



The Jockey Club

40 East 52nd Street, New York, NY 10022
Phone: (212) 371-5970 | Fax: (212) 371-6123

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Chair Jan Schakowsky
Ranking Member Cathy McMorris Rodgers
Energy & Commerce Subcommittee on Consumer Protection & Commerce
2125 Rayburn HOB
U.S. House of Representatives
Washington, D.C., 20515

Dear Chair Schakowsky and Ranking Member McMorris Rodgers,

Thank you very much for allowing me to testify at the January 28, 2020 hearing concerning "Legislation to Promote the Health and Safety of Racehorses." I enjoyed the experience and hope that my remarks and those of the other panelists will prove helpful in your consideration of HR 1754.

My responses to the post-hearing questions forwarded to me by Committee staff are as follows:

The Honorable Paul Tonko (D-NY)

1. Mr. Lear, in Kathy Anderson's testimony, she spoke of AAEP's 10-point plan. Can you tell the Committee in your view how much of the plan has been implemented, and whether this plan will sufficiently address the issue of over medication of our equine athletes?

Answer:

The AAEP's 10-point plan was first presented by Dr. Anderson at the 63rd Round Table Conference on Matters Pertaining to Racing in 2015, a conference that The Jockey Club annually hosts. Her address was entitled the AAEP's 10-point "Prescription for Racing Reform", which was described as "a plan for positively effecting change with regard to racehorse health and racing integrity."

The following represents The Jockey Club's current analysis of the 10-Point Prescription, five years after it was first presented:

1. Continued support of the National Uniform Medication Program (NUMP) in all U.S. racing jurisdictions.

The NUMP is a voluntary program created in 2013 for adoption at the discretion of the 30+ state regulatory authorities. It is aimed at creating uniform rules, drug testing standards and enforcement. Given the nature of state-based medication reform where each state must follow unique processes and procedures when creating medication rules (by statute or regulation, depending on the state), and also endure political interference, harmony among the states is nearly impossible to obtain and even then, fleeting at best.

Each new NUMP rule introduced for consideration among the 30+ racing jurisdictions must go through processes that vary in duration, notice and public comment. As a result, variances in rules creep in where horses racing in state A are subjected to rules that differ from state B or state C.

Differing rules due to differing state procedures have plagued the NUMP system since its inception. In a sport where more than 50% of the competitions are made by horses that frequently cross state borders and race in multiple jurisdictions, these differences negatively impact the athlete, and ultimately the sport suffers.

To date, zero states have fully adopted all elements of the currently effective version of NUMP. Only six states have partially adopted the majority (three of four portions) of the currently effective version of NUMP.

2. Recommend to the Racing Medication & Testing Consortium (RMTTC) the development of regulations banning the use of anabolic steroids in training.

This recommendation is intertwined with No. 5, out-of-competition testing.

The RMTTC is a non-regulatory, voluntary consortium of industry organizations sharing common goals of promoting uniformity in drug testing rules and enforcement. The organization conducts research on various legal and illegal substances and recommends methods for detection to another non-regulatory, voluntary organization, the Association of Racing Commissioners International (ARCI). The ARCI is then tasked with advocating for rule adoption among the 30+ pari-mutuel racing jurisdictions.

Fundamental to banning the use of anabolic steroids in training is having a system to detect the use of anabolic steroids in training. Currently, the overwhelming majority of drug tests in horse racing are conducted immediately following the race. Few racing jurisdictions in the U.S. have out-of-competition testing, a program of drug testing where the athletes may be tested at any time and at any place, and even the jurisdictions that do have out-of-competition testing do not have an effective intelligence based testing program in place.

With so few states effectively conducting out-of-competition testing and, more importantly, without any central coordination of efforts to follow horses as they move across state borders as is the case with human athletics, adopting a rule without a means to enforce is specious. Moreover, even in those states that have a system of out-of-competition testing and have adopted a rule banning the use of anabolic steroids in training, the frequency of testing is minimal at best. During fiscal year 2018-2019, for example, of the total 52,333 samples analyzed in California, only 2,529 were from out-of-competition.

To date only a few states have adopted rules banning the use of anabolic steroids in training.

3. Recommend to the Racing Medication & Testing Consortium a 48-hour restricted administration time for NSAIDs as part of uniform medication policy.

NSAIDs, or non-steroidal anti-inflammatory drugs, are a group of medications frequently administered to horses for the management of pain. Recently published scientific evidence concluded that horses allowed to compete under the pain-suppressing influences of NSAIDs are at a heightened risk for racing and training injuries and fatalities. Allowing a horse to race with an existing injury when the symptoms of pain are masked by NSAIDs predisposes them to more serious injury or even death.

For perspective, recent scientific evidence suggests that at least one of the more frequently used NSAIDs continues to suppress pain for up to 96 hours. International racing jurisdictions regulate this same NSAID to where withdrawal is required 168 hours, or seven days, prior to the race. Several U.S. racing jurisdictions (not all) currently regulate NSAIDs to where withdrawal is required only 24 hours prior to the race.

