to synthetic material, trainers were told that the new synthetic tracks would be better than the dirt tracks.⁴¹ In more recent years, however, track owners and trainers have been unhappy with synthetic tracks.⁴² Due to this unhappiness, the requirement for synthetic tracks in California has been lifted, and many tracks have been converted back to dirt.⁴³ The last race of the 2014 season at Del Mar was on November 30, 2014, and by December 8, contractors had begun removing 15,000 tons of synthetic material to convert back to a dirt track.⁴⁴ This has left many people questioning why more money is not being put into research for safer tracks, instead of faster tracks.⁴⁵

When a horse is racing at a speed of 38 miles per hour, its hooves hit the ground roughly 150 times per minute, so it is hard to argue that the safety of the track and material of the track is not of extreme importance.⁴⁶ While standardizing the tracks will not eliminate all injuries, it will help with performance and safety.⁴⁷

DRUG REGULATIONS IN HORSE RACING

When it comes to regulations, issues with the tracks are not the only concerns in the horse racing field; another issue is drug use.⁴⁸ This is a large concern, since bets are being placed on individual horses and what place they finish.⁴⁹ There are four primary reasons for drug use in horse racing: drugging to win, drugging to lose, therapeutic reasons, and accidental drugging.⁵⁰ While there are similarities between drug use in human sports and drug use in the sport of horse racing, there is one major difference: horses cannot consent to being adminis-

tered drugs, and therefore cannot willingly assume the risks that are associated with drug use.⁵¹

Drug use was once very hushed with the public; it was only discussed among members of the horse racing industry.⁵² In May 2008, two horses named Eight Belles and Big Brown changed that dynamic and made drug use in horse racing a recognized national problem.⁵³ During the 2008 Kentucky Derby, Big Brown narrowly won over Eight Belles, but the excitement did not stop there.⁵⁴ Just as Eight Belles crossed the finish line she collapsed due to two broken legs and had to be euthanized in front of millions of live and television spectators.⁵⁵ Big Brown’s trainer decided to speak out to prevent future injuries, like those that had occurred with Eight Belles.⁵⁶ Big Brown’s trainer explained that he would give Big Brown anabolic steroids before each race to enhance his performance.⁵⁷ This once quiet talk within the industry became such a national issue that 32 out of the 36 states that have

³⁶*Id.*

³⁷Brian Hiro, *Horse Racing: Thorn in Their Side: Passionate Owner Jerry Jamgotchian Constantly Challenges the Sport’s Establishment*, UT SAN DIEGO (July 18, 2009), available at <<http://m.utsandiego.com/news/2009/jul/18/horse-racing-thorn-in-their-side-passionate-owner/>>.

³⁸*Id.*

³⁹Pugmire, *supra* note 29.

⁴⁰Hiro, *supra* note 37.

⁴¹Pugmire, *supra* note 29.

⁴²*Work Toward Del Mar’s New Dirt Track Moves Steadily Along*, DEL MAR MEDIA NEWS (Jan. 28, 2015), available at <<https://www.dmtc.com/media/news/work-toward-del-mars-newbrdirt-track-moves-steadily-along-341>>.

⁴³*Id.*

⁴⁴*Id.*

⁴⁵Pugmire, *supra* note 29.

⁴⁶Michael “Mich” Peterson et al., *Racing Surfaces White Paper*, GRAYSON-JOCKEY CLUB at 5, available at <http://www.grayson-jockeyclub.org/resources/White_Paper_final.pdf>.

⁴⁷*Id.* at 3.

⁴⁸Bradley S. Friedman, *Oats, Water, Hay, and Everything Else: The Regulation of Anabolic Steroids in Thoroughbred Horse Racing*, 16 ANIMAL L. 123, 140 (2009–2010), available at <HeinOnline.org>.

⁴⁹*Id.* at 134.

⁵⁰JOAN S. HOWLAND AND MICHAEL J. HANNON, A LEGAL RESEARCH TO AMERICAN THOROUGHBRED RACING LAW FOR SCHOLARS, PRACTITIONERS AND PARTICIPANTS 1, 23 (1998), available at <HeinOnline.org>.

⁵¹Friedman, *supra* note 48, at 143.

⁵²*Id.* at 125.

