

And They're Off: Eliminating Drug Use in Thoroughbred Racing

Amy L. (Williams) Kluesner¹

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I. INTRODUCTION

The Triple Crown of thoroughbred racing is one of the rarest victories in sports. There are three jewels in the Triple Crown: the Kentucky Derby, popularly known as the “fastest two minutes in sports,”² held at Churchill

¹ Bachelor of Science, *cum laude*, Vanderbilt University (2002); Juris Doctor, Notre Dame Law School (2011). The author would like to thank Ed Edmonds, Associate Dean and Professor of Sports Law at Notre Dame Law School for his assistance with this article.

² See *Kentucky Derby Trivia*, KENTUCKY DERBY INFO, <http://www.kentuckyderby.info/kentuckyderby-trivia2.php> (last visited April 1, 2012). See generally PETER CHEW, *THE KENTUCKY DERBY: THE FIRST 100 YEARS* (1974); PAMELA K. BRODOWSKY & TOM PHILBIN, *TWO MINUTES TO GLORY: THE OFFICIAL HISTORY OF THE KENTUCKY DERBY* (2007); ANDY PLATTNER, *KENTUCKY DERBY VAULT: A HISTORY OF THE RUN FOR THE ROSES* (2008); KIMBERLY GATTO, *CHURCHILL DOWNS: AMERICA'S MOST HISTORIC RACETRACK* (2010).

Downs in Louisville, Kentucky; the Preakness Stakes, held at Pimlico Race Course in Baltimore, Maryland; and the Belmont Stakes, the longest of the races, held at Belmont Park in New York.³ Only eleven horses have won the Triple Crown — the first, Sir Barton, in 1919, and the last, Affirmed, in 1978.⁴ The agility, perseverance, and strength necessary to be a champion may at times seem impossible and cause some to resort to drugs or excessive medication. Athletes frequently fall victim to this temptation, and breeders, trainers and veterinarians who work with thoroughbred horses are no exception. Unfortunately, such measures may at times have tragic consequences.

Few can forget the tragic story of Eight Belles, the acclaimed filly who nearly won the 2008 Kentucky Derby, but collapsed during the race with two broken front ankles.⁵ She had to be euthanized by injection on the track.⁶ Fans were heartbroken over the incident. Eight Belles appeared to have the will of a champion and her death was reminiscent of Barbaro's unfortunate injury just two years earlier in the Preakness Stakes.⁷ After winning the Kentucky Derby in 2006 by the largest margin since 1946, Barbaro's chances of winning the Triple Crown looked promising.⁸ But he broke three bones in his right hind leg during the Preakness, developed laminitis in both front feet, and struggled for eight months through various treatments and surgeries.⁹ David Switzer, executive director of the Kentucky Thoroughbred Association, referred to Barbaro as a "hero," stating

³ See TRIPLE CROWN RACES, <http://www.triplecrownraces.com> (last visited April 1, 2012). See generally MARVIN DRAGER, *THE MOST GLORIOUS CROWN: THE STORY OF AMERICA'S TRIPLE CROWN THOROUGHBREDS FROM SIR BARTON TO AFFIRMED* (TRIUMPH BOOKS 2005) (1975); JOE DRAPE, *THE RACE FOR THE TRIPLE CROWN: HORSES, HIGH STAKES AND ETERNAL HOPE* (2001); *TO THE SWIFT: TRIPLE CROWN HORSES AND THEIR RACE FOR GLORY* (Joe Drape ed., 2008).

⁴ See TRIPLE CROWN RACES, *supra* note 3 (the eleven Triple Crown winners are: Sir Barton (1919); Gallant Fox (1930); Omaha (1935); War Admiral (1937); Whirl Away (1941); Count Fleet (1943); Assault (1946); Citation (1948); Secretariat (1973); Seattle Slew (1977); and Affirmed (1978)).

⁵ Associated Press, *Runner-up Eight Belles Breaks Front Ankles, Euthanized on Track*, ESPN (May 3, 2008) <http://sports.espn.go.com/sports/horse/triplecrown08/news/story?id=3380100>.

⁶ *Id.*

⁷ *Id.*

⁸ Associated Press, *Barbaro Euthanized After Lengthy Battle*, NBC SPORTS, Jan. 29, 2007, <http://nbcsports.msnbc.com/id/16846723>.

⁹ *Id.* Laminitis, an inflammation of the sensitive laminae of the hoof which leads to breakdown and degeneration, constitutes a medical emergency in its acute form. It can be caused by ingesting too many carbohydrates, excessive grazing, or over-

that “his owners went above and beyond the call of duty” to save him and made the right decision in putting him down.¹⁰

The good that came out of the deaths of Barbaro and Eight Belles was the realization that more uniform regulations regarding equine health standards and drug use should be a top priority for the sport of thoroughbred racing. It is difficult to explain exactly what caused the injuries to Eight Belles and Barbaro; some have suggested “genetics, track surface, training methods, [or] medications” may have contributed.¹¹ Both Eight Belles and Barbaro were descendants of Northern Dancer, a thoroughbred from the 1950’s who also had a shortened racing career due to leg injuries.¹² Big Brown, the horse who went on to win the Kentucky Derby following the collapse of Eight Belles, sparked controversy over the use of certain performance-enhancing drugs because a steroid, although legal, was found in his system.¹³ To examine the concerns about equine medication and prevent future injuries in racing, the Grayson-Jockey Club Research Foundation convened its first Welfare and Safety of the Racehorse Summit in 2006.¹⁴ In March 2008, the Summit promulgated a set of recommendations¹⁵ to improve the well-being of racehorses. The recommendations address issues such as improving track surfaces, measures to deal with catastrophic injuries, the use of racing medication and drug testing laboratories, the need for uniform regulation of medication, and the promotion of genetic diversity.¹⁶ The Summit last met in June 2010 to further the discussion on recommen-

exercise of an un-fit horse. See THE MERCK VETERINARY MANUAL, *Laminitis*, available at <http://www.merckvetmanual.com/mvm/index.jsp?cfile=htm/bc/90722.htm>.

¹⁰ *Id.* See generally EDGAR PRADO & JOHN EISENBERG, *MY GUY BARBARO: A JOCKEY’S JOURNEY THROUGH LOVE, TRIUMPH, AND HEARTBREAK WITH AMERICA’S FAVORITE HORSE* (2008) (jockey’s perspective on Barbaro’s death).

¹¹ Alison Rowe, *Potential Law Suit over Eight Belles?*, EQUINE LAW BLOG (May 7, 2008), <http://equinelaw.alisonrowe.com/2008/05/articles/equine-veterinary-medical-law/potential-law-suit-over-eight-belles/>.

¹² *Id.*

¹³ Jennifer M. Jabroski, Note, *Reining in the Horse Racing Industry: A Proposal for Federal Regulation of Steroid Use in Racehorses*, 1 KY. J. EQ. AG. & NAT’L. RES. L. 67, 68 (2009) (internal citations omitted).

¹⁴ See *Welfare and Safety of the Racehorse Summit*. GRAYSON-JOCKEY CLUB RESEARCH FOUNDATION, INC. (last visited Mar. 31, 2012), <http://grayson-jockeyclub.org/summitDisplay.asp>.

¹⁵ See *Welfare and Safety of the Racehorse Summit Recommendations*, GRAYSON-JOCKEY CLUB RESEARCH FOUNDATION, INC. (Mar. 18, 2008), <http://www.grayson-jockeyclub.org/resources/recommendations.pdf> [hereinafter *Welfare and Safety of the Racehorse Summit Recommendations*].

