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Medication Regulations of the California Horse Racing Industry: Are Changes Needed to Prevent the Use of Illegal Drugs?*

The California horse racing industry is the most lucrative industry of its kind in the world, generating phenomenal sums of money each year. The industry produces nearly $145 million in state revenues alone.\(^1\) The largest part of that sum comes from the billions of dollars bet each year\(^2\) through parimutuel wagering\(^3\) on horse races.

One of the reasons California enjoys such a prosperous racing industry is the warm weather which Californians use to their advantage to provide horsemen and racing fans with virtually year-round racing. For example, California's Thoroughbred racing schedule\(^4\) provides for forty-two weeks of racing in the central zone\(^5\) forty-four weeks of racing in the northern zone,\(^6\) and seven weeks of racing in

* The author wishes to thank the Del Mar Thoroughbred Club and California Horse Racing Board Medication Steward Ingrid Fermin for their continued assistance throughout the writing of this comment. Special thanks also to Julie D'Angelo and John Gorski for their valuable comments and suggestions.

1. CALIFORNIA HORSE RACING BOARD (CHRB), HORSE RACING IN CALIFORNIA STATISTICAL REPORT OF OPERATION 2 (1988). The exact figure for 1988 was $144,124,926.


3. "In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage." 9 CAL. REG. L. REP. 120 (1989).

4. CAL. BUS. & PROF. CODE § 19531(a) (West 1989). The statistics mentioned in the text refer to the maximum Thoroughbred racing weeks permitted by law. While California has a successful industry of both Quarter horse and Harness racing, this article focuses primarily on Thoroughbred racing because it is the largest section of California's racing industry.

5. The central zone consists of the Los Angeles area which includes Santa Anita Racetrack, Hollywood Park Racetrack, and Pomona Fairgrounds. 18 CHRB ANN. REP. 57 (1988).

6. The northern zone is comprised of the racetracks north of and including Fresno which include: Bay Meadows Racetrack, Fresno District Fair, Alameda County Fair at Pleasanton, Golden Gate Fields Racetrack, San Joaquin County Fair at Stockton, Solano County Fair at Vallejo, California State Fair at Sacramento, Sonoma County Fair at Santa Rosa, and the Humboldt County Fair at Ferndale. Id.
the southern zone. Applying further to the industry's prominence, California is home to some of the richest purse races run in the world.  

Because of the high stakes involved in California horse racing, some horsemen try to gain an advantage over the competition by administering prohibited performance-enhancing drugs to their horses. For example, during the 1988 racing season, thirty post-race samples were found to contain a prohibited drug. In the early months of 1989, the public was made aware of the illegal drug problem in horse racing when the California Horse Racing Board (CHRB) announced that charges had been filed against six trainers (including two world famous trainers) for drugging race horses with cocaine. The release of this information substantiated rumors that had been circulating for some time that the "doping" of horses was a real problem in California. This problem is one of the paramount issues facing the California racing industry today because of the negative impact doping horses has on the image of racing.

As a result of the CHRB's findings of prohibited substances, controversy now exists over the credibility of using of any drug substance, including current legal medications, on a horse which is entered to race. Certain individuals advocate a change in the medication rules and regulations to ban the use of any medications in horses entered to race. Such a change would return California to a regimen permitting only hay, oats, and water to be given to a race horse. However, as this Comment will show, revoking the use of current legal medications is not the best solution to the problem because

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7. The southern zone includes Del Mar Racetrack in San Diego and Los Alamitos Racetrack in Orange County. Id.
8. Examples of such races are the Hollywood Futurity and the Santa Anita Handicap, both with purses of one million dollars. Both of these races have a richer purse than the purse offered in the prestigious Kentucky Derby which is $350,000 plus a portion of each entry fee added back to the purse. (The total value of the purse for the 1989 Kentucky Derby was $749,200).
10. For example, a San Diego newspaper article that ran after the close of the 1990 Del Mar Race Meet stated:
   It [Del Mar] was one of the worst meets because of the entire racing industry's continued reluctance and consequent inability to deal effectively with the issue of drugs, in men as well as animals, and the excessive use of legal performance-enhancing substances, such as Lasix, Butazolidin, cortizone, and anabolic steroids. This cloud, growing ominously bigger and darker each day, hangs over the sport and contributes heavily to the paranoia that afflicts the betting public, which always suspects the worst. What the vets are up to in the barn area has become more important to some professional handicappers than a horse's current form. And the simple solution, which would be to ban all drugs on the theory that a horse that can't run without medication shouldn't be running at all, is the least one likely to be adopted, because it would interfere with business and, therefore, the American way of life.
it will not deter individuals from doping horses. More effective means are available to curb the use of illegal drugs in racing. Feasible remedies include implementing a more accurate drug testing program and increasing penalties for those who are caught drugging race horses.

The purpose of this Comment is: (1) to describe the controversy over the use of drugs and medications in racing; (2) to analyze the current California law as it pertains to the use of drugs in horse racing; (3) to analyze the California Legislature's solution to the problem of increased drug use in the sport of horse racing; (4) to apply feedback from key members of the California horse racing industry; (5) to present a comparative analysis of drug regulations in other states; and (6) to suggest means to effectively address the problem of medication abuse in horse racing.

I. BACKGROUND

A. Race Horse Medications

Various categories of medications can be given to race horses. The first category consists of medications given to a horse to improve its performance with the desired effect of increasing the horse's speed. The substances usually associated with this type of drugging are stimulants such as amphetamines, cocaine, and narcotics. The use of such drugs during racing is prohibited by California racing rules.¹¹

The second category includes drug substances that impair the performance of a horse by decreasing the animal's speed. Drugging of this type usually involves depressants such as tranquilizers and sedatives and is most often done by someone who has a vested interest in the horse not winning. These drugs are also prohibited by racing rules.¹²

The third category of medication is also illegal and includes local anesthetic blocks.¹³ A local anesthetic block is a substance, such as Marcaine, which is injected directly into the joint of a horse's leg, such as the knee or ankle. A block deadens pain felt at and below the site of the injection. When a block is injected correctly into the joint of the horse's leg, the fluid injected is retained in the joint for an extended period of time, thus slowing the absorption of the mate-

¹¹. CALIFORNIA HORSE RACING BOARD, MEDICATION PROCEDURES AND INSTRUCTIONS FOR HORSEMAN 3-4 (1988) [hereinafter MEDICATION PROCEDURES].
¹². Id.
¹³. Id.
rial into the bloodstream. As a result, it is often difficult to obtain an accurate post-race reading on the substance used for the block.