⁵³*Id.*

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

racetracks passed some sort of regulation on anabolic steroids and horse racing.⁵⁸

There is a trainer's responsibility rule, which states that horse trainers and other handlers are responsible for any horse under their supervision; however, penalties are often mild or non-existent.⁵⁹ An example of this is when Ramon O. Gonzales Sr. was caught drugging 10 horses.⁶⁰ The charges were dropped completely because the commission forgot to file the proper paperwork.⁶¹ States such as New Mexico even allow a free pass for the first drugging violation, a small fine of \$200 for the second violation, and only \$400 for the third.⁶² The leniency does not let up there: every 12 months, the violations are wiped clean, and trainers can once again get a free pass for their "first" violation.⁶³ Rarely are violators actually suspended, and often, the small fines are just seen as the cost of doing business.⁶⁴

LEGISLATION PROPOSED IN HORSE RACING

With an estimated 24 horses dying per week during racing season, safety should be a huge concern for racing boards.⁶⁵ The large number of deaths, many of which can be attributed to drug use, caught the attention of People for the Ethical Treatment of Animals (PETA).⁶⁶ On PETA's website, it urged viewers to contact their U.S. representatives and senators to show their support of the proposed Horse Racing Integrity and Safety Act of 2013, which was introduced as Senate Bill 973 and House Bill 2012.⁶⁷

The House bill was introduced on May 16, 2013.⁶⁸ It required there be an independent anti-doping organization, and listed some of the responsibilities of that organization. It also set out what type of punishments the organization could impose on a person that violated the rules.⁶⁹ This bill is the first of its kind to suggest that there should be a uniform national drug policy, and that testing would be performed by an anti-doping organization.⁷⁰ One of the co-sponsors, Representative Joe Pitts, said that he was growing frustrated with the industry promising to better regulate drug use.⁷¹ Pitts said, "I introduced my bill in order to end race day medication and bring horseracing in line with other sports that have a national and uniform testing policy."⁷² This bill was not enacted; it died in Congress.⁷³

The Senate bill was also introduced on May 16, 2013.⁷⁴ It was referred to the Committee on Commerce, Science, and Transportation.⁷⁵ The proposals in the Senate bill were the same as the House bill.⁷⁶ This bill was also not enacted and died in Congress.⁷⁷

Even as these bills were pending, the Jockey Club released a statement saying that if the majority of states did not adopt uniform medication rules, then it would push for a federal regulation of horse racing.⁷⁸ By July 2014, some jurisdictions

⁵⁸*Id.* at 57.

⁵⁹*Id.*; see also Walt Bogdanich et al., *Mangled Horses, Maimed Jockeys*, N.Y. TIMES (Mar. 21, 2012), available at <http://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html?pagewanted=all&_r=1>.

⁶⁰Bogdanich, *supra* note 59.

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵Layla Klamt, *Horse Races Continue at Del Mar Despite Deaths [Graphic Video]*, GUARDIAN LIBERTY VOICE (Aug. 25, 2014), available at <<http://guardianlv.com/2014/08/horse-races-continue-at-del-mar-despite-deaths-graphic-video/>>.

⁶⁶Ray Paulick, *NY Times: PETA Files Complaint After Undercover Investigation of Asmussen Stable*, PAULICK REPORT (Mar. 20, 2014), available at <<http://www.paulickreport.com/news/ray-s-paddock/ny-times-peta-undercover-investigation-leads-to-cruelty-complaint-against-asmussen-biasi/>>.

⁶⁷*Id.*

⁶⁸Horseracing Integrity and Safety Act of 2013, H.R. 2012, 113 Cong. (2013), available at <<https://www.congress.gov/bills/113th-congress/house-bill/2012>>.

⁶⁹*Id.*

⁷⁰"Every Day, I Almost Quit": Confessions of a Racetrack Veterinarian, NBC NEWS (May 15, 2014), available at <<http://www.nbcnews.com/news/investigations/every-day-i-almost-quit-confessions-racetrack-veterinarian-n106791>>.

⁷¹*Id.*

⁷²*Id.*

⁷³Horseracing Integrity and Safety Act of 2013, H.R. 2012, 113 Cong. (2013), available at <<https://www.govtrack.us/congress/bills/113/hr2012>>.

⁷⁴Horseracing Integrity and Safety Act of 2013, S. 973, 113 Cong. (2013), available at <<https://www.govtrack.us/congress/bills/113/s973>>.