¹⁶ See Rowe, *supra* note 11.

dations, and racing medication and testing again played a central role.¹⁷ Most recently, the Association of Racing Commissioners International (RCI) called for a five-year phase-out of all medications used on race day.¹⁸ The debate on what medications should and should not be used in the training and racing of horses is far from being resolved, but it appears that major stakeholders in the industry such as veterinarians, owners, and trainers are making the safety and wellbeing of the horse a top priority.¹⁹

Part I of this paper will address current drug use in the industry, including anabolic steroids, corticosteroids, non-steroidal anti-inflammatory drugs (NSAIDs), and anti-bleeding medications. The inconsistencies of state regulation will also be examined in order to illustrate the need for greater transparency and uniformity in thoroughbred racing. Part II will discuss the objectives and resolutions of the Grayson-Jockey Club's Welfare and Safety of the Racehorse Summit. Part III will more closely examine current and future regulations of NSAIDs, particularly phenylbutazone and corticosteroids. Part IV discusses possibilities for stronger and more uniform regulation and recent recommendations for a phase-out of all race-day medications. This analysis suggests that the best way to restore the integrity of thoroughbred racing is for leaders and organizations within the industry to adopt a nationwide ban on all medications used in racing.

II. DRUG USE, CURRENT REGULATION, AND THE NEED FOR UNIFORMITY

The use of medication in American horseracing has been a controversial issue since the 1800s when doping rumors first circulated.²⁰ In the modern era, horses are given numerous medications as part of routine equine well-

¹⁷ See *Welfare and Safety of the Racehorse Summit Resource Page*, GRAYSON-JOCKEY CLUB RESEARCH FOUNDATION, INC. (last visited Mar. 31, 2012), <http://www.graysonjockeyclub.org/summitDisplay.asp?section=41>.

¹⁸ Tom LaMarra, *RCI: Phase Out Use of Drugs in Five Years*, BLOODHORSE (Mar. 28, 2011), available at <http://www.bloodhorse.com/horse-racing/articles/62162/rci-phase-out-use-of-drugs-in-five-years#ixzz1HzYl15EH>.

¹⁹ See generally *Regulators to Discuss Raceday Medication*, BLOODHORSE (July 18, 2011), available at <http://www.bloodhorse.com/horse-racing/articles/64079/regulators-to-discuss-race-day-medication>; *National HBPA: Keep Salix, Drop Adjunct Drugs*, BLOODHORSE (July 25, 2011), available at <http://www.bloodhorse.com/horse-racing/articles/64182/national-hbpa-keep-salix-drop-adjunct-drugs>; *Model Rule on Salix Administration Adopted*, BLOODHORSE (December 13, 2011), available at <http://www.bloodhorse.com/horse-racing/articles/66583/model-rule-on-salix-administration-adopted>.

²⁰ Bradley S. Friedman, *Oats, Water, Hay, and Everything Else: The Regulation of Anabolic Steroids in Thoroughbred Horse Racing*, 16 ANIMAL L. 123, 125 (2009).

ness, with some used to “combat the severe physiological reactions to the physical strain of racing.”²¹

These types of drugs include NSAIDs, corticosteroids, diuretics, bronchodilators, and various anti-bleeding medications.²² Some medication is needed to preserve the health and safety of the horse, but drugs that are used merely to enhance performance affect the fairness of racing and negatively impact the integrity of breeding.²³

Anabolic steroids were banned from racing in 2008.²⁴ While the ban was a step in the right direction, inconsistent individual state regulations and inadequate testing procedures persist. Corticosteroids are legal, but there has been debate regarding their potential to mask other injuries. NSAIDs like phenylbutazone, used for treating lameness in horses,²⁵ can also lead to long-term negative health effects. Recently there has been much controversy regarding the use of furosemide, more commonly known by its brand-name, Lasix, which is used to prevent stress-induced pulmonary bleeding in racehorses.²⁶ Lasix and phenylbutazone “have become staples of North American racehorse training and competition,” but their use may have led to a “steady decline in the durability of American thoroughbreds.”²⁷ In fact, “[t]he average number of lifetime starts has dropped from 44 in 1950 to 13 in 2007, accompanied by a dramatic increase in fatal breakdowns and career-ending injuries.”²⁸ Many trainers believe that Lasix is “good for the horse” and necessary to prevent bleeding, while others in the industry believe it to be “detrimental to the horse’s well being.”²⁹

²¹ *Id.* at 126.

²² *Id.*

²³ *Id.*

²⁴ See *Thoroughbred Safety Committee Recommendations*, GRAYSON-JOCKEY CLUB RESEARCH FOUND. (June 17, 2008), http://www.jockeyclub.com/resources/3_steroids.pdf [hereinafter *Thoroughbred Safety Committee Recommendations*]

²⁵ *Phenylbutazone (Bute) Use in Horses*, ONTARIO MINISTRY OF AGRIC., FOOD AND RURAL AFFAIRS, http://www.omafra.gov.on.ca/english/livestock/horses/facts/info_pheny.htm (last modified Apr. 7, 2011).

²⁶ *Furosemide (Lasix) Banned: Horse Bleeding Drug Not Allowed by American Graded Stakes Committee*, HUFFINGTON POST (Aug. 13, 2011), http://www.huffingtonpost.com/2011/08/13/furosemide-banned-horse_n_926184.html.

²⁷ Jim Squires, *Drugs in Racing: Déjà vu All Over Again*, THE RAIL: THE N.Y. TIMES HORSE RACING BLOG (May 7, 2011), <http://therail.blogs.nytimes.com/2011/05/07/drugs-in-racing-deja-vu-all-over-again/>.

²⁸ *Id.*

²⁹ *Id.* See also Jennie Rees, *What Impact Would Lasix Ban Have on Field Size?*, THE COURIER-JOURNAL: HORSE RACING BLOG (July 21, 2011), <http://blogs.courier-jour->

A. *Inconsistent State Regulation*

Thoroughbred racing is primarily regulated by agencies within the states that are responsible for controlling the use of performance-enhancing drugs. Unfortunately, these horseracing agencies have a “reputation for lax enforcement.”³⁰ The penalties are inconsistent and often fail to “deter trainers, veterinarians and owners” from using drugs because of the intense desire to win and the enormous investment at stake.³¹ For example, in 2008, Delaware’s “zero-tolerance” steroid policy carried only a two-week suspension and a fine of \$5,000 for a positive test.³² Under the current regime of state regulation, the industry will depend on the cooperation of each state’s horseracing agency if it seeks to eliminate drug use altogether, and “[t]his dependency creates problems of cooperation, uniformity, enforcement and research.”³³

Even if uniform rules are eventually adopted by each state, they must be enforced. Congress recognized the need for uniform laws regarding equine medication and decided to act in order to preserve the integrity of horseracing. In 2008, Representative Ed Whitfield, a Republican from Kentucky, criticized the racing industry for falling behind other professional sports in its failure to ban steroids, asking “isn’t it time to clean up the sport of horse racing?”³⁴ The Jockey Club answered Rep. Whitfield’s request for uniformity by forming the Thoroughbred Safety Committee in 2008 to review equine health standards and formulate recommendations regarding the use of anabolic steroids.³⁵ Veterinarian Larry Bramlage, a member of the Committee, stated that steroids can be good for thoroughbreds

nal.com/racing/2011/07/21/what-impact-would-lasix-ban-have-on-field-size/. Rees argues that an absolute ban on drugs that prevent bleeding will harm the sport by decreasing the number of horses who are able to enter the field on race day.

