

THE NUTS AND BOLTS OF AN EQUINE MEDICATION CASE: WHAT YOU MUST KNOW

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The legislative purpose in granting to racing commissions the plenary power to promulgate rules and minutely regulate horse racing is to ensure that horse races are conducted "fairly, decently and cleanly."

The Racing Commission performs an active role of policy formation in order to ensure the integrity of horse racing and the state's interest in the minute and extensive regulation of a gambling enterprise and the protection of bettors against fraud.

I. Medication in Racing and Competition – A Primer

A. The Basic Drug Rules

- ◆ No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse.
- ◆ No drug substance shall be administered to a horse which is entered to compete in a race, except for approved and authorized drug substances.
- ◆ A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues, which has not been approved, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of established limits for its use shall be prima facie evidence that the trainer and his/her agent responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse.

B. Sample Collection and Documentation

- ◆ Urine and/or Blood
- ◆ Secure Testing Area
- ◆ Contamination Free
- ◆ Documentation
- ◆ Split Samples
- ◆ Property Collection and Sealing
- ◆ Sample Preservation and Integrity
- ◆ Documented Chain of Custody from collection to laboratory review

- C. Toxicology – Drug Detection and Analysis
 - ◆ The Laboratory
 - ◆ Inspection and Log-In
 - ◆ Blood v. Urine
 - ◆ Methods of Identification
 - Thin Layer Chromatography Immunoassay (ELISA)
 - ◆ Methods of Confirmation
 - Gas Chromatography/Mass Spectrometry
 - Liquid Chromatography/Mass Spectrometry
 - ◆ Decision Levels
 - ◆ Understanding and Interpreting Analytical Data
 - ◆ Reporting – The Data Packet
- D. Pharmacology - Effects of Drugs on Horses
 - ◆ Metabolism and Excretion
 - ◆ Urine v. Blood
 - ◆ Classification of Drugs
 - ◆ Administration Studies
 - ◆ Scientific Literature
 - ◆ Actual Effect v. Ability to Affect Performance
 - ◆ Zero Tolerance/Laboratory Confidence/Laboratory Cut-Offs
 - ◆ Withdrawal Times
- E. Drug Classifications
 - ◆ ARCI Uniform Classifications
 - ◆ Therapeutic v. Non-Therapeutic
 - ◆ Regulatory Controlled Drugs/Thresholds

II. The Investigation

- A. The Investigator's Report
- B. Search and Seizure/Contraband

III. The Prosecution of a Drug Case

A. Target Audiences

- ◆ Stewards
- ◆ Commission
- ◆ Hearing Officer
- ◆ Civil Courts

B. The Relevant Rules of Liability

- ◆ Trainer Responsibility
 - A trainer, in the absence of substantial evidence to the contrary, is responsible for the condition of each horse he enters in a race.
 - A trainer shall not start a horse or permit a horse in his custody, care or control to be started if he knows, or through the exercise of reasonable care, he might have known or has cause to believe, that the horse has received a substance foreign to the natural horse, except for those specifically permitted.
- ◆ Duty to Guard
 - A trainer shall guard, or cause to be guarded, each horse in his charge in a manner and for a period of time before racing so as to prevent any person from administering a substance foreign to the natural horse, except for those specifically permitted by the regulations of the commission.
- ◆ Absolute Insurer
 - A trainer is the absolute insurer of, and responsible for, the condition of each horse he enters in a race, regardless of the acts of third parties

C. Burdens of Proof

- ◆ Prima Facie Evidence
- ◆ Preponderance of Evidence

IV. Elements of A Successful Prosecution

- A. Compliance with Due Process Requirements
- B. Sample Collection
 - ◆ Demonstrated Chain of Custody
 - ◆ Integrity of Sample Collection Process
- C. Toxicology
 - ◆ Integrity of Laboratory Procedures;
 - ◆ Tests Performed are Generally Accepted Analytical Methods
 - ◆ Confidence of Lab in Positive Call
 - ◆ The Referee Analysis
- D. Pharmacology
 - ◆ What is the Pharmacology of the Drug
 - ◆ Is it a Drug that Might Affect Performance and How
 - ◆ ARCI Drug Classification or Non-classification
- E. Investigation
 - ◆ Witness Statements, Results of Search and Seizure
 - ◆ Report
- F. Importance of a Record
 - ◆ Documents
 - ◆ Testimony
 - ◆ Stipulations

V. Necessary Witnesses

- ◆ Investigator
- ◆ Laboratory Director
- ◆ State Veterinarian
- ◆ Equine Medical Director
- ◆ Pharmacologist

VI. Discovery Issues – Stewards, Hearing Officer, Commission

- A. Mandamus

VII. Expert Testimony

- A. Qualifying the Expert
- B. Opinions to be Rendered
- C. Toxicology v. Pharmacology
- D. Curriculum Vitae
- E. Testimony via Affidavit

VIII. Stipulations

- A. Partial v. Complete
- B. The Record

IX. Hearsay Evidence

- A. Witnesses
- B. Affidavits

X. Typical Defenses

- A. Contamination
- B. Non-Performance Enhancing/Traces - Pharmacology
- C. Reliance on Veterinarian
- D. Attacks on Reliability of Testing – Toxicology
- E. Failures in Chain of Custody
- F. Use of Supplements and Topicals
- G. Polygraph Examinations

XI. The Penalty Phase

- A. ARCI Drug Classification
- B. ARCI Model Penalties
- C. Aggravating and Mitigating Factors
 - ◆ past record of the trainer, veterinarian or owner the potential of the drug to influence performance
 - ◆ the legal availability of the drug
 - ◆ whether there is reason to believe the responsible party knew of the administration of the drug
 - ◆ whether the administration of the drug was intentional to affect performance
 - ◆ the steps taken by the trainer to safeguard the horse

- ◆ the probability of environmental contamination or inadvertent exposure due to human drug use
 - ◆ The purse of the race
 - ◆ whether there is a medication treatment form or other documentation and is the information consistent with the analytical data
 - ◆ whether there was any suspicious betting pattern
 - ◆ whether the trainer was acting under the advice of a veterinarian
- D. The Facts and Circumstances
- E. Toxicology and Pharmacology

XII. Exhaustion of Administrative Remedies

XIII. The Appeal

- A. Standard of Review
- ◆ Any decision of a regulatory body that is deemed to be arbitrary, illegal, capricious and unreasonable is subject to reversal.
 - ◆ Courts may not substitute their judgment for the judgment of the regulatory body or disturb a decision of such body, unless the decision was arbitrary, illegal, capricious, unreasonable or unsupported by the competent evidence.
- B. The Record

XIV. Trends and New Developments

- A. RMTC/DTI
- B. Laboratory Accreditation
- C. Research