⁷⁵Horseracing Integrity and Safety Act of 2013, S. 973, 113 Cong. (2013), available at <<https://www.congress.gov/bills/113th-congress/senate-bill/973>>.

⁷⁶Horseracing Integrity and Safety Act of 2013, S. 973, 113 Cong. (2013), available at <<https://www.govtrack.us/congress/bills/113/s973>>.

⁷⁷*Id.*

⁷⁸Matt Hegarty, *Jockey Club to Push for Federal Regulation of Racing if Uniform Drug Rules Aren't Adopted*, DAILY RACING FORM (Aug. 11, 2013), available at <<http://www.drf.com/news/jockey-club-push-federal-regulation-racing-if-uniform-drug-rules-arent-adopted>>.

had adopted all or parts of the National Uniform Medical Program.⁷⁹ Unfortunately, some is not all, and parts do not equal uniformity. For the program to actually be considered a success, all states need to adopt the entire program; moreover, this program only focuses on drugs, and not on other issues of uniformity in the horse racing world.

In April 2015, racing officials expected to see federal legislation filed to establish a federal agency to oversee all medication and drug issues in horse racing.⁸⁰ This bill was similar to the one introduced and rejected in 2013.⁸¹ On July 16, 2015, the bipartisan Thoroughbred Racing Integrity Act of 2015 (H.R. 3084) was introduced.⁸² Andy Barr, a Republican congressman from Kentucky, and Paul Tonko, a Democratic congressman from New York, introduced the bill.⁸³ H.R. 3084, like the bills before it, focuses on an anti-doping program.⁸⁴ The Horse Racing Integrity Act website explained that the state-by-state drug laws are a messy patchwork system that only leads to confusion and unfair competition for horse owners and trainers traveling over state lines, as well as inconsistency for bettors who want to fairly evaluate horses before wagering away their hard-earned money.⁸⁵ If passed, it would go into effect on January 1, 2017, and the United States Anti-Doping Agency would have exclusive jurisdiction over all anti-doping, covering all horses, all jockeys, all trainers, all owners, and all horseraces.⁸⁶

While the House and Senate did not implement new laws to add an independent anti-doping organization, many people have issues with the drug and horse racing industry, including veterinarians who specialize in treating race horses.⁸⁷ Kate Papp, a veterinarian who specializes in horse racing, has decided to speak out about things she has seen going on behind closed doors at racetracks and horse racing training facilities.⁸⁸ Papp's reason for speaking out against the industry in which she works is that she wants the horse racing industry to reverse the allowance of over-use of therapeutic drugs.⁸⁹ Papp says it is a daily struggle not to quit her job because she constantly questions whether she can follow the professional oath she took to protect animals and prevent suffering.⁹⁰ She describes one of her daily jobs as being forced to inject horses with painkillers and other medications that they may not need.⁹¹ She says it is not uncommon to see young horses that have not even run yet be euthanized because they were trained too hard, pushed too far, and overmedicated.⁹²

Papp goes on to say that owners and trainers have one goal in mind, and that is to have the horses run well, so that they will win races and the payout for the owners, trainers, and bettors will be greater.⁹³ Owners and trainers are not looking at the long-term effects of the drugs that they are injecting into the horses; they are looking for fast results.⁹⁴ Papp and other vets have said that the medication is not being used for therapeutic purposes; it is used to keep a horse going when the horse's body is saying it is time to stop.⁹⁵ The overuse of these drugs can have negative side effects because they do not actually treat what is wrong with a horse, but rather just mask the symptoms, which can lead to bigger injuries and a total breakdown of the horse.⁹⁶

CALIFORNIA HORSE RACING

The California Horse Racing Board has a special program devoted to safety, known as the Racing Safety Program.⁹⁷ This program is fairly new, having been established in early 2010.⁹⁸ The members

⁷⁹Tom LaMarra, *Uniform Drug Program Picking Up Support*, BLOOD HORSE (July 10, 2014), available at <<http://www.bloodhorse.com/horse-racing/articles/86101/uniform-drug-program-picking-up-support>>.

⁸⁰Tom LaMarra, *Federal Bill Expected for Drug Regulation*, BLOOD HORSE (Apr. 6, 2015), available at <<http://www.bloodhorse.com/horse-racing/articles/91108/federal-bill-expected-for-drug-regulation>>.