³⁰ Kimberli Gasparon, Comment, *The Dark Horse of Drug Abuse: Legal Issues of Administering Performance-Enhancing Drugs to Racehorses*, 16 VILL. SPORTS & ENT. L.J. 199, 200 (2009).

³¹ *Id.*

³² JIM SQUIRES, HEADLESS HORSEMEN 154 (2009).

³³ *Id.*

³⁴ John Hay Rabb, *Congress Hears Testimony on Racehorse Drug Testing*, THOROUGHBRED TIMES (Feb. 27, 2008), available at <http://www.thoroughbredtimes.com/national-news/2008/february/27/waldrop-testifies-before-congress.aspx>.

³⁵ *Jockey Club Forms Thoroughbred Safety Committee*, THOROUGHBRED TIMES (May 8, 2008), available at <http://www.thoroughbredtimes.com/national-news/2008/may/08/jockey-club-forms-thoroughbred-safety-committee.aspx>.

because they “help them withstand the wear and tear of racing.”³⁶ However, some trainers abuse them, which can be detrimental to the health of the horse.³⁷ In June 2008, the Thoroughbred Safety Committee asked all North American racing authorities to eliminate the use “of all anabolic steroids in the race training and racing of Thoroughbreds.”³⁸ But while great progress was made in the nationwide elimination of anabolic steroids in thoroughbred racing, uniformity is still needed regarding the use of corticosteroids and anti-inflammatory drugs.³⁹

B. *Improving Transparency and Uniform Disclosure*

A lawsuit regarding the 2009 Kentucky Derby favorite, I Want Revenge, illustrates the importance of full disclosure regarding medication. I Want Revenge was scratched the morning of the Derby because of an injured ankle.⁴⁰ International Equine Acquisitions Holdings, Inc. (IEAH) owns a fifty percent interest in the horse and the other half belongs to David Lanzman, manager of racing activities.⁴¹ In the suit, IEAH claims that Lanzman failed to disclose the horse’s injuries, which Lanzman alleges were not known to him until the morning of the race.⁴² Two veterinarians, Dr. Foster Northrop and Dr. Larry Bramlage, testified that I Want Revenge was injected with synthetic joint fluid, corticosteroids, and antibiotics at the request of his trainer, Jeff Mullins.⁴³ Lanzman asserted that he was unaware

³⁶ Pat Forde, *Veterinarian: Horse Racing Will Ban Steroid Use*, ESPN.COM (June 6, 2008), <http://sports.espn.go.com/sports/horse/news/story?id=3429781>.

³⁷ *Id.*

³⁸ *Thoroughbred Safety Committee Recommendations*, *supra* note 24. Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia and West Virginia moved to eliminate anabolic steroid use in January 2008, several months before the Jockey Club’s recommendations were issued. *See, e.g.*, Press Release, Virginia Racing Commission, Mid-Atlantic States Move to Eliminate Steroid Use in Horse Racing (Jan. 25, 2008), <http://www.vrc.virginia.gov/document/Anabolic%20Steroid%20Release.pdf>.

³⁹ *See* GRAYSON-JOCKEY CLUB RESEARCH FOUND., INC., THOROUGHBRED SAFETY COMMITTEE RECOMMENDATION (Aug. 22, 2010), <http://www.jockeyclub.com/resources/nsaid.pdf>.

⁴⁰ Joe Drape, *Lawsuit Sheds Light on Use of Legal Medications in Horses*, N.Y. TIMES, (Oct. 5, 2009), http://www.nytimes.com/2009/10/06/sports/06horse.html?_r=2&em.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

of the treatment used by Mullins.⁴⁴ These veterinarians expressed concern that, while corticosteroids and anti-inflammatory drugs have therapeutic value to reduce soreness, they can also have detrimental long-term effects on the horse.⁴⁵ While I Want Revenge's treatments leading up to the derby were considered "minor and routine for a top-caliber racehorse," they are a "striking example of how the use, and overuse, of legal medications have placed America's thoroughbred population at ever greater risk of injury, and, in some cases, catastrophic breakdown."⁴⁶

This caution regarding drug use in horse racing must not be taken lightly because the United States has the highest thoroughbred mortality rate in the world.⁴⁷ According to Mary Scollay, equine medical director for the Kentucky Horse Racing Commission, "racehorse fatalities have occurred at the rate of 1.47 per 1,000 starts for synthetic surfaces, and 2.03 per 1,000 starts for dirt tracks."⁴⁸ This is notably higher than England, where the risk of fatality is between 0.8 and 0.9 per 1,000 starts, and Australia, where it is only 0.44 per 1,000 starts.⁴⁹ The number of injuries has led many in the racing industry, including Northrop, to push for more transparency with the public and improved disclosure between trainers, veterinarians, and owners.⁵⁰ In the weeks prior to the 2009 Kentucky Derby, writers from *The New York Times* asked the owner or trainer of each horse to share their veterinary records, but only three of the twenty agreed.⁵¹ Change will thus be a slow process. The ankle injury and subsequent surgery threatened to end the racing career of I Want Revenge, but he was able to return to racing in 2010, although he will never have another chance at the Kentucky Derby.⁵²

Foster Northrop along with Scott Palmer, who is chairman of the American Association of Equine Practitioners' Racing Committee, believe that "putting the horse first" when making decisions is the key to achieving

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Mike Farrell, *I Want Revenge Will Face Five in Iselin*, DAILY RACING FORM (Aug. 18, 2010), available at <http://www.drf.com/news/i-want-revenge-will-face-five-iselin>.

safety and integrity in racing.⁵³ “Best practices” for the veterinary care of racehorses should require that “[d]ecisions about medical treatment [be] based upon valid diagnostic indications, not the date of entry of the horse’s next race.”⁵⁴ Furthermore, “medications should be administered based upon scientific studies that demonstrate their ability to successfully treat illness or injury.”⁵⁵ Penalties should be enforced against veterinarians who do not follow these professional standards.⁵⁶ Northrop cites the scratching of *I Want Revenge* on the morning of the Derby as a proper decision that was made in the best interest of the horse which “most likely prevented a major injury.”⁵⁷ But deciding the proper medication for horses is a complex issue because therapeutic drugs may be needed for reasons specific to the illness or injury.⁵⁸ As Northrop and Palmer write:

Horses are treated with disease-modifying medicine, such as hyaluronic acid, to delay the onset of degenerative changes in the musculoskeletal system that are a natural result of any form of athletic activity. Medications may also be necessary for the prevention and treatment of respiratory and allergy-like conditions, while furosemide and/or adjunct bleeder medications are used to help prevent the occurrence of exercise-induced pulmonary hemorrhage (bleeding in the lungs). All of these medications are strictly regulated. No medication, therapeutic or otherwise, is allowed to be used [on the] day of the race in the United States except furosemide and adjunct medications for bleeding in some jurisdictions.⁵⁹

Typically, the decision to medicate a horse is made by the trainer, and not necessarily in consult with the veterinarian.⁶⁰ The trainer is well-equipped to handle day-to-day routine medical needs of the horse, whereas the veterinarian is consulted as the seriousness of the condition requires.⁶¹ But Northrop and Palmer write that it’s time for veterinarians to “be the voice

⁵³ Foster Northrop & Scott Palmer, *Making Good Decisions to Protect Horses*, NY TIMES, June 5, 2009, available at <http://therail.blogs.nytimes.com/2009/0605/making-good-decisions-to-protect-horses/?scp=1&sq=%22making%20good%20decisions%22&st=cse>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

for the horse” and to “lead the way” in making the right decisions about medication.”⁶² This need for more responsibility among equine professionals was a main reason for the Jockey Club’s institution of the Welfare and Safety of the Racehorse Summit.