The fourth category includes therapeutic drugs. These drugs are not illegal, but they are “controlled substances,” meaning the use of these substances in race horses is regulated by law. The two types of drugs in this category are non-steroidal anti-inflammatory drug substances (NSAIDs) and bleeder medication. NSAIDs, such as Phenylbutazone (commonly referred to as “Bute”), are therapeutic health aids used to increase joint movement by reducing soft tissue inflammation. By reducing heat and swelling, the horse’s pain is relieved. Bleeder medication, such as Furosemide (Lasix), is used in racing to treat a condition known as epistaxis, or exercise-induced pulmonary hemorrhage (EIPH), which affects many race horses. Horses with this condition bleed from the lungs after physical exertion. This bleeding often produces symptoms such as shedding blood from one or both nostrils after a race or exercise. Many more horses with this condition bleed internally, but do not physically shed blood from their nostrils. Veterinarians are now able to detect internal pulmonary bleeding by using a flexible fiberoptics scope which enables them to see blood in the trachea and upper respiratory tract.

The first three categories of drugs — stimulants, depressants, and local anesthetic blocks — are used illegally to dope horses. Such illegal drug use is causing a major problem for the California horse racing industry. Ironically, the finding of illegal substances in post-race samples has given rise to a controversy involving the use of the fourth type of drug — legal therapeutic medications.

**B. Statement of the Controversy**

Those who favor the use of therapeutic drugs such as NSAIDs and bleeder medication (Lasix) during racing claim these drugs are especially necessary in California because of the extremely heavy racing schedule. With virtually year-round racing, proponents of drug use argue that race horses cannot be expected to run as frequently as they are required without the use of therapeutic drugs to ease minor muscle soreness and pulmonary bleeding. They claim that “the sensible use of drugs can enable an animal to run a better, more comfortable race.”

Those who oppose the use of drugs in horse racing believe race horses should not be given anything except hay, oats, and water.

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15. See id. at 85-109.
16. See id. at 111-31.
17. See supra notes 4-7 and accompanying text.
They believe "[i]f a horse is sick enough to need medication, then it is too sick to be entered in a race." The major concern of opponents is that drugs are often used to bring an injured horse back racing sooner than is in the best interest of the horse. They argue that therapeutic drugs are abused when they are used to cover up a horse's ailment rather than to treat it.

Another apprehension is the possibility of abuse and misuse of Lasix. Because Lasix is a diuretic drug, its use can produce diluted urine which, in turn, results in diluted concentrations of other drugs, including illegal drugs which may be contained in the horse's urine. Thus Lasix may interfere with the detection of illegal drugs in the horse's urine sample. Additionally, those opposed to the use of drugs in California horse racing argue that "[t]he practice of giving 'permitted' drugs, generally by intravenous injection, provides the means (syringes, needles, vials) and the opportunity for doping (doping agents can be substituted or mixed with permitted drugs)."

II. CURRENT CALIFORNIA LAW

Law governing horse racing in California comes from three sources: Chapter 4 of the California Business and Professions Code; Title 4, Division 4 of the California Code of Regulations; and the California Penal Code.

A. California Business and Professions Code

Chapter 4 of the California Business and Professions Code, is known as the "Horse Racing Law." This chapter places control and supervision over all aspects of horse racing within California in the California Horse Racing Board. The CHRB is an independent regulatory board consisting of seven members who are appointed by the Governor to serve a four-year term. The CHRB is entrusted with power to fully and effectively carry out the horse racing law. This power includes implementing all necessary and proper rules and

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20. Letter from Dr. Gary L. Henderson & Dr. Martha R. Harkey to Leonard Foote, Executive Secretary of CHRB at 6 (Sept. 12, 1989) (discussing recommendations for the Equine Drug Testing Program) [hereinafter Henderson & Harkey letter].
21. See id. at 4.
23. Id. § 19420.
24. Id. § 19421.
Thus, the CHRB has the primary responsibility for implementing and enforcing rules and regulations dealing with the use of medications and drug substances in race horses.

B. California Code of Regulations

Title 4, Division 4 of the California Code of Regulations sets forth the rules and regulations of the CHRB. The purpose of the rules pertaining to the medication of race horses is to “[p]rotect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the natural horse.”

1. Medication Regulations

The current race horse medications regulations prohibit use of all drugs except approved medication for the control of pulmonary bleeding (provided the horse is included on the bleeder list) and the use of not more than one non-steroidal anti-inflammatory drug substance (NSAIDs). The following four NSAIDs are the only approved medications, besides bleeder medication, which may be administered to a race horse:

1. Phenylbutazone and Oxyphenylbutazone to be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites and analogs per milliliter of blood plasma.
2. Naproxen to be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites or analogs per milliliter of blood plasma.
3. Flunixin to be administered in such dosage amount that the test sample shall contain not more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma.
4. Meclofenamic Acid to be administered in such dosage amount that the...
test sample shall contain not more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma. 29

Additionally, no more than one of these substances may be administered to a horse between the time it is entered to race and twenty-four hours before post time. No NSAIDs are allowed to be administered less than twenty-four hours prior to post time for the event in which the horse is entered. 30 Bleeder medication may not be administered to a horse less than four hours prior to post time for the event in which the horse is entered. 31

2. Testing Procedures

The procedures for drug testing of race horses are set forth in section 1858:

[b]lood and urine samples shall be taken from the winner of every race, from horses finishing second in every race with exacta or quinella wagering, second and third in any stakes race with a gross purse of $20,000 or more, beaten favorites, seven competing horses selected at random during the racing program, and from such other horses as may be selected or designated by the stewards or the official veterinarian. Saliva or other tests may also be taken when directed by the official veterinarian. Every horse within the enclosure or entered in any race is subject to such tests and no owner, trainer, or other person having the care of the horse shall refuse to submit such horse for testing when directed by the stewards or the official veterinarian. 32

In order to protect the state's chain of custody, 33 "[t]he taking of any test sample shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his agent or employee, and may be witnessed by the owner, trainer or person designated by them. Urine or other samples shall be sent to the official racing laboratory approved and designated by the board, in such manner as the board may direct." 34 The official laboratory handles all testing of samples for race horses in the state of California. The official labora-

