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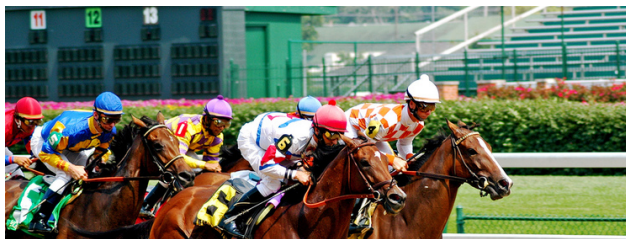
CHEATER, CHEATER: THOROUGHBRED RACING REGULATIONS WALKING THE FINE LINE BETWEEN THERAPY AND DOPING

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By: Peter Rosene

As a spectator, sporting events are a pastime, but to those investing and participating in the event, it is serious business. With billions of dollars on the line every year, it is becoming necessary to regulate nearly every aspect of athletics to preserve fairness. The most notorious areas of regulation are player performance, or rather performance enhancement. When we think of illegal doping scandals, undoubtedly the first scandals that come to mind are with the mega homerun hitters of Major League Baseball, but protections against cheating have permeated nearly every sporting event out there. Horse racing is no exception.

This year has seen a change in drug regulations for Kentucky horse racing in the wake of the Franklin Circuit Court reversing a one-year suspension and fining of a horse trainer whose thoroughbred tested positive for the drug levamisole, used primarily as a de-wormer and treatment for neurological diseases in horses.^[i] The Kentucky Horse Racing Commission (“KHRC”) originally convicted the trainer due to the drug’s classification as a Class A drug, meaning “those [drugs] that have no legitimate therapeutic purpose in the equine athlete and have not been approved for use in the horse by the U.S. Food and Drug Administration” and “their potential to influence performance is high.”^[ii]





(<http://earlyinvesting.com/run-for-the-roses/>)

The Franklin Circuit Court found this classification to be “arbitrary and capricious” based on the drug’s potential medicinal uses and FDA approval.[iii] This brings up questions of what changes in drug regulation attempt to achieve, namely striking a balance between allowing effective, therapeutic drugs in a sport that is incredibly stressful on the animal, and a fair race.[iv] This balance is especially significant as this year’s veterinary report at the KHRC meeting cited nine horse deaths at a Churchill Down’s spring meet, alone. After all, along with bourbon, thoroughbreds are ubiquitous with the Bluegrass State, so protecting the health of the horses and the sportsmanship and sanctity of the race are primary concerns.

There are only three “non-steroidal anti-inflammatory” medications approved to be given to horses within twenty-four hours of a race.[v] While limiting drugs with the potential to influence performance is an understandable goal for the KHRC, with so few drugs approved to be in the horse’s system prior to post time, the Commission should tread lightly in deciding which drugs it approves and which drugs carry a stiff penalty with use. This is taking into account drugs like levamisole that have major health benefits to the animal but at the same time carry a limited possibility of creating undesirable effects.[vi] In the particular case of levamisole and the trial surrounding it, perhaps it was a prudent for the Commission to err on the side of caution and keep it on the list of prohibited drugs, but in the future it might be just as sensible to allow drugs with medical benefits to the horses that far outweigh the possible negative effects.[vii]

[i] Jennie Rees, *KHRC changes drug certification language*, *Courier J.* (Aug. 18, 2015), <http://www.courier-journal.com/story/sports/horses/breeders/2015/08/18/kentucky-horse-racing-commission-changes-drug-classification-language-approves-breeders-cup-betting-at-horse-park/31962575/>; see also 810 Ky. Admin. Regs. 1:028 (2015).

[ii] Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01 (Dec. 2013), <http://khrc.ky.gov/Documents/substance%20classification.pdf>.

[iii] Ron Mitchell, *Judge Reverses Werre’s One-Year Suspension*, *Blood-Horse* (June 17, 2015), <http://www.bloodhorse.com/horse-racing/articles/92618/judge-reverses-werres-one-year-suspension>.

[iv] See Ron Mitchell, *Medication Issues Dominate KHRC Meeting*, *Blood-Horse* (Aug. 18, 2015), <https://www.bloodhorse.com/horse-racing/articles/93779/medication-issues-dominate-khrc-meeting>.

[v] See Rees, *supra* note i.

[vi] *Id.*

[vii] *Id.*

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