III. WELFARE AND SAFETY OF THE RACEHORSE SUMMIT

The good that came out of the deaths of Barbaro and Eight Belles was the realization that more uniform regulations regarding equine drug use should be a top priority for thoroughbred racing. Shortly after Eight Belles was euthanized at the Kentucky Derby it became clear that “thoroughbred racing needs better oversight of equine health.”⁶³ Horseracing is unique among other sports in that there is very little accountability, and Porter supports adding procedures that would “ensure the soundness and durability of modern thoroughbreds.”⁶⁴ The injuries of Barbaro and Eight Belles brought to light “the gap between the physical characteristics a horse needs to win and those needed to lead a long life.”⁶⁵ This is precisely the danger of over-medicating thoroughbred horses. Certain drugs only offer a quick fix for the immediate needs of a particular race, but have detrimental long-term effects.

After Barbaro’s injury at the 2006 Preakness Stakes, those involved with breeding and training race horses took initiative. In October of that year the Keeneland Association held the inaugural Welfare and Safety of the Racehorse Summit to study the durability of horse breeds and bloodlines.⁶⁶ During recent years the number of starts for thoroughbreds has declined, and some suggest that their inability to compete is due to the owner’s and trainer’s fear of injury.⁶⁷ The Keeneland seminar brought together statisticians and breeding experts in an effort to create a comprehensive database of injuries and racing records “directed at improving safety.”⁶⁸ The hope was to be able to give owners and breeders a “durability score” that could pre-

⁶² *Id.*

⁶³ Jon Weinbach, *Better Racing Oversight Sought*, WALL ST. J. (May 6, 2008), <http://online.wsj.com/article/SB121003733327069541.html>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* See also Grayson-Jockey Club Research Foundation, Inc., *Thoroughbred Safety Committee Recommendation for the Equine Injury Database*, August 17, 2008, available at <http://www.jockeyclub.com/resources/eid.pdf> (last visited Feb. 27, 2012).

dict the longevity of a horse's racing career.⁶⁹ The database, which is accessible via the Jockey Club's website, was launched in July 2008 and there are currently 87 racetracks providing relevant statistics.⁷⁰

As a follow-up to the Keeneland Association's 2006 seminar, the Grayson-Jockey Club Research Foundation held another Welfare and Safety of the Racehorse Summit in March 2008.⁷¹ Each of the Summit's seven working groups were charged with developing recommendations for the previously discussed issues.⁷² Participants agreed that "these recommendations should be provided to all aspects of the horseracing industry for review and consideration of implementation."⁷³ There were eight general recommendations that the working groups highlighted at the Summit: (1) improve track surfaces; (2) reduce catastrophic injuries; (3) improve drug testing and laboratory standards; (4) expand education; (5) establish uniform regulation; (6) coordinate implementation efforts; (7) encourage responsible thoroughbred ownership; and (8) promote genetic diversity among thoroughbreds.⁷⁴

Several of the Summit's recommendations have been successful in improving regulatory uniformity and tightening disclosure requirements. With regard to the second recommendation for catastrophic injuries, the primary objective is to reduce racing fatalities.⁷⁵ Summit participants discussed the development of a standardized on-track injury reporting program and ways to encourage more racetracks and commissions to participate.⁷⁶ To that end, the Jockey Club partnered with InCompass Solutions Inc., a company that offers pre-race veterinary exam software.⁷⁷ In an effort to encourage broad participation, InCompass announced in June 2010 that the on-track reporting software would be offered "free of charge to all racetracks that agree to share their respective examination data with association and regulatory veterinarians at other tracks that are also using the software."⁷⁸

⁶⁹ *Id.*

⁷⁰ See THE JOCKEY CLUB, <http://www.jockeyclub.com/initiatives.asp> (last visited Feb. 27, 2012).

⁷¹ *Welfare and Safety of the Racehorse Summit Recommendations*, *supra* note 15.

⁷² *Id.*

⁷³ *Id.* at 3.

⁷⁴ *Id.* at 3-9.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*

⁷⁷ See Bob Curran, *InCompass Pre-Race Vet Exam Software to be Offered Free to Racetracks*, THE JOCKEY CLUB (June 9, 2010), <http://www.jockeyclub.com/mediaCenter.asp?story=428>.

⁷⁸ *Id.*

The Summit's third recommendation concerns improvement of drug testing and laboratory standards. Participants recognized the need to establish more uniform standards and accreditation requirements along with a complete analysis of the most effective testing methods.⁷⁹ In developing recommendations for medication and drug testing laboratories, the following organizations were included: Association of Official Racing Chemists (AORC), Racing Medication and Testing Consortium (RMTC), Association of Racing Commissioners International (RCI) Drug Testing Standards Committee, the World Anti-Doping Agency, the Thoroughbred Owners and Breeders Association (TOBA) Sales Integrity Task Force, and the National Thoroughbred Racing Association (NTRA).⁸⁰ In 2010, the RMTC developed a "Drug Testing Initiative," which sought to reorganize and improve drug testing.⁸¹ The initiative seeks to develop a "code of standards for laboratory accreditation by the RMTC and consolidation of the current industry quality assurance programs into a single, independently monitored program."⁸² Believing this will result in "comprehensive reform and improvement to U.S. equine drug testing," the Jockey Club's Thoroughbred Safety Committee recommended "the adoption of the RMTC Equine Drug Testing Standards into the [RCI] Model Rule book and the participation and adoption of the standards by all United States racing authorities and their associated testing laboratories."⁸³ Laboratories in California, Kentucky, New York, and Pennsylvania signed letters of intent to complete the accreditation process no later than December 2011.⁸⁴

In order to establish uniform regulation of medication and coordinate implementation efforts (recommendations No. 5 and 6), Summit participants saw the need to create a national, non-federalized regulatory structure.⁸⁵ Specifically, participants sought to develop a consensus from all industry stakeholders and create a World Anti-Doping Agency member organization to set national drug policy and laboratory standards.⁸⁶ The main objective for implementation is to focus on the welfare and safety of

⁷⁹ *Welfare and Safety of the Racehorse Summit Recommendations*, *supra* note 15, at 3.

⁸⁰ *Id.* at 6.

⁸¹ Grayson-Jockey Club Research Found., Inc., *Thoroughbred Safety Committee Recommendation for Drug Testing and Laboratory Standards*, THE JOCKEY CLUB (Aug. 22, 2010), <http://www.jockeyclub.com/resources/lab.pdf>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Welfare and Safety of the Racehorse Summit Recommendations*, *supra* note 15, at 7-8.

⁸⁶ *Id.*

racehorse as “the guiding principle in the decision-making process.”⁸⁷ To achieve this, steps were taken in October 2010 by the Association of Racing Commissioners International (RCI) to establish more uniform drug testing standards for the regulation of non-steroidal anti-inflammatory drugs such as phenylbutazone and corticosteroids.