29. Id. § 1844(c) 1-4.
30. Id.
31. Id. § 1845(e). Prior to July 1989, bleeder medication was able to be administered up until three hours prior to post time of the event for which the horse was entered. The CHRB has changed this rule. See infra text accompanying notes 58-61.
32. CAL. CODE REGS. tit. 4, § 1858 (1989). Exacta or quinella wagering is a type of wagering in which the bettor must select the first and second place horse in the race in exact order to collect on the bet.
33. Chain of custody refers to the proper handling of samples from the time they enter the state's hands (the moment the animal is detained for a drug test) to the time the sample is tested and results are reported. It is very important to have a tight chain of custody to prevent the possibility of tampering with or tainting of samples. A secure chain of custody is vital to the legal defensibility of the test results.
34. CAL. CODE REGS. tit. 4, § 1859 (1989).
A sample which tests positive for illegal drugs carries with it both civil and penal consequences. The civil penalties are quite severe. First, the horse is disqualified regardless of culpability for its condition, and any purse, award, prize, or record for such race is forfeited and the horse is deemed unplaced. Second, there are serious consequences for the horse's trainer. California has adopted a version of the "trainer-insurer" rule, which many other states also apply. This rule states:

[t]he trainer shall be the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties . . . . Should the chemical or other analysis of urine, or saliva samples, or other tests, prove positive showing the presence of any narcotic, stimulant, depressant, or local anesthetic, the trainer of the horse may be fined, his license suspended or revoked, or be ruled off; and in addition, the owner of the horse, the foreman in charge of the horse, groom and any other person shown to have had the care or attendance of the horse may be fined, his license suspended, revoked, or be ruled off.

Thus, a standard of strict liability attaches to the trainer of the horse.

4. Adjudication Procedures

As discussed previously, the presence of a prohibited drug in the test sample of a race horse is a violation of sections 1844 and 1887 of Title 4, Division 4 of the California Code of Regulations. The CHRB has the responsibility of proceeding with disciplinary action against the trainer of any horse who has tested positive for a prohibited drug. The CHRB delegates this responsibility to its state stewards. Stewards are racing officials who exercise immediate supervision, control, and regulation of racing at each racetrack. Stewards act on behalf of, and are responsible only to the CHRB. Stewards have authority over all horses and persons on the racetrack grounds, and they may hold hearings, investigate matters, and rule on disputes and objections. The trainer of a horse which has tested positive for a prohibited substance must appear in a hearing before the stewards. The stewards have the authority to suspend the trainer's license, subject the trainer to a fine, or rule the trainer off the racing grounds. All decisions and rulings of the stewards are subject to re-

35. Id. § 1859.5.
36. Id. § 1887.
37. See supra notes 28-36 and accompanying text.
38. CAL. BUS. & PROF. CODE § 19440 (West 1989).
After all administrative remedies have been exhausted, the trainer may petition for a writ of mandate in any court of competent jurisdiction to set aside the decision of the CHRB.\textsuperscript{40}

\textbf{C. California Penal Code}

In addition to civil liability for drugging race horses, persons who engage in such actions are also subject to criminal liability. Any person who administers a drug to a race horse to increase or retard its speed during a race is punishable by a fine not exceeding five thousand dollars, or by imprisonment in the state prison or county jail not exceeding one year, or both.\textsuperscript{41} Criminal liability also attaches to a person who did not personally administer the drug to the horse, but simply entered the horse in a race knowing it had received the drug within the past twenty-four hours.\textsuperscript{42}

\textbf{D. Controversy Over Current Law}

The controversy over the current drug regulations focuses on the large potential for abuse. For example, studies show that seventy to eighty percent of all horses racing in California are administered Lasix for the control of pulmonary bleeding, while only two to eight percent of horses are actually shedding blood from one or both nostrils.\textsuperscript{43} As explained above, Lasix has the potential to markedly dilute urine, which interferes with the detection of other drugs in the horse’s urine.\textsuperscript{44} Research reveals that “[f]or many of the more potent drugs, this dilution can result in concentrations well below the detection limits of current analytical technology.”\textsuperscript{45} Also, because the urinary concentrations of Phenylbutazone may not return to normal for up to twenty-two hours after the introduction of Lasix into the horse’s system,\textsuperscript{46} it is possible to give a horse a dosage of Phenylbutazone far in excess of the limitations proscribed by law.\textsuperscript{47} However, a solution to this problem is available. The levels of

\begin{itemize}
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Id. \textsection 19463.
\item \textsuperscript{41} CAL. PENAL CODE \textsection 337(f) (Deering 1989).
\item \textsuperscript{42} Id.
\item \textsuperscript{43} Henderson & Harkey letter, supra note 20, at 5.
\item \textsuperscript{44} See supra note 20 and accompanying text.
\item \textsuperscript{45} Henderson & Harkey letter, supra note 20, at 6.
\item \textsuperscript{46} Id.
\item \textsuperscript{47} T. Tobin, supra note 14, at 121.
\end{itemize}
Phenylbutazone in a horse’s system may be analyzed by a blood test instead of a urine test, as Lasix does not alter the plasma levels of any drug in a horse’s system.48

Opponents of Lasix also question its efficacy as a treatment for exercise-induced pulmonary hemorrhage (EIPH). Their skepticism emanates from studies showing that Lasix is only marginally effective in the control of pulmonary bleeding.49 These studies show that Lasix will not stop a horse from bleeding.50 Therefore, those persons opposed to its use during racing argue that the drug’s therapeutic value is scant, and it should be prohibited. However, proponents of Lasix respond that although Lasix will not stop a horse from bleeding entirely, scientific studies and common usage show that it reduces the amount of bleeding in most horses with a history of EIPH.51 Therefore, those who support use of the drug argue that it has measurable therapeutic value.

The potential for abuse is not the only concern. Some of the people associated with horse racing feel the integrity of the sport is denigrated when the majority of horses racing in California are legally administered two types of drugs in virtually every race.52 As a result of the controversy surrounding the current medication rules and regulations, the CHRB and the California Legislature have taken steps toward changing the existing racehorse medication rules in an effort to curb the use of illegal drugs in racing.

III. REGULATORY, LEGISLATIVE, AND INDUSTRY ATTEMPTED SOLUTIONS

A. California Horse Racing Board Actions

The CHRB has established a Medication Committee comprised of three members of the Board and several advisory members, including veterinarians, racing chemists, pharmacologists, and horsemen. The purpose of this committee is to discuss the drug problem and take actions to correct it.53 In addition to formulating the Medication Committee, the CHRB created the position of Equine Medical Director.54 The director’s responsibility is to oversee and advise the

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48. Id.
50. Id. at 2003.
51. Id.
52. Henderson & Harkey letter, supra note 20, at 4.
53. The Medication Committee meets once a month, in addition to the regular monthly meetings of the CHRB.
54. The first veterinarian appointed to this position was Dr. Dennis Meagher of the University of California at Davis, School of Veterinary Medicine. Dr. Meagher filled this position from July 1, 1989 to July 1, 1990. The position is currently filled by Dr. Richard
Medication Committee.