⁸¹*Id.*

⁸²Thoroughbred Horseracing Integrity Act of 2015, H.R. 3084, 114 Cong. (2015–2016), available at <<https://www.congress.gov/bill/114th-congress/house-bill/3084>>.

⁸³*Id.*

⁸⁴*Id.*

⁸⁵Coalition for Horse Racing Integrity, *Take Action*, HORSE RACING INTEGRITY.COM, available at <<http://www.horseracingintegrity.com/register.aspx>>.

⁸⁶Thoroughbred Horseracing Integrity Act of 2015, H.R. 3084, 114 Cong. (2015–2016), available at <<https://www.congress.gov/bill/114th-congress/house-bill/3084>>.

⁸⁷*Every Day*, *supra* note 70.

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰*Id.*

⁹¹*Id.*

⁹²*Id.*

⁹³*Id.*

⁹⁴*Id.*

⁹⁵*Id.*

⁹⁶*Id.*

⁹⁷CA HORSE RACING BD., 44TH ANNUAL REPORT, *supra* note 6, at 22.

⁹⁸*Id.*

of the Racing Safety Program are required by Businesses and Professions Code § 19481.3 to prepare reports that identify likely reasons for all accidents that happen on the track.⁹⁹ The Racing Safety Program members are also required to monitor racing surfaces, evaluate a track's safety standards, develop continuing education of horse racing safety, and to provide postmortem pathology reports.¹⁰⁰ The chart provided by the CHBR does not divulge how much revenue is put into this program.¹⁰¹ The health and safety regulations do not stop with just the Racing Safety Program; there is also a laboratory service and an Equine Postmortem Program.¹⁰²

California has a laboratory service that requires blood and urine samples from each of the horses racing.¹⁰³ This program was put into place to help preserve the integrity of the sport and protect the safety of the horses.¹⁰⁴ The samples are obtained before every race and from the winner of each race, any horse finishing in second or third place at some races, and can also be directed at random after any race, even if a horse has not won, placed, or shown.¹⁰⁵ The post-race samples are the biggest part of the drug regulation program in California.¹⁰⁶ The post-race test includes testing for anabolic steroids and over 1,500 other drugs, and a special test was added in 2014 to check for cobalt.¹⁰⁷ The samples are sent to an accredited Racing Medical Testing Consortium (RMTTC) lab, the laboratory at the University of California, Davis (the Maddy Lab), to be tested.¹⁰⁸

The California Equine Postmortem Program was created to study injuries that occur to race horses, to find what caused the injuries, and to help develop ways to prevent those injuries.¹⁰⁹ To help study the injuries, a necropsy, which is also known as an autopsy, is performed on all horses that die within a California horse racing facility.¹¹⁰ The ultimate goal of this program is to lessen serious, non-fatal injuries to the horses and prevent deaths at the race-track, as well as to protect the jockeys riding the horses.¹¹¹ Other states have health and safety commissions as well.¹¹²

NEW YORK HORSE RACING

The New York Gaming Commission's Horse Racing Equine Health and Safety Division claims that "New York's equine drug rules and protective

measures are among the strictest and most comprehensive in the nation."¹¹³ New York proudly says that those who attempt to cheat will be held accountable for their actions.¹¹⁴ They have published two databases for the public: one that has every horse that has broken down, died, or been seriously injured at the track; and another database that contains every fine and suspension issued by the board of licensees, going back almost three decades.¹¹⁵ However, there is little to no public information about the standards, who is in charge of making sure tracks are up to those standards, and what standards need to be met.¹¹⁶

KENTUCKY HORSE RACING

Kentucky publishes the Kentucky Horse Racing Commissioners (KHRC) report biennially; the most current available report is the 2012–2013 edition.¹¹⁷ One of the committees included in the commission is the Kentucky Equine Drug Research Council (EDRC).¹¹⁸ The EDRC focuses on the safety of the animals when it comes to drugs, including testing, research, protocol, and recommendations.¹¹⁹ There is also a Necropsy Subcommittee that advises EDRC on issues that result in a fatality.¹²⁰ Kentucky

⁹⁹*Id.*

¹⁰⁰*Id.*

¹⁰¹*Id.* at 42.

¹⁰²*Id.* at 21–23.