IV. REGULATION OF NON-STEROIDAL ANTI-INFLAMMATORY DRUGS

A. *Phenylbutazone*

The RCI's Board of Directors lowered the threshold level for phenylbutazone, a NSAID also known as “Bute,” from 5 µg/ml of plasma or serum to 2 µg.⁸⁸ The RCI's Model Rules Committee suggested lowering the threshold for Bute based on recommendations from RCI's Regulatory Veterinarians Committee, the RCI Drug Testing Standards Committee, the Racing Medication and Testing Consortium (RMTC), The Jockey Club's Thoroughbred Safety Committee,⁸⁹ The Jockey's Guild, the Thoroughbred Owners and Breeders Association (TOBA) and the American Association of Equine Practitioners (AAEP).⁹⁰ The benefit of using an anti-inflammatory like Bute is that horses can be more comfortable while they run which can help avoid other compensatory injuries, but the downside is that some horses receiving phenylbutazone don't metabolize it well.⁹¹ Larry Soma, veterinarian and professor of anesthesia at University of Pennsylvania's New Bolton Center, says that the reduction will be better for horses and for racing:⁹²

⁸⁷ *Id.* at 8.

⁸⁸ Ed Kane, RCI Rules on Reducing Phenylbutazone Thresholds in Racehorses, *DVM NEWS MAGAZINE* (Dec. 1, 2010), available at <http://veterinarynews.dvm360.com/dvm/article/articleDetail.jsp?id=697064&pageID=1>.

⁸⁹ GRAYSON-JOCKEY CLUB RESEARCH FOUND., INC., *supra* note 39 “In light of concerns expressed by regulatory veterinarians. . .the Thoroughbred Safety Committee calls for the immediate adoption by the Association of Racing Commissioners International and all United States racing authorities of the Racing Medication and Testing Consortium recommendation revising the recommended threshold for the NSAID phenylbutazone from 5 micrograms per milliliter to 2 micrograms per milliliter of plasma or serum when administered not less than 24 hours prior to post time.” *Id.*

⁹⁰ See Kane, *supra* note 88.

⁹¹ *Id.*

⁹² *Id.*

The recommendation that you go from a threshold of 5 µg/ml to 2 µg/ml of serum is probably going to be beneficial in the long run . . . If it's going to cut back on some of the injuries we see in racehorses, that's positive, though there are many reasons why a horse becomes injured, and medication is just one possibility. We'll see over the next year or so if the overall catastrophic or non-catastrophic injury rate is reduced at some of the racetracks.⁹³

Other equine practitioners from various jurisdictions have echoed Soma's support of the lowered threshold. Kathleen Anderson is an equine veterinarian who works at racetracks in Maryland, Delaware, Pennsylvania, Virginia, West Virginia, New Jersey and New York.⁹⁴ She says that each jurisdiction where she practices has different Bute rules, so the action of the RCI Board of Directors offers welcome uniformity:⁹⁵

I don't feel this is a hardship at all for horsemen or for practitioners. In my experience, very few horses would be negatively impacted by a little less Bute — meaning I don't think the majority of horsemen rely on high levels to get horses to the races Once the ruling goes into effect, we'll find out quickly that higher levels of Bute are unnecessary. Like with the use of anabolic steroids, nobody could live without them until they had to. This is just one more step toward uniformity among medications between jurisdictions. And it's a good thing.⁹⁶

Bryan Young, an equine veterinarian who works at racetracks in Texas and Oklahoma, also supports the reduced level for Bute.⁹⁷ He is in favor of any steps that can be made to reduce the number of injuries.⁹⁸ Young stated that lowering the threshold could bring change in how the racing industry works and the way horses are trained on Bute:⁹⁹

Trainers won't be able to use Bute on a daily basis, especially leading up to a race, as they would with the previous threshold level [F]rom

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* The Virginia Racing Commission approved the lower phenylbutazone levels in March 2009. See Press Release, Virginia Racing Commission, Virginia Racing Commission Approves Stricter Controls on Use of Phenylbutazone (March 25, 2009), available at <http://www.vrc.virginia.gov/document/PBZ%20Press%20Release.pdf>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

the standpoint of allowing the regulatory veterinarians an opportunity to look at these racehorses on race day, with a lower level of bute on board to give them a more accurate view, [is] a positive thing for racing.¹⁰⁰

Mary Scollay, Equine Medical Director for the Kentucky Horse Racing Commission, and a member of the RCI Regulatory Veterinarians Committee, is very supportive of the change because it will aid in performing more accurate pre-race exams.¹⁰¹ The pre-race exam is usually completed the morning of a race and the veterinarian is responsible for determining whether the horse is healthy enough to compete.¹⁰² Scollay stated that her colleagues have raised concerns regarding the ability to perform an accurate examination if the horse was under the influence of NSAIDs.¹⁰³ She noted, "If the things that we're looking for during a pre-race inspection in terms of heat, pain, swelling and inflammation were mitigated by the effects of medication, then we really couldn't assess the horse's condition."¹⁰⁴ Thus, reducing the threshold level of phenylbutazone in racehorses seems to be a step in the right direction for improving safety and uniformity.

B. *Corticosteroids*

Lowering the threshold levels for phenylbutazone could also have an effect on the use of corticosteroids in racing since both are anti-inflammatory in nature.¹⁰⁵ Corticosteroid use would likely increase if Kentucky lowers the threshold testing level for Bute.¹⁰⁶ Those who are actively involved with finding second careers for thoroughbreds after they retire from racing claim that horses "that have been regularly injected with corticosteroids have trouble rehabilitating."¹⁰⁷ Due to the concern expressed by veterinarians, the RMTC asserts that more research on the effects of corticosteroids is urgently needed, and researchers are currently investigating the use of several different corticosteroids in racehorses.¹⁰⁸

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Tom LaMarra, *Kentucky Equine Drug Research Council Targets Corticosteroids*, THE HORSE (Feb. 10, 2011), <http://www.thehorse.com/ViewArticle.aspx?ID=17780&src=RC>.

¹⁰⁶ *See id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

In early 2011, the Kentucky Equine Drug Research Council received a letter from The Jockey Club asking Kentucky to lead the research and make recommendations to the state's Horse Racing Commission¹⁰⁹. Although many racing jurisdictions have drastically limited the use of medication on race day, corticosteroids are under scrutiny both because of their therapeutic and anti-inflammatory capabilities, and because they are not currently regulated.¹¹⁰ The research initiated by the RMTTC will aid in making recommendations to regulators for use in model rules on a national level.¹¹¹ Thus far, nine corticosteroids have been recognized for defining threshold testing levels, and these could be permitted for therapeutic use but banned on race days.¹¹² Injecting medication into a racehorse's joints is a common occurrence, but veterinarians are concerned that the injections may have long-lasting negative effects.¹¹³

V. STRONGER REFORM AND HOPE FOR THE FUTURE

At a March 2011 meeting of the Association of Racing Commissioners International (RCI), leaders called for a five-year phase-out of medication in horse racing.¹¹⁴ It was reasoned that a gradual phasing out would "give horsemen and owners sufficient time to adjust to the change" and the five-year time frame is "reasonable to bring North American racing policies in line with what is going on in other parts of the world like Europe and Hong Kong."¹¹⁵ In its release on equine medication the RCI stated that "[t]oday over 99% of Thoroughbred racehorses. . . have a needle stuck in them four hours before a race," which seems unnecessary to a majority of people "except horse trainers who think it necessary to win a race."¹¹⁶ Gradually allowing more equine drug use throughout the years has forced racing jurisdictions to "juggle threshold levels as horsemen become more desperate to win races," and this has led to a negative public perception of racing.¹¹⁷ The RCI did not mention the use of therapeutic medication for training purposes but, from the tone of the annual meeting, leadership