The Medication Committee has assigned Ingrid Fermin, one of its state stewards, to investigate and research the illegal medication problem in California horse racing. Fermin analyzes test results and racing data to watch for any developing trends, such as a particular trainer who is winning at an alarming rate, or any suspect samples which may indicate that a new type of drug is being used on the horses. Fermin also conducts surveillance on the backstretch (the area behind the racetrack where the horses are stabled) to watch for people who may be administering an illegal substance to a race horse.

Fermin has stated:

[The worst problem we are having is not with the use of stimulants, but the use of local anesthetic blocks to run unsound horses. Stimulants can only make the horse's legs run so fast. But, when a local anesthetic block is used to enable a horse with a crippling lameness (such as a hair line fractured in one of the bones of the leg or hoof) to run, it is incredibly dangerous to the horse and jockey. Danger is created because the injured limb might falter, causing the horse to fall which may result in a multiple horse collision.]

While Fermin is working with the CHRB to clean up the use of illegal drugs on the racetrack by ascertaining what drugs are used and by whom, she is determined to do it in a fair and just fashion. Fermin commented: "[R]uling someone off or issuing a suspension . . . results in taking away someone's livelihood, and for many of these people it is the only livelihood they know. Therefore, it is imperative to employ the best testing procedures available to be sure that the positive results really are positive."[57]

The Medication Committee has also addressed the procedure for administering bleeder medication. The old procedure required a veterinarian, employed by the owner of the horse, to administer the bleeder medication no less than three hours prior to post time. Furthermore, the shot had to be given in a detention area while in the care and custody of the horse's trainer or his agent. In July 1989, the CHRB followed the Medication Committee's recommendation to

Vuillet, also of the University of California at Davis, School of Veterinary Medicine.

55. Excellent trainers have a win record usually in the area of twenty percent of the horses they start. If a particular trainer has a win record that is considerably higher than twenty percent, there may be grounds for suspicion.


57. Id.


59. Id.
amend this rule. The new rule provides that the administration of Lasix must be given at least 4 hours prior to post time, in a single dose not to exceed 250 milligrams.\textsuperscript{60}

This change was made because of studies which show:

The urinary concentration of some drugs will return to normal within 4 hours after bleeder medication [Lasix] administration, [therefore] it has been assumed that there will be little or no effect on the post-race urinary concentrations of other drugs if Lasix is administered at least 4 hours before a race.\textsuperscript{61}

Another suspected problem with bleeder medication is that illegal drugs are being administered at the time bleeder medication is given. The Medication Committee suggested that the administration of bleeder medication be allowed only by an official veterinarian employed by the Board. However, CHRB Executive Secretary, Leonard Foote,\textsuperscript{62} offered his criticisms of this proposal:

First of all, the Board's current budget does not have sufficient funding to contract for the services of additional official veterinarians needed to implement the plan. Next, the State of California would assume any liability stemming from the possible misadventure due to the administration by the official veterinarian. Further still, the state has a policy prohibiting it from engaging in those activities regularly performed by private persons and businesses. Lastly, this proposal would entail a new program for which there is no present statutory authority.\textsuperscript{63}

Alternatively, Mr. Foote suggested that the administration of any bleeder medication be performed by a veterinarian designated by the CHRB and paid for by the owner of the horse.\textsuperscript{64} The designated veterinarian would notify the official veterinarian of the horse's treatment and administer such bleeder medication in the form of a single dose not to exceed 250 milligrams 3 to 4 hours prior to post time of the race in which the horse is entered.\textsuperscript{65} This alternative would remove the administration of the drug from private veterinarians and thus reduce the opportunity for the administration of other drugs at the same time. The state would also be relieved of the potential exposure to liability that would be created if the official veterinarian were to administer the drug.

Another area the Medication Committee has concerned itself with is supplemental or complementary drug testing in addition to the

\textsuperscript{60} Transcript of Proceedings California Horse Racing Board regular meeting Thursday, July 27, 1989 (held in La Jolla, California).
\textsuperscript{61} Henderson & Harkey letter, supra note 20.
\textsuperscript{62} Since offering this proposal, Leonard Foote has resigned from the position of Executive Secretary. The CHRB selected Dennis Hutcheson, former Assistant Executive Secretary to the CHRB, to fill the position.
\textsuperscript{63} Letter from Leonard Foote, CHRB Executive Secretary, to CHRB Medication Committee (August 10, 1989).
\textsuperscript{64} Id.
\textsuperscript{65} Id.
drug testing performed at the official testing facility. The implementation of supplemental drug testing was in response to pressures from the California Horsemen's Benevolent and Protective Association (CHBPA). The CHBPA fought to use an independent laboratory to prove that testing methods used by Truesdail laboratories (the official racing laboratory designated by the CHRB for the last twenty years), were inaccurate and unable to detect illegal substances. In July 1988, CHBPA received permission from the CHRB to have independent drug testing performed at the International Diagnostic Systems laboratory (IDS) in New Mexico.

IDS performed a broad range of enzyme immunoassay tests and was able to detect traces of illegal substances in test samples that Truesdail was not able to detect. The tests performed by IDS revealed that "[m]any of [the reported substances] were synthetic narcotics, stimulants and powerful diuretics." These test results confirmed suspicions that Truesdail's testing methods were inadequate in detecting the presence of prohibited substances. As a result, many people in the horse racing industry expressed strong dissatisfaction with the CHRB's continued use of Truesdail as the official racing laboratory. In response to the strong industry sentiment, the CHRB did not renew Truesdail's contract which expired June 30, 1990. Instead, the CHRB designated an Arizona laboratory, Harris Laboratories, as the new official racing laboratory.

The problem with Truesdail Laboratories was two-fold. First, until the end of their last contract with the CHRB, they did not have immunoassay testing kits which are very reliable for detecting drugs. Second, the credibility and quality control of Truesdail's

66. Supplemental or complementary drug testing involves splitting the sample taken from a horse into two separate samples; one is tested by the official testing facility, and the other is tested by another laboratory.
67. CHBPA is an organization which represents the interests of horse owners and trainers.
69. Id.
70. Immunoassay testing is a type of screening test which searches for the presence of drug substances. If a substance is detected through the screening test, an identification test (such as gas chromatography-mass spectroscopy) is performed to confirm which drug is actually present. At the time, IDS had exclusive access to this type of screening test which proved to be more effective than the techniques employed at Truesdail.
72. See infra text accompanying notes 97-127.
73. Hovdey, supra note 68, at 13.
testing procedures was questioned.\textsuperscript{74} To help ensure that the techni-
cians at Truesdail were upgrading their quality control program, the
CHRB found it necessary to place a custodial officer at Truesdail to
work as an investigator and monitor their procedures.\textsuperscript{75} Also, Trues-
dail had problems delivering timely results which created difficulties
when distributing purse monies.\textsuperscript{76} If a purse is distributed before test
results are in due to laboratory delay, and a sample subsequently
proves positive, it may be difficult to recover the money.\textsuperscript{77}