¹⁰³*Id.* at 21.

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸*Id.*

¹⁰⁹*Id.* at 23.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²New York State Gaming Commission, *Horse Racing*, GAMING.NY.GOV, available at <<http://www.gaming.ny.gov/horseracing/>>.

¹¹³*Id.*

¹¹⁴*Id.*

¹¹⁵*Id.*

¹¹⁶*Id.*

¹¹⁷KY HORSE RACING COMM'N, 2012–2013 BIENNIAL REPORT (2012–2013), available at <<http://khrc.ky.gov/reports/Biennial%20Report%202012-2013.pdf>>.

¹¹⁸*Id.* at 15.

¹¹⁹*Id.*

¹²⁰*Id.*

also has a Safety and Welfare Committee.¹²¹ The Safety and Welfare Committee conducts public meetings at two of the tracks to address questions and concerns about safety regulations.¹²² They focus on health and safety of both humans and horses participating in the races.¹²³ Kentucky also has a Rule Committee that looks at regulations and makes recommendations for governing and improving the horse racing industry.¹²⁴

Kentucky has a Division of Veterinary Services, which oversees all regulatory items associated with horse racing, which includes: pre-race exams for fitness, on-track monitoring of health and well-being, racetrack injuries, determining eligibility for a race, record keeping, and more.¹²⁵ On race days, the horses are examined by the Vet Division in the morning, while saddling up, and during pre-race warm ups.¹²⁶ All the records are stored in a program that provides shared access to other racing regulation vets, so that a horse's conditions can be monitored over time, despite being at a different track or in a different state.¹²⁷ All scratches and race related injuries are also put into a database called the Jockey Club Equine Injury Database.¹²⁸ If a horse dies at a Kentucky track, the body is sent to the University of Kentucky for a necropsy, which includes in-depth evaluations and radiography of all limbs.¹²⁹

Kentucky Statute § 230.265 pertains to the Kentucky Equine Drug Research Council.¹³⁰ The council is made up of nine members that are appointed by the governor, and those members include: a veterinarian, horseman, pharmacologist, thoroughbred breeder, legislator, a representative of a licensed racing association, a member of the harness racing industry, a member from Kentucky Harness Horsemen's Association, and a member of the Kentucky Horse Racing Commission.¹³¹ The purpose of the council is to review drug research and testing, advise the racing commission, help to continue to establish a drug regulatory policy in Kentucky, and report changes that need to be made to the regulation of drug use in horse racing.¹³²

FEDERAL SAFETY ORGANIZATIONS

With health and safety concerns on the rise and questions about the integrity of the competition, many spectators and gamblers have lost faith in horse racing.¹³³ Horse racing once drew larger

crowds each year than all major and minor league baseball games, and college and professional football games.¹³⁴ In the last two decades, however, attendance at the races has decreased by nearly 50 percent.¹³⁵

Some of the blame for the public's loss of trust in the horse racing industry and decline in attendance has been placed on the lack of organized, uniform rules in the industry.¹³⁶ To address this concern, organizations such as the Racing Medication and Testing Consortium (RMTC), the National Thoroughbred Racing Association (NTRA), which has a safety and integrity alliance, and the Grayson-Jockey Club Research Foundation's Welfare and Safety of Racehorse Summit, started a process towards uniformity.¹³⁷

The mission of the RMTC is "to develop, promote and coordinate, at the national level, policies, research and educational programs that seek to ensure the fairness and integrity of racing and the health and welfare of racehorses and participants, and to protect the interests of the racing public."¹³⁸ Goals of the organization include: developing uniform policies, being an unbiased source for information regarding research in such areas as safety and drug abuse, to create uniformity for legitimate therapeutic drugs and drug testing in a laboratory,

¹²¹*Id.* at 16.

¹²²KY HORSE RACING COMM'N, 2010 ANNUAL REPORT 21 (2010), available at <<http://khrc.ky.gov/reports/Annual%20Report%202010.pdf>>.

¹²³KY HORSE RACING COMM'N, 2012–2013 BIENNIAL REPORT, *supra* note 117, at 16.

¹²⁴*Id.*

¹²⁵*Id.* at 31–38.

¹²⁶*Id.*

¹²⁷*Id.*

¹²⁸*Id.*

¹²⁹*Id.*

¹³⁰KY. REV. STAT. ANN. § 230.265 (Westlaw 2014).