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ LaMarra, *supra* note 18.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

within RCI is seeking “a major overhaul of medication policies” with rules similar to those used in Australia, Dubai, Europe, Hong Kong, and Russia.¹¹⁸ If RCI moves toward a zero tolerance policy, however, it will mark a departure from the recommendations of the Racing Medication and Testing Consortium, which seeks to develop a consensus on drug use from a variety of professionals involved with racing.¹¹⁹ Some doubt that a zero tolerance policy for drug use is even possible given the amounts of medications used for training, but the RCI feels it has a duty to better serve the horses and the betting public.¹²⁰

A. *The Debate on Anti-Bleeding Medication*

The Association of Racing Commissioners International (RCI) wants to stop the use of the diuretic furosemide (commonly known as Lasix or Salix) which treats bleeding in the lungs of racehorses.¹²¹ In December 2011 RCI adopted a rule that prohibits private veterinarians from administering Lasix on race day, and this rule must be adopted by regulators in each racing jurisdiction.¹²² If furosemide is needed for therapeutic treatment on race day, it must be administered under “strictly regulated terms.”¹²³ RCI took action under recognition that racing medication policies in the United States are “‘not only out of step with an increasing number of the world’s racing nations, but out of step with other major league sports.’”¹²⁴ Furthermore, regulatory authorities, the general public, and entities closely involved with racing “are growing increasingly intolerant” of the use of such drugs.¹²⁵ Several organizations have joined RCI in support of its recommendations, including the “Kentucky Thoroughbred Association, the Thor-

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Matt Hegarty, *Jockey Club Outlines Support for Banning Raceday Furosemide*, DAILY RACE FORM (Apr. 28, 2011), <http://www.drf.com/news/jockey-club-outlines-support-banning-raceday-furosemide>.

¹²² *Model Rule on Salix Administration Adopted*, *supra* note 19.

¹²³ *Id.*

¹²⁴ Joe Drape, *Congress to Propose Stiffer Rules on Drugs*, N.Y. TIMES (Apr. 29, 2011), <http://www.nytimes.com/2011/04/30/sports/30racing.html>.

¹²⁵ Paul Moran, *Drug War of the Clueless*, ESPN.COM (May 1, 2011), http://sports.espn.go.com/sports/horse/triplecrown2011/columns/story?columnist=moran_paul&id=6461850. The fact that different states have had different policies regarding drug use in thoroughbreds would seem absurd in other sports like football or basketball. See Bill Heller, *Bettors Hurt by Secret Positives*, THOROUGHBRED TIMES (Nov.

oughbred Owners and Breeders Association, Keeneland Association, Breeders' Cup, Ltd., Thoroughbred Racing Associations of North America, and The Jockey Club."¹²⁶

For example, the Jockey Club issued a statement of support mentioning that race-day administration of Lasix "is no longer tolerated by the racing public" and that "U.S. policies that have allowed for [its] use have increasingly isolated the U.S. from the rest of the racing world."¹²⁷ While Lasix is effective in reducing the severity of bleeding that horses sometimes experience after a race, its usefulness "does not outweigh the harm to racing's reputation caused by the widespread use of the drug."¹²⁸

Many observers today believe that the Thoroughbred is not as sound and hardy as he once was, and the generations of horses racing on medication and then dominating the gene pool are suspected of causing or contributing to that decline. . . . If the rest of the world increasingly looks on the American Thoroughbred as a tainted product, the impact on the international market is easily predictable. . . . The Jockey Club stands convinced that the elimination of race-day medication is essential to achieving optimal stewardship of the horse, the sport, the public perception and confidence, and the business of Thoroughbred racing.¹²⁹

In contrast, the National Horsemen's Benevolent and Protective Association (HBPA) expressed skepticism about recommendations by the RCI to ban anti-bleeding medications on race day.¹³⁰ The HBPA raised concerns such as: how equine professionals can adequately address bleeding or exercise-induced pulmonary hemorrhage (EIPH) if Lasix or Salix cannot be used, whether there are alternative non-race-day treatments that can be used for

15, 2003), <http://www.thoroughbredtimes.com/commentary/2003/November/15/Bettors-hurt-by-secret-positives.aspx> (cited in Gasparon, *supra* note 30 at 199).

¹²⁶ *Id.* The Breeders' Cup board of directors plans to form a committee to develop a timetable for the elimination of anti-bleeding drugs commonly used on race-day. See *Ludt New BC Chair; Support for Medication Ban*, BLOODHORSE (Apr. 15, 2011), <http://www.bloodhorse.com/horse-racing/articles/62486/ludt-new-bc-chair-support-for-medication-ban>.

¹²⁷ Hegarty, *supra* note 120 (stating, "The United States is the only major racing jurisdiction where the drug is legal to use on raceday, and its ubiquitous use in the United States has consistently been the source of criticism by regulatory bodies in other countries.")

¹²⁸ *Id.*

¹²⁹ James L. Gagliano, *Statement from The Jockey Club*, (Apr. 28, 2011), available at <http://www.jockeyclub.com/mediaCenter.asp?story=489>.

¹³⁰ Ed DeRosa, *Horsemen Oppose Current Plan to Eliminate Race-Day Medication*, THOROUGHBRED TIMES (Apr. 18, 2011), <http://www.thoroughbredtimes.com/national-news/2011/04/18/hbpa-rci-raceday-medication.aspx>.

EIPH, what factors make U.S. racehorses more susceptible to EIPH than foreign horses, and how trainers in other countries compensate for EIPH.¹³¹ Following its convention in July 2011, the HBPA issued a statement supporting the elimination of all race-day medication except for the anti-bleeding drug Salix and only in particular circumstances.¹³² The HBPA supports the continued use of Salix “only if it is administered at least four hours before a race by a regulatory veterinarian in the horse’s stall.”¹³³ The decision was based on scientific evidence showing that “most racehorses will bleed sometime in their careers, and that Salix has been proven to reduce or prevent exercise-induced pulmonary hemorrhaging.”¹³⁴ The HBPA believes that Salix is “best for the welfare of horses and jockeys” and continues to support the enforcement of strict penalties for drug violations.¹³⁵

Anti-bleeding drugs are a source of controversy because of their increased use in thoroughbred racing over the years and the limited scientific research detailing the overall effects the drugs have on horses.¹³⁶ Furosemide, the diuretic known as Lasix “restricts excessive bleeding in a horse’s lungs due to exercise-induced pulmonary hemorrhage by directing the blood to the kidneys.”¹³⁷ In 1991 the number of horses that started a race on Lasix was about 45 percent and in 2010 the number is almost 95 percent.¹³⁸ The drug was developed as a treatment for swelling in the human body caused by heart or kidney failure and was first used in racehorses in the 1960’s¹³⁹ to reduce visible amounts of blood from the horse’s nostrils after racing.¹⁴⁰ At that time, horses could only be approved for Lasix use if they bled from the nostrils during competition, but the relaxing of restrictions over the years has led to severe overuse and abuse.¹⁴¹ Thoroughbred horses that run at speeds of over thirty miles per hour do have

¹³¹ *Id.*

¹³² *National HBPA: Keep Salix, Drop Adjunct Drugs*, *supra* note 19.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Squires, *Drugs in Racing*, *supra* note 27.