Moreover, the CHRB recently established a supplemental testing
program.\textsuperscript{78} The purpose of this program is to serve as a check on the
official testing facility.\textsuperscript{79} However, some critics complain that supple-
mental testing costs too much money, causes confusion, and casts
doubt on the credibility of the official testing laboratory.\textsuperscript{80} A signifi-
cant problem with the use of supplemental testing is the high occur-
rence of conflicting results reported by two different laboratories. Be-
cause testing procedures in the racing industry are not standardized,
one lab often reports a positive result while the other lab reports a
negative result for the same test sample. For instance, "[i]n a
CHRB confidential report on 197 samples found to be positive in the
supplemental testing program, the laboratories agreed on only 2
samples: conflicting results were reported for the remaining 195
samples."\textsuperscript{81}

\section*{B. Legislative Action}

The California Legislature reacted to the increased use of illegal
medications in the racing industry by introducing bills in both the
Assembly and the Senate during the 1989-1990 legislative session.
The content of both bills contained provisions which would have
changed the drug regulations of the California horse racing industry.
Both bills were dropped by their authors and, therefore, were not
made into law. However, their proposals contained in the bills repre-
sented what many felt were solutions to the racehorse "doping" is-

\textsuperscript{74} Christine, \textit{Testing Lab is on Defensive Again}, L.A. Times, Nov. 9, 1989, at C
\textsuperscript{13}, col.2.

\textsuperscript{75} Minutes of the California Horse Racing Board regular meeting, Friday, Sep-
tember 29, 1989 (held in San Mateo, California).

\textsuperscript{76} Christine, \textit{supra} note 74.

\textsuperscript{77} Minutes of California Horse Racing Board regular meeting Friday, November
17, 1989 (held in Los Angeles, California).

\textsuperscript{78} \textit{Id.}

\textsuperscript{79} \textit{Id.}

\textsuperscript{80} Henderson & Harkey letter, \textit{supra} note 20, at 10-11.

\textsuperscript{81} \textit{Id.}
C. Assembly Bill 216

Assembly Bill 216 (AB 216) was introduced by Assembly Member Floyd. In its early versions the bill sought to create the California Drug Free Horseracing Act of 1989. As the time limit in which drugs could be introduced into the horse’s system. For example, Furosemide (Lasix) could only be administered up until twelve hours before the start of a race program as opposed to the current rule which allows its use up until four hours prior to post time for the particular race in which the horse is entered. Administering Lasix twelve hours before the start of the racing program would not be effective in the control of bleeding in the horse’s race because Lasix is most effective when administered one to three hours before racing. Therefore, the bill’s proponents thought that the rationale for administering Lasix would no longer exist and the use of the drug would rapidly decline.

Additionally, AB 216 would have authorized the imposition of harsher civil penalties than are permitted under existing law on persons responsible for a positive sample. AB 216 also would have amended California Penal Code section 337(f) to provide for criminal liability for administering a drug to a race horse in violation of the bill. In later versions AB 216 dropped its title as the “California Drug Free Horse Racing Act of 1989.” In these versions, the bill changed its focus away from banning drugs. Its new focus was to prohibit the administration of any drug substance to a horse entered to race within twenty-four hours of the race, except by the official veterinarian. The bill died when Senator Maddy withdrew his support for the bill (which was crucial for the bill’s passage) due to the

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82. A. 216, Cal. Leg. 89-90 Sess. (1989). This bill was introduced by Assembly Member Floyd on January 5, 1989, and went through five amended versions before it was dropped by Floyd late in the summer of 1990.


83. Id.

84. CAL. CODE REGS. tit. 4, § 1845(e) (1989).

85. T. TOBIN, supra note 14, at 114.

86. Telephone interview with Mr. Kirk Breed, legislative consultant for Assembly Bill 216 (November 3, 1989).

87. A. 216 would amend CAL. PENAL CODE §§ 337f and 337h, and repeal CAL. PENAL CODE § 337g.

extraordinary cost implementing the program.\[^{80}\]

\[D. \textit{Senate Bill 593}\]

Senate Bill 593 (SB 593), introduced by Senator Maddy, was another piece of legislation addressing the issue of race horse medication regulations.\[^{80}\] This bill focused on testing for illegal drugs rather than attacking the existing medication regulations. SB 593 would have required one half of one percent of the revenue received by the CHRB from the monies handled in the annual parimutuel pool from on-track wagering to be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis to fund an equine drug testing laboratory. Until its last amended version, the bill provided that the CHRB must use the new equine drug testing laboratory at the University of California at Davis for at least twenty-five percent of the drug tests it conducts.\[^{91}\]

While the bill stated that it would require at least twenty-five percent of the drug tests conducted by the CHRB to be performed at the new laboratory, the legislative consultant for the bill, Joanne Slinkard, stated that the primary emphasis of the bill would be to provide for research at the facility on the use of medication in race horses.\[^{92}\] Routine testing would continue to be done by the official testing laboratory designated by the CHRB.\[^{93}\] The facility would occasionally test samples, but only as a complement to the testing performed by the official laboratory.\[^{94}\] Even though the bill was very popular within the racing industry, Slinkard correctly predicted that it might encounter opposition in the legislature due to the tremendous cost of implementing the program.\[^{95}\] In her words, “Horse racing generates a lot of revenue for the state’s general fund. Therefore, any special programs, such as the one this bill seeks to create, which rely upon money that would otherwise go to the general fund are often subject to a lot of scrutiny.”\[^{96}\]

\[^{80}\] “Estimates are that it could cost $1 million a year to hire enough state veterinarians to run the program, which is a tremendous cost in this difficult (state budget) year.” Daily Racing Form, Aug. 12, 1990, at 1, col. 1.

\[^{81}\] Senate Bill 593 was introduced on February 22, 1989, and was extended to a two-year bill.


\[^{83}\] Telephone interview with Joanne Slinkard, legislative consultant for Senate Bill 593 (December 21, 1989).

\[^{84}\] Id.

\[^{85}\] Id.

\[^{86}\] Id.
C. Industry Response

The people who would be most directly affected by any changes made in the medication regulations are horsemen. Therefore, any attempted solutions to the doping problem must consider the opinions of key people in the horse racing industry on the gravity of the drug abuse problem and what changes, if any, should be made to minimize the situation.