¹³¹*Id.*; see also KY HORSE RACING COMM'N, 2012–2013 BIENNIAL REPORT, *supra* note 117, at 15.

¹³²*Id.*

¹³³Henry D. Fetter, *No, Horse Racing Can't Be Saved—Even by a Triple Crown Winner*, ATLANTIC (Washington, DC) (May 20, 2014), available at <<http://www.theatlantic.com/entertainment/archive/2014/05/no-horse-racing-cant-be-savedeven-by-a-triple-crown-winner/371255/>>.

¹³⁴Hoffheimer, *supra* note 2, at 250.

¹³⁵Fetter, *supra* note 133.

¹³⁶Breslin, *supra* note 3, at 324.

¹³⁷*Id.* at 320.

¹³⁸Racing Medication and Testing Consortium, *Goals and Accomplishments*, RMTNET.COM, available at <http://www.rmtcnet.com/content_goals.asp>.

to create a program to educate industry stakeholders about maintaining the integrity of the sport, and to distribute information to all stakeholders in a timely manner.¹³⁹ While the RMTC has accomplished many of the goals it has set forth, this is not a perfect solution to all the problems in the racing world.¹⁴⁰

The National Thoroughbred Racing Association (NTRA) offers benefits to its members, including discounts on many products for farm, business, and personal use.¹⁴¹ The biggest benefit is actually for racing facilities, and that benefit is to become an accredited member of the National Thoroughbred Racing Association Safety and Integrity Alliance (NTRASIA).¹⁴² For a racetrack to become a member, operators must fill out a 48-page application and have an on-site inspection of the facilities.¹⁴³ Currently, 23 racing facilities are accredited, but originally, 55 tracks had pledged to apply for accreditation.¹⁴⁴ More than half of them failed to do so.¹⁴⁵ The NTRASIA has a code of standards that is updated each year, and accredited facilities must comply with these standards; there are also Model Rules which each accredited racetrack must follow.¹⁴⁶ The code of standards contains standards on reporting injuries or fatalities, safety equipment, medication and testing, jockey qualification, and more.¹⁴⁷ The Model Rules cover every part of the operation of a racetrack, except that there is no rule covering what the track must be made from, or standards for the track itself.¹⁴⁸

The Grayson-Jockey Club Research Foundation was created to raise money to fund research projects for horse racing.¹⁴⁹ As the foundation grew, the Jockey Club created the Grayson-Jockey Club Research Foundation's Welfare and Safety of the Racehorse Summit.¹⁵⁰ The Welfare and Safety of the Racehorse Summit met for the first time in October of 2006, as a two-day workshop.¹⁵¹ A cross section of the horse racing community, including breeders, veterinarians, and others, was brought together to focus on improving welfare and safety in horse racing.¹⁵² They now meet every two years with the same goals in mind.¹⁵³ Different committees have been developed to focus on topics such as racing surfaces, durability, shoeing, hoof care, and more.¹⁵⁴

While the RMTC is a tax-deductible organization, and the NTRA would help tracks receive accreditation and offers its members several great discounts, many racetracks either do not have the money to spend on joining, or else believe it is un-

important to join, because the accreditation is more of a window dressing than a necessity to run a good track.¹⁵⁵ In addition, with both the RMTC and the NTRA, the area of uniformity in regulation of the track itself is being overlooked.

PROPOSAL FOR FEDERAL RULES AND REGULATIONS

With each state able to operate under its own rules and regulations due to the lack of federal or national regulation, tracks can and have been as lenient as they want when it comes to enforcing rules and punishing those who violate the rules.¹⁵⁶ With the lack of a powerful central authority in horse racing, there has been a decline in health and safety, as well as a competitive disadvantage among jurisdictions.¹⁵⁷ For years, many states had no regulations on drug use in horses, and even fewer had regulations regarding the track's safety.¹⁵⁸

Many in the horse racing industry have seen a need for a change over the past few years, and many have sadly had to sit back and watch the overall decline in the sport. The integrity of the sport has been compromised with the patchy and unorganized structure that is currently being used in horse racing.

¹³⁹*Id.*

¹⁴⁰*Id.* See Racing Medication and Testing Consortium, *Recent Accomplishments of the RMTC*, available at <<http://www.rmtcnet.com/resources/RMTC%20Recent%20Accomplishments%20Handout%20-%20May%202014.pdf>>, for more information about those accomplishments.