¹³⁷ *Id.*

¹³⁸ Moran, *supra* note 125.

¹³⁹ Veterinarian Alex Harthill administered the first dose of Lasix to the Kentucky Derby winner Northern Dancer in 1964 before anyone was aware the drug existed. The 1968 Derby winner, Dancer’s Image, was disqualified after testing positive for Lasix, which was illegal at that time. *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Moran, *supra* note 125.

varying degrees of bleeding in their lungs, but severe bleeding is uncommon.¹⁴² Not only is Lasix expensive (costing horse owners over \$100 million per year), but when it is used regularly in equine training, it can damage a horse's organs and interfere with bone remodeling by "disturbing the calcium phosphorus balance by releasing calcium stored in the bone."¹⁴³

B. *In the Homestretch for Uniform Regulation*

Because of these negative effects, it is obvious to both those inside the industry and those who enjoy thoroughbred racing as spectators that uniform regulation regarding drug use is an urgent need. There are thirty-eight racing jurisdictions in the United States, and each is governed by the state's individual racing commission which has authority to draft its own regulations.¹⁴⁴ The authority of each state to control racing in its jurisdiction and the lack of a centralized governing body leads to confusion and inconsistency.¹⁴⁵ There are three possibilities for creating a centralized governing body: (1) pass federal legislation; (2) develop a national governing body for thoroughbred racing similar to other sports; or (3) allow stakeholders within the industry to establish uniform rules and regulations for all thirty-eight racing jurisdictions.¹⁴⁶

Passing federal legislation seems to be the least viable of the options because owners, trainers, veterinarians, and breeders are reluctant to put the power of total regulation in the hands of Congress.¹⁴⁷ The racing industry "would only accept federal involvement as a last resort."¹⁴⁸ Currently the federal government's authority over horseracing is limited to the regulation of wagering and off-track betting through the Interstate Horseracing Act.¹⁴⁹ But stakeholders in the industry do not want to expand that authority to include all aspects of racing because "there are many competent and effective organizations within the racing community" capable of bringing about

¹⁴² Squires, *Drugs in Racing*, *supra* note 27.

¹⁴³ *Id.*

¹⁴⁴ Luke Breslin, Comment, *Reclaiming the Glory in the "Sport of Kings" – Uniformity is the Answer*, 20 SETON HALL J. SPORTS & ENT. L. 297, 313-14 (2010) (internal citations omitted).

¹⁴⁵ *Id.* at 314.

¹⁴⁶ *Id.* at 324.

¹⁴⁷ *Id.* at 314.

¹⁴⁸ *Id.*; citing John Scheinman, *Governing Body Urged for Racing Industry*, WASH. POST, June 20, 2008.

¹⁴⁹ *Id.* at 313 (internal citations omitted). See also Interstate Horseracing Act, 15 U.S.C. § 3001, et seq. (2007).

necessary changes with respect to drug use.¹⁵⁰ The week before the 2011 Kentucky Derby, Representative Edward Whitfield from Kentucky and Senator Tom Udall from New Mexico introduced a federal bill that would eliminate performance-enhancing drugs from thoroughbred racing.¹⁵¹ The bill establishes penalties, including a permanent ban, for trainers whose horses test positive for either illegal or therapeutic drugs.¹⁵² The language and purpose of the legislation is similar to the rules already proposed by RCI that will eliminate all drug use in thoroughbred racing over the next five years.¹⁵³ While it is laudable that legislators want to promote uniform regulation as a means of restoring the dignity of thoroughbred racing, federal involvement is not the most effective means. Owners, trainers, and veterinarians through organization such as RCI are better equipped to regulate the sport because they are the most closely connected and directly impacted by industry standards.

Some have argued that thoroughbred racing should be governed by a national governing body similar to the National Football League, National Basketball Association, or Major League Baseball.¹⁵⁴ While this may seem like a more effective and simplified approach, it is not likely to succeed for thoroughbred racing in the way it has with other sports because of the number of “conflicting organizations and interests in the [racing] industry.”¹⁵⁵ It is also unlikely that states that collect all the operational revenue and are able to enforce their own rules and interests would cede such power to a national racing league.¹⁵⁶

The third possibility, establishing uniform rules and regulations within the industry for all racing jurisdictions, is the most likely to succeed. A uniform consensus among leading thoroughbred organizations will ensure that “health and safety is not compromised, the integrity of American racing is upheld, and that all horses and racing jurisdictions are operating on an even playing field.”¹⁵⁷ Industry leaders should work to establish a zero-tolerance policy for the use of all drugs in racing and develop stricter penalties for those who violate the rules.¹⁵⁸ Medication may be used for rehabili-

¹⁵⁰ *Id.* at 324.

¹⁵¹ Moran, *supra* note 125.

¹⁵² *Id.*

¹⁵³ LaMarra, *supra* note 18.

¹⁵⁴ Breslin, *supra* note 144, at 325.

¹⁵⁵ *Id.* at 326.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 327.

¹⁵⁸ *Id.* at 328.

tation, but when a horse requires medication for a particular illness or injury, then that horse should not be permitted to race.¹⁵⁹ This is necessary to ensure the best equine health and wellness for racing across all jurisdictions.

If American racing becomes medication-free in a way that conforms to current international standards, it should come as a result of “industry-wide consensus, establishment of a central authority and unanimous regulatory effort”¹⁶⁰ among racing associations. The first steps in this process were taken in the summer of 2011 during the National Thoroughbred Racing Association, the American Association of Equine Practitioners, and the Racing Medication and Testing Consortium conferences regarding the use of race-day medication and its impact on equine health.¹⁶¹ Ideally these discussions will lead to the development of a model rule that all states can adopt. The surest way to return to a more pure form of racing is for the industry itself to adopt a nationwide ban on all medications.

C. A Timely Victory

The 2011 Kentucky Derby displayed many of the things that are great about thoroughbred racing. Despite the scratch of Derby-favorite, Uncle Mo, and Archarcharch’s leg injury during the race,¹⁶² there was a lot to celebrate in the victory of Animal Kingdom. Having never raced on dirt prior to the Derby, Animal Kingdom was not the most likely of candidates to win the roses.¹⁶³ Moreover, he is owned by a syndicate of twenty partners, Team Valor International, and “trained by an Englishman who has never been cited for violating a medication rule and believes a horse should

¹⁵⁹ *Id.*

¹⁶⁰ Moran, *supra* note 125.

¹⁶¹ Hegarty, *supra* note 121.

¹⁶² Uncle Mo was scratched the day before the Derby because of a gastrointestinal infection. The main goal for trainer, Todd Pletcher, was to keep the horse healthy so that he can continue racing. Archarcharch, however, will retire from racing. He suffered cartilage damage in his front left leg, which he injured during the race shortly after coming out of the gate. Joe Drape, *Uncle Mo Sent to Farm; Archarcharch is Retired*, N.Y. TIMES (May 9, 2011), <http://therail.blogs.nytimes.com/>.