1. Veterinarians

The people in the racing industry who perhaps know the most about race horse medication are the veterinarians. They work with horses on a daily basis and have thoroughly studied and researched medications and their effects on horses. It is the position of at least one veterinarian, Jock Jocoy, DVM, that the formulation of drug rules is best left to veterinarians and should not be decided by the California Legislature. Jocoy stated:

The current drug regulations bind the hands of veterinarians by not allowing them to avail themselves of the modern medicinal technology that is available due to the fact that they [i.e., drugs] may show up in a post-race drug test. The permitted therapeutic drugs which are allowed, such as Phenylbutazone (Bute), are nearly 40 years old. The modern day equivalents of these drugs are better and more effective but the veterinarian is not allowed to use them because the presence of these drug substances in post-race samples is not allowed.

On the controversy over the existing drug regulations, Jocoy opined that "too many horses are being run on Lasix." Jocoy would not subject Lasix to a twelve-hour rule, as AB 216 attempts to do, because such a limitation would wipe out the therapeutic value of the drug for all horses. Instead, he would prefer to see a change in the procedure for admitting a horse to the bleeder list. Only horses which have been observed to physically shed blood from one or both nostrils should be permitted to be treated with bleeder medication. Horses that require an endoscopic examination to reveal their internal bleeding should not be admitted to the list. Jocoy also feels

97. Dr. Jocoy has been actively involved in racing since 1946 and is a retired veterinarian. Dr. Jocoy serves as the official racing veterinarian during the Del Mar meet.
98. Interview with Dr. Jocoy, Racing Veterinarian for Del Mar meet, in Del Mar (November 10, 1989) [hereinafter Jocoy Interview].
99. Id.
100. Id.
101. See supra note 27 and accompanying text.
102. Jocoy Interview, supra note 98.
that any and all therapeutic medications should be allowed up to forty-eight hours before a race. A forty-eight hour rule would, in his opinion, enable a veterinarian to effectively treat the horse, but would prevent the running of unsound horses in races.\textsuperscript{103}

Jocoy also believes "the penalties for those who are caught using prohibited substances should be stiffer. If there was a threat of licenses being suspended for a significant period (such as one year), people might think twice before 'hopping'\textsuperscript{104} a horse."\textsuperscript{105} Finally, for the drug abusers to take the threat of punishment seriously, they have to fear they will be caught. In order to instill this fear, it must be possible to accurately detect the presence of prohibited drugs and to do so in a manner that will stand up in court.\textsuperscript{106} To ensure reliable evidence, the CHRB needs to enter into a testing contract with a testing laboratory that employs better, more accurate testing techniques than Truesdail Laboratories.\textsuperscript{107} Even when Truesdail detects a positive sample, the results do not stand up in court because of the laboratory's bad reputation.\textsuperscript{108}

2. Trainers

John Sadler is a southern California race horse trainer who provided comments on the race horse medication issue.\textsuperscript{109} Sadler believes that he speaks for most of the California trainers in stating that he is happy with the present drug regulations.\textsuperscript{110} He believes drug regulations which provide for the use of Lasix and Bute are workable and desirable because they allow horses to race more comfortably. In his words, "These horses are expected to work very hard and the use of therapeutics is beneficial to the horses."\textsuperscript{111} In Sadler's opinion, California's drug laws are one of the reasons California horse racing is the best in the world.\textsuperscript{112} For example, "if a trainer has a horse that has a problem with pulmonary bleeding, the trainer simply will not race the horse in a state which bars the use of Lasix."\textsuperscript{113}

When questioned as to why trainers run so many of their horses on Lasix, Sadler responded, "Studies have shown that the damage

\textsuperscript{103} Id.
\textsuperscript{104} "Hopping" a horse is racing parlance for giving a horse a stimulant.
\textsuperscript{105} Jocoy Interview, supra note 98.
\textsuperscript{106} Id.
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Interview with Mr. John Sadler, Thoroughbred race horse trainer, in Los Angeles (November 17, 1989).
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Id.
caused by exercise induced pulmonary hemorrhage is irreversible. So, if a horse can be treated with Lasix as soon as internal bleeding is detected, you can prevent damage to the horse’s respiratory tract - because a horse that can’t breath can’t run competitively.” Likewise, according to Sadler, trainers would like to see better testing techniques to catch those who abuse the system, rather than take away the use of beneficial, therapeutic drugs for everyone. To obtain better testing, Sadler is a strong supporter of SB 593.

3. Racetrack Administrators

Joseph Harper is the President and General Manager of the Del Mar Thoroughbred Club, which is responsible for the seven-week racing meet at Del Mar during the summer. Harper commented, “At Del Mar there are approximately 2300 horses on the grounds at any given time during the meet. It takes about that many to fill nine races a day, five days a week for seven consecutive weeks.” Therefore, it would probably be difficult to fill all the races if every horse that was a little stiff had to be layed up rather than being treated with Bute. In an effort to curb the use of illegal drugs, the racetracks have increased security on the backstretch to watch for people who might be doping horses - including keeping an eye on the veterinarians. In Harper’s opinion, “[T]he only way to have ‘squeaky clean’ racing is to employ accurate drug testing and let it be known that there is a way to detect any type of drug someone might think to give a horse. That way, a person will know that if they give a horse a prohibited substance, they will be caught.”

Dan Smith is the Director of Marketing at Del Mar and has provided useful insight to the problem. As marketing director, Smith is constantly in touch with the public. Therefore, he is perhaps one of the most qualified people to comment on the effect of publicity of positive drug tests on horse racing’s image. “Public confidence is very high in the sport as evidenced by the fact that Del Mar’s at-

114. Id.
115. Id.
116. Id.
117. Interview with Joseph W. Harper, Executive Vice President and General Manager of the Del Mar Thoroughbred Club, in Del Mar (November 3, 1989) (Joseph Harper was promoted to President of Del Mar Thoroughbred Club in July 1990).
118. Id.
119. Id.
120. Interview with Dan Smith, Director of Marketing for the Del Mar Thoroughbred Club, in Del Mar (November 21, 1989) [hereinafter Smith Interview].
tendance (both on-track and off-track combined) has been increasing over the years, including an increase for the 1989 season over the 1988 season.\textsuperscript{121} Santa Anita's attendance has also been very good. Smith concluded by stating, "If anything, it looks as if public confidence is up, although it is difficult to ascertain how much better the industry could be doing if confidence were even greater."\textsuperscript{122} Smith's proclamation that public confidence is high held true for Del Mar's 1990 season. Del Mar patrons wagered a record $322,967,256 on horse races during the track's seven-week meet in 1990.\textsuperscript{123} This level of wagering represented an increase of 2.6 percent over the 1989 season.\textsuperscript{124} The average daily attendance of 16,506 at Del Mar in 1990, an increase of 1.2 percent over the 1989 season.\textsuperscript{125}