¹⁴¹Nat'l Thoroughbred Racing Assoc., *NTRA Advantage*, NTRA.COM, available at <<http://www.ntra.com/>>.

¹⁴²*Id.* at *Safety Alliance*.

¹⁴³*Id.*

¹⁴⁴*Id.*

¹⁴⁵*Id.*

¹⁴⁶*Id.*

¹⁴⁷*Id.*

¹⁴⁸*Id.*

¹⁴⁹Grayson-Jockey Club Research Foundation, Inc., *Who Are We*, GRAYSON-JOCKEY CLUB, available at <<http://www.grayson-jockeyclub.org/default.asp>>.

¹⁵⁰*Id.*

¹⁵¹*Id.* at *Welfare and Safety of the Racehorse Summit*.

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴*Id.*

¹⁵⁵Bogdanich, *supra* note 60.

¹⁵⁶*Id.*

¹⁵⁷Breslin, *supra* note 3, at 315.

¹⁵⁸Friedman, *supra* note 48, at 144.

Something needs to be done, and having all jurisdictions operating under the same rules and regulations would be the best start to improving the sport of horse racing as a whole.

Implementing national standards is nowhere near impossible, as there are national standards for most other professional sports.¹⁵⁹ RMTC, NTRA, and Grayson-Jockey Club have already put the time, money, and effort into research and developing the basis for federal uniform rules.¹⁶⁰ Using their efforts as a ground floor, the transition would be off to a good start.¹⁶¹ Implementing uniform federal rules would have many benefits to the horse racing community: getting everyone to operate on a level playing field, health and safety improvements, uniformity in tracks and track materials, and restoring faith in horse racing. All of this would also help the gambling aspect of horse racing, as well as entice new horses into racing at different tracks.

Uniform federal rules and regulations should include: a uniform drug rule, with required penalties for people who violate it; consistency in the tracks, as measured by a unbiased party; uniform drug testing procedures; a safety standard for how long a horse needs to heal before racing after an injury; and what tests should be performed before a horse is certified to be race ready. Areas for research should include creating and perfecting a device that will determine when the track needs to be watered, or when it is too wet, and automatically correct the problem if water is needed, much like what is used on farms for crops. In addition, research needs to be performed to determine what

type of track is best for the well-being of the horses, without hindering horses from breaking record times. Lastly, improvements need to be made in the drug testing techniques to expand ability to test for more drugs, in the most accurate manner.

CONCLUSION

Too many horses are dying during horse races today, too many gamblers have stopped placing bets at tracks, and far too many people have lost faith in the racing world. Something clearly needs to be done: horse racing has fallen far from being the largest spectator sport, and much of the blame for the decline can be put on the distrust in the racing industry.¹⁶² People do not want to bet money in a sport that they do not trust, and people do not want to attend races where the likelihood of seeing a serious injury is high. The best way to bring fans back to the sport is to stop playing around with a mash-up of disparate rules and regulations, and instead establish something across the board to restore integrity to the sport. The sport needs uniform nationwide rules and regulations. Even though horse racing is one of the most regulated sports due to the fact that it allows gambling, the sport of horse racing is still largely unregulated when it comes to health and safety.¹⁶³ Almost every other professional sport has national regulations, and horse racing needs to follow that trend. The positive reputation of a sport, which was once viewed as the “Sport of Kings,” can only fall so far before it fades into a distant memory.¹⁶⁴

¹⁵⁹Breslin, *supra* note 3, at 315.

¹⁶⁰*Id.* at 327.

¹⁶¹*Id.* at 327; *see also* Racing Medication and Testing Consortium, *supra* note 138; Nat'l Thoroughbred Racing Assoc, *supra* note 141; Grayson-Jockey Club Research Foundation, Inc., *supra* note 149.

¹⁶²Hoffheimer, *supra* note 2, at 250.

¹⁶³Breslin, *supra* note 3, at 314.

¹⁶⁴*Id.* at 297. *See also* Michael Russell, *Horse Racing—The Sport of Kings*, *EZINE* (Mar. 30, 2006), available at <<http://ezinearticles.com/?Horse-Racing—The-Sport-of-Kings&id=170027>>.