¹⁶³ Joe Drape, *Animal Kingdom’s Win is Victory for the Sport*, NY TIMES (May 8, 2011), http://www.nytimes.com/2011/05/09/sports/09racing.html?_r=2&ref=sports.

be allowed to be a horse as much as possible.”¹⁶⁴ Trainer Graham Motion and Barry Irwin, CEO of Team Valor, “demonstrate how solid horsemanship rather than black bag veterinarian work can succeed at horse racing’s highest level.”¹⁶⁵ Animal Kingdom, who was born and raised in Kentucky, had a Brazilian-bred sire and a German-bred dam, which Irwin thinks played a part in his Derby win:

We have not done enough importing of horses and blood lines from other places where horses don’t run on drugs, and horses’ legs are not manipulated, and horses, basically, are bigger and tougher, stronger and sounder. In Germany, you are not allowed to breed a mare that has ever raced on drugs, Lasix, Bute, nothing. So when you buy some stock from there, you know you’re getting something good.¹⁶⁶

Motion adheres to “European principles of horsemanship” and trains his horses outside the racetrack.¹⁶⁷ After many years of using a lot of different trainers and tired of “the lack of truth telling in the profession,” Irwin was relieved when Motion agreed to train Animal Kingdom.¹⁶⁸

“How Animal Kingdom was bred by Irwin and how he was managed by Motion is nothing short of remarkable” given the prevalent use of performance-enhancing drugs in American racing.¹⁶⁹ Although Animal Kingdom did run on the anti-bleeding drug known as Lasix, which was legal the day of the Derby, Motion and Irwin stated that they would have “no trouble giving up drugs like Lasix” for future races.¹⁷⁰ Animal Kingdom’s victory

¹⁶⁴ *Id.*; see also Bill Finley, *The Fresh Face of Horse Racing*, ESPN (May 10, 2011), http://sports.espn.go.com/sports/horse/triplecrown2011/columns/story?columnist=finley_bill&id=6521407 (“Motion has never had a medication violation in a career that has spanned 19 years and includes more than 7,900 starters.”).

¹⁶⁵ Drape, *Animal Kingdom’s Win*, *supra* note 163.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* Irwin was passionate about finding a trainer who would not cheat to win. Motion had a reputation for always playing by the rules and Irwin could trust him. “Not only is Motion honest, he’s good. He’s won with 19 percent of his starters during his career, and with Animal Kingdom he pulled off the difficult feat of taking a horse that had never run on dirt and winning the toughest dirt race in the world.” Finley, *supra* note 163.

¹⁶⁹ *Id.*

¹⁷⁰ Jim Squires, *Derby Winner Sets Shining Example for Wayward Industry*, THE RAIL: THE N.Y. TIMES RACING BLOG (May 8, 2011), <http://therail.blogs.nytimes.com/2011/05/08/derby-winner-sets-shining-example-for-wayward-industry/#more-12781/>. “Although Team Valor has benefited by moving horses to the United States

at the Derby was arguably attained “with the best interest of the horse and the sport in mind,”¹⁷¹ and it could not have come at a more opportune time given the recent recommendation by the RCI to eliminate all race-day medication.¹⁷²

VI. CONCLUSION

There are several changes that can be made to improve the sport of thoroughbred racing. First, the safety and welfare of the horse must be the top priority. As exciting as it is, the thrill and financial gain of winning must not usurp the obligations of owners, trainers, and veterinarians to do what is best for the horse’s health. Second, transparency must be improved by developing a uniform tracking system for injuries. According to a 2010 report, the Jockey Club is working to develop “world-class equine drug testing laboratories capable of producing consistent results through uniform and standardized testing procedures,”¹⁷³ which is a major step toward improvement. Third, a central authority within the industry should make and enforce rules and regulations that bind all racing jurisdictions. The lack of a national uniform regulatory structure has not only harmed the image of horse racing in America, but “has led to a decline in the health and safety of the horse, as well as competitive disadvantages among racing jurisdictions.”¹⁷⁴ The best way to restore the integrity of thoroughbred racing is for leaders and organizations within the industry to adopt a nationwide ban on all medications used in racing.

In the debate over what medications should be allowed and under what conditions they should be used, we can lose sight of what is best about thoroughbred racing. Gambling has always played an influential role in the popularity of the sport, but the showcase of athletic power and endurance is what drives and sustains it.¹⁷⁵ Perhaps the most captivating win in racing

from non Lasix-tolerant racing jurisdictions, [Irwin] is one of the owners perfectly happy with a drug-free playing field. He believes he can breed a horse that can compete around the world without relying on race-day drugs.” *Id.*

¹⁷¹ Drape, *supra* note 163.

¹⁷² Moran, *supra* note 125.

¹⁷³ Tom LaMarra, *Officials Say Report Dispels Drug Criticism*, BLOODHORSE (Sept. 13, 2011), available at <http://www.bloodhorse.com/horse-racing/articles/65007/officials-say-report-dispels-drug-criticism#ixzz1qBuywOx6>.

¹⁷⁴ Breslin, *supra* note 144, at 315.

¹⁷⁵ See Maria Puente, *Hanging Onto a Horse’s Tale: Secretariat Still Astounds Us*, USA TODAY (Oct. 7, 2010), http://www.usatoday.com/life/movies/news/2010-10-07-secretariat07_CV_N.htm. “Racehorses are not out there for the money, they’re

history was that of Secretariat, winner of the 1973 Triple Crown.¹⁷⁶ Secretariat showed his strength and courage in each jewel of the Triple Crown. He set a record at the Kentucky Derby as the only horse in history to run it in under two minutes.¹⁷⁷ At the Preakness he was in last place at the first turn, but his jockey allowed the horse to make an early move to the outside and Secretariat went on to win by two and a half lengths.¹⁷⁸ After winning the Preakness, Secretariat's story began to capture the attention of America.¹⁷⁹ It had been twenty-five years since the last Triple Crown winner (Citation in 1948) and expectations were high.¹⁸⁰ But what happened at the Belmont Stakes on June 9, 1973, was more than anyone dreamed possible. Secretariat won by a "jaw-dropping 31 lengths," the largest margin in history, and his record-setting time still stands today.¹⁸¹ Secretariat set records while winning the Triple Crown and "he did it without steroids."¹⁸²

Secretariat's victory represents a purity and lack of compromise that must return to thoroughbred racing.¹⁸³ The responsibility of veterinarians, owners, and trainers is to ensure that horses can run based on their ability without artificial interferences. The Jockey Club "continues to believe that horses must compete only when they are free from the influence of medication."¹⁸⁴ This is why the movement to phase out all medications from thoroughbred racing is best for the integrity of the sport and the safety of the horse.

out there for the purest of intentions – they love to run, they love to win, and people just respond to that." *Id.*

¹⁷⁶ See Joe Drape, *To the Swift: Red Smith on Secretariat*, THE RAIL: NY TIMES HORSE RACING BLOG (June 6, 2008), <http://therail.blogs.nytimes.com/2008/06/06/to-the-swift-red-smith-on-secretariat/>.

¹⁷⁷ Secretariat's Triple Crown, ESPN Classic, Sports Century.

¹⁷⁸ *Id.*

¹⁷⁹ Secretariat's Triple Crown, ESPN Classic, Sports Century.

¹⁸⁰ *Id.*

¹⁸¹ Ron Flatter, *Secretariat remains No. 1 name in racing*, ESPN.COM, <http://espn.go.com/classic/biography/s/Secretariat.html> (last visited Apr. 2, 2013). For a comparison between Secretariat and the other Triple Crown winners, see Andrew Beyer, *Ranking the Triple Crown Winners*, THE WASHINGTON POST (June 6, 2008), <http://www.washingtonpost.com/wp-srv/sports/interactives/triplecrown08/>.

¹⁸² Puente, *supra* note 175.

¹⁸³ See *id.*

¹⁸⁴ LaMarra, *supra* note 173.