IV. ANALYSIS

A. Medication Regulations of Other Racing Jurisdictions

To achieve a complete understanding of the racehorse medication issue, it is helpful to look at the medication regulations of other states. The regulated use of medications has existed in most major horseracing jurisdictions in the United States since the end of the 1970s.\textsuperscript{126} The shining exception to this rule is New York which does not allow any medication to be administered to a horse entered to race within forty-eight hours of the start of the racing program.\textsuperscript{127} New York's strict rule has been criticized as unfair to the horse and the betting public. Critics look at cases such as Alysheba, who won the first two legs of the Triple Crown\textsuperscript{128} in 1987 but lost the final event — the Belmont Stakes in New York. Lasix was permitted in the first two events, (The Kentucky Derby (Kentucky) and The

\textsuperscript{121} Average daily attendance at Del Mar for the 1989 season was 16,310, which was a 2.8% increase over the 1988 average daily attendance of 15,872. Likewise, the combined on and off track parimutuel handle (the amount of dollars placed on bets) was a record $314,786,781 for the 1989 season, which equated to an average daily parimutuel handle of $7,320,623. These statistics made Del Mar the number one racetrack in the country in terms of average daily parimutuel handle, and the number two racetrack for average daily attendance (second only to Saratoga racetrack in New York). Del Mar Parimutuel Handle and Attendance Statistics - 1989 (Sept. 13, 1989) (Final news release, available at Del Mar Thoroughbred Club).

\textsuperscript{122} Smith interview, supra note 120.

\textsuperscript{123} Del Mar Parimutuel Handle and Attendance Statistics - 1990 (Sept. 13, 1990) (Final news release, available at Del Mar Thoroughbred Club).

\textsuperscript{124} Id.

\textsuperscript{125} Id.

\textsuperscript{126} T. Tobin, supra note 14, at xi.


\textsuperscript{128} The Triple Crown is thoroughbred racing's most coveted award. To win the Triple Crown, a horse must win the Kentucky Derby, The Preakness, and the Belmont Stakes in the same year.
Preakness (Maryland)) but was not permitted in the Belmont Stakes. More recently, New York's ban on Lasix created a cloud of controversy over the 1990 Triple Crown and Breeders Cup. Many critics claim that New York's ban on Lasix kept top contenders, such as Summer Squall, out of the events. In today's racing, the top horses compete in many different states. Consequently, critics of New York's rule argue that horses should be treated with medication in a consistent manner. Critics believe this would be most beneficial to the horse, and the fairest situation for the betting public. Unfortunately, people may place a bet on a horse believing that it will run in a manner consistent with a performance given in another state while running on medication.

B. Discussion

The CHRB and the California Legislature are both making efforts to reduce the use of prohibited drugs in California horse racing. The CHRB has initiated measures such as providing supplementary testing and addressing the issue of bleeder medication administration. These steps are movement in the right direction because they make it more difficult to abuse the drug regulations, but do not wipe out the use of valuable therapeutic drugs for all horses. Studies have shown, and horsemen have experienced, that horses suffer permanent, irreversible damage to their respiratory system from exercise-induced pulmonary hemorrhaging (EIPH). Until a new drug (or some kind of non-medicinal treatment) capable of reducing EIPH is introduced, the industry is dependent on Lasix to reduce the effects of EIPH. CHRB's supplementary program hopefully will enable the CHRB to ascertain whether the official laboratory is adequately performing its duties. This program, combined with the CHRB's newly designated racing laboratory, will provide increased ability to detect drugs.

The failed legislative attempts had both good and bad points. The California Drug Free Horseracing Act of 1989, was not a good piece of legislation. The problem with the use of illegal drugs in racing will not cease if and when therapeutic drugs are outlawed. New York does not allow the use of any therapeutic medications in horses.


130. See supra text accompanying note 16.
while they are racing, yet prohibited substances are still found in post-race tests.\footnote{131} Making the use of therapeutic drugs illegal will simply divert the efforts and capabilities of the testing facility and the CHRB from discovering and prosecuting persons using prohibited substances to affect the performance of race horses.

Additionally, the drugs AB 216 sought to prohibit are beneficial, therapeutic drugs. It is acceptable for human athletes to avail themselves of therapeutic drugs (such as aspirin) to ease muscle soreness.\footnote{132} And, certainly if a human athlete had a health condition (such as diabetes) that could be controlled or aided by modern medicinal technology the athlete would be allowed to make use of such medicine.\footnote{133} Likewise, equine athletes should be able to use medicine that will allow them to perform more comfortably. As long as steps are taken to ensure that these drugs are properly regulated and not abused, therapeutic drugs should be allowed in racing.

Finally, to protect the horse and the betting public, horses should be treated with medication in a consistent manner. A horse that is accustomed to being treated with a particular medication will probably not perform to its fullest capability when racing without the medication. Because all racing jurisdictions in the United States except New York allow the use of Lasix or therapeutic drugs, California should not change its current drug regulations. This is necessary in order to keep medication rules as uniform as possible in the United States.

SB 593 was definitely progress in the right direction. However, it needed to go further. Not only should research be performed at the University of California at Davis drug facility, but a portion, if not all, of the daily testing of samples should be conducted there. Other states make use of their universities to ensure that testing is at its

\footnote{131} Telephone interview with Dr. George Maylin, Director of New York’s Equine Drug Testing and Research Program (January 2, 1990).

\footnote{132} The United States Olympic Committee rules do not allow amateur athletes to use any painkillers during competition. \textit{United States Olympic Committee Report}, March 10, 1986, at 1. However, race horses are more closely comparable to professional athletes, who are allowed to use painkillers such as aspirin during competition. For example, the California Horse Racing Board’s regulations are silent as to the medications jockeys are allowed to take during competition. See \textit{Cal. Code Regs. tit. 4, Div. 4} (1990). The CHRB’s only regulation of human drugs is a blanket prohibition of any licensee being under the influence of an intoxicating liquor or drugs while within the racing enclosure. \textit{Cal. Code Regs. tit. 4, § 1874} (1990). Moreover, most professional sports association’s rules regarding the use of drugs by athletes are silent as to the use of common pain killers such as aspirin, but are solely concerned with the use of narcotics drugs. \textit{See generally}, Brock & McKenna, \textit{Drug Testing in Sports}, 92 \textit{Dick. L. Rev.} 505 (1988); Roth, \textit{Sports Policies Towards the Use of Drugs by Players}, 31 \textit{B.B.J.} 28 (July-Aug. 1987).

\footnote{133} Actually, many sportings associations’ rules on prohibited drugs contain a “prescription exception” which allows athletes to use otherwise prohibited drugs if the drugs are lawfully obtained from a licensed treating physicians. Brock & McKenna, \textit{supra} note 132, at 515.
best. For example, Kentucky performs its drug testing at the Kentucky Equine Drug Research Program located at the University of Kentucky. Likewise, New York's testing is done at Cornell University.

California needs a credible, modern drug testing facility that is able to detect illegal substances and in a manner that will stand up in court. A recent newspaper article stated that the cases against five of the six California trainers whose horses tested positive for prohibited drug substances have been dropped. The one trainer who has not had the charges against him dismissed has filed a law suit against the official laboratory. When the credibility of the testing laboratory is low, as in the case of Tuesdail Laboratories, it is difficult to get convictions in court. Trainers will merely challenge the validity of test results and the accuracy of testing methods. While the CHRB has designated a new private laboratory to perform its testing, a testing lab located at the University of California at Davis would be an even better alternative: The connection with the veterinary school and the pharmacology department may enable the lab to be in the forefront of testing technology. Access to the latest research and veterinary medicine information is necessary to stay up with the types of drugs people may use to dope a race horse.

Another alternative is to locate an official testing laboratory at the University of California at Los Angeles. One reason why this may be an even better alternative than the University of California at Davis is because the University of California at Los Angeles is already equipped with a complete analytical facility. The University of California at Los Angeles houses the Paul Ziffren Olympic Analytical Laboratory which performed all of the drug testing for the 1984 Los Angeles Olympic Games. While the University of California

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134. Christine, supra note 74.
136. To give an idea of the capacity at which the Olympic Analytical Laboratory is able to operate, during the 1984 Los Angeles Olympic Games, within 15 days, 1510 different urine specimens underwent 9440 screening analyses by a combination of gas chromatography—mass spectrometry, "high performance" liquid chromatography, and radioimmunoassay. These tests covered more than 200 different drugs and metabolites, including psychomotor stimulants, sympathomimetic amines, central nervous system stimulants, narcotic analgesics, and anabolic steroids.

Catlin, Kammerer, Hatton, Sekera & Merdink, Analytical Chemistry at the Games of
at Los Angeles does not have a connection with a school of veterinary medicine, as does the University of California at Davis, the University of California at Los Angeles has the advantage of being on the forefront of analytical testing. The University of California at Los Angeles has the knowledge, experience, and equipment to accurately determine what substances are present in a test sample. The CHRB or the California Legislature should seriously explore the possibility of conducting race horse drug testing at the University of California at Los Angeles.

C. Recommendations

The best way to deal with the increased use of drugs in horse racing is to take action before, as well as after, the problem starts. More measures must be taken to prevent the doping of racehorses and to catch those who drug horses. Increased surveillance on the backstretch is necessary to prevent people from drugging horses. Next, stiffer penalties should be given to those who are caught drugging horses.

Perhaps most importantly, increased research needs to be conducted on the cause and control of pulmonary bleeding in race horses. If a different method is discovered for treating this condition, the use of Lasix would decrease if not subsist altogether. In any event, the procedures for admitting a horse to the bleeder list should be changed to make it more difficult for a horse to qualify for Lasix treatment. Only horses that bleed from the nostrils or horses with a severe level of internal bleeding when examined by a fibroptic endoscope\textsuperscript{137} should be allowed to receive bleeder medication. Trainers would then be forced to find other methods of bleeder management for horses that are only slightly affected by the problem rather than “training off of a needle” for all of their horses. That way, the true bleeders would still be able to reap the benefits of Lasix, but the overall widespread use of the drug would decline.

Because veterinarians are also suspected of administering illegal drugs to horses, liability should attach to the veterinarians of horses that test positive for illegal substances. If veterinarians, like trainers, were exposed to liability, many would desist from the practice of

\textit{the XXIIIrd Olympiad in Los Angeles, 1984, 33 CLINICAL CHEMISTRY 319 (1987)} (portraying an indepth account of the testing regime used at the Los Angeles Olympic Games including sample acquisition, chain of custody, quality control, testing methods, and disposition of positive results).

\textsuperscript{137} Studies have shown “the degree of hemorrhage seen on endoscopic examination varied from single drops of blood on the . . . the trachea to profuse hemorrhage into the tracheal lumen which would cover the viewing screen on the endoscope.” Rapheal \& Soma, \textit{Exercise-induced Pulmonary Hemorrhage in Thoroughbreds After Racing and Breezing}, 43 AM. J. VET. RES. 125 (1982).
giving horses illegal shots. They may even put forth efforts to ensure that the horses they treat do not receive illegal substances from anyone.

Finally, state of the art testing procedures must be implemented to catch those who drug horses. The more people who are caught, the greater the deterrent effect will be.

One way to accomplish this goal is to reduce the number of horses subjected to post-race drug testing, but perform complete and thorough analysis of the samples that are collected. In line with this proposal, Senator Maddy recently introduced a bill in the California Senate which attempts to shift the focus of race horse drug testing from quantity to quality. Senate Bill 31, as introduced states: "[i]t is the intent of the legislature that the Board [CHRB], in its testing efforts to determine illegal or excessive use of substances, recognize the greater importance of conducting complete and thorough testing on a lesser number of samples in preference to conducting less thorough testing on a greater number of samples."

XII. CONCLUSION

In the final analysis, the medication issue in horse racing is a complex, controversial subject. All agree that the use of prohibited substances such as narcotics, stimulants, and depressants taints the integrity of the sport. However, the solution to the problem differs widely among individuals. The general consensus seems to be that more adequate testing procedures must be developed and utilized. However, the similarities stop there. Whatever the solution may be, the public needs to know that the problem is being addressed, and

138. A study conducted by the California Legislative Analyst's Office in 1990 indicated that the CHRB spends over one million dollars a year on drug testing. The CHRB tests over 57,000 samples a year, with an average cost per sample of twenty dollars. Yet, with the extraordinary number of samples tested, the CHRB laboratory reported only thirty positive samples in 1988. This means that in 1988, only 0.1% of all samples tested positive for prohibited drugs. While it is uncertain what actually accounts for this low percentage of positive samples, one possible explanation is that the substances used to drug race horses are not detectable with a cursory twenty dollar drug test. CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, A COMPARATIVE STUDY OF STATE RACE HORSE DRUG TESTING REQUIREMENTS, 3, 13 (1990).

action is being taken. In order for California to continue enjoying the prosperous horse racing it has experienced over the years, public confidence in the sport needs to remain high.

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