Currently, only New York, California and Maryland have rules requiring withdrawal of NSAIDs 48 hours prior to the race. Kentucky has begun the

administrative process adopt a regulation implementing the 48 hour withdrawal requirement for NSAIDs. During this year's Triple Crown season involving the Kentucky Derby (in Kentucky), Preakness Stakes (in Maryland), and Belmont Stakes (in New York), it is very likely that our most elite athletes will be exposed to multiple withdrawal times for powerful medications as they prepare for, and compete in, the Triple Crown races.

4. Support clear uniform regulations for compounded medication.

Compounded veterinary medications and substances, similar to illegal, performance-enhancing substances capable of producing lasting effects long after evidence of their administration has vanished, are a particularly insidious threat to horse racing. Slight alterations in chemical structures are capable of rendering a substance that may be detected today virtually invisible tomorrow. Identifying, let alone regulating, the network of veterinary compounding pharmacies is a daunting task.

A model rule was approved by the Association of Racing Commissions International in 2014 calling for increased penalties in certain circumstances when compounded veterinary drugs are discovered on racetrack property. ***To date, no major racing jurisdiction in the United States has adopted the rule.***

Veterinarians enjoy a unique position among all medical professions. The majority of veterinarians practicing their trade at the nation's racetracks simultaneously act as diagnostician, prescriber, and pharmacist. This business model has the unintended consequence of producing clear economic incentives to dispense medications, which is only modulated by the moral compulsion of the practitioner. Veterinarians work tirelessly in their trade and often must fill the dual roles of attending and emergency caregiver. These roles often necessitate immediate access to life saving medications in emergency situations. However, in a racing environment where the majority of visits are routine in nature, this model adds to the already existing public perception that racehorses are overmedicated.

5. Support the implementation of a national uniform program for comprehensive out-of-competition testing.

Testing athletes between competitions has become increasingly preferred in professional and amateur athletics. These tests conducted between competitions have been shown in other sports to increase the chance of detecting illegal substances. Because certain substances are capable of exerting prolonged, illegal, performance-enhancing effects long after evidence of administration has vanished, the current system of testing horses immediately after the race is useless for detecting these substances.

The vast majority of testing in human Olympic athletics now occurs between events through a system requiring the athlete to report his/her whereabouts in the event they are selected for testing.

Less than 5% of testing in U.S. horse racing is performed out-of-competition as compared to an average of 11% in other major international racing jurisdictions* and 68.6% in Olympic sports.

*Major international racing jurisdictions to include Hong Kong, France, Great Britain, Japan (NAR & JRA), Saudi Arabia, South Africa, United Arab Emirates.

6. Support and advocate the development and implementation of effective security measures to enforce medication rules.

No major racing jurisdiction has implemented new rules aimed to create more effective security measures. In general, the more elite races, those listed by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, are the only races subjected to more effective security measures put in place purely

under the discretion of a voluntary coalition of host racetracks. These measures include 24-hour video or in-person surveillance, logging visitors with access to horses, and requiring horses to be stabled on racetrack grounds at least 72 hours prior to the race.

With less than 100 of the approximate 36,000 races conducted each year in the U.S. (0.3%) occurring with more effective security in place, the record of implementation is another example of the failures of a system of well-intentioned voluntary initiatives without a regulatory imperative that coordinates implementation.

7. Support meaningful medication rule violation sanctions for horses, veterinarians and other licensees, as appropriate.

A component of the initial version of NUMP was to implement a system whereby individuals with multiple drug testing violations are progressively subject to more severe penalties. The system was initially designed to increase coordination of penalties among the states so that violations accumulated by individuals in state A would factor into any penalties assessed in state B.

As discussed in item 3 above, horses that compete under the pain-suppressing influences of NSAIDs are at a heightened risk for racing and training injuries and fatalities. Unfortunately, in 2017 the MMV was substantially weakened. Under the new schedule, more violations, (including from medications such as NSAIDs) were required to trigger the increased penalties of the MMV, the duration of suspensions was reduced, and the records of violators were expunged sooner.

To date, 12 states have adopted the MMV system, which, as pointed out, is now substantially weakened.

8. Create national uniform procedures for Veterinarian's List reciprocity and management criteria.

Each state jurisdiction maintains a system of placing horses on a veterinarian's list, which typically suspends the horse from competition for a period of time or until it can be proved to have overcome some physical deficiency or treatment administered.

Noting that about half of the horses that race in the United States do so in more than one state, the current system relies upon a tenuous thread of good faith among regulatory officials. Horses placed on mandatory rest in state A too often are allowed to compete in state B without consequence – except to the health and safety of the racehorse.

To date there is no national rule for reciprocity for vet's lists.

9. Investigate alternative exercise-induced pulmonary hemorrhage management strategies with the intent to eliminate race-day medication.

This recommendation and No. 10, below, are intertwined.

10. Upon finding efficacious methods to manage EIPH, the AAEP will propose that the Racing Medication & Testing Consortium amend its uniform medication policy in order to eliminate race-day medication.

Studies have been conducted to investigate the effects of moving the time of administration of Lasix from the day of the race to the day before the race. The studies compared the efficacy of the two administration times against each other as opposed to the effect upon the horse as a competitor in races. The small numbers of horses used in the studies yielded promising but inconclusive results.

The fact is, North American racing jurisdictions are distinct from all other international racing jurisdictions in that North American rules permit the administration of Lasix to racehorses on the day of the race. Of the 968,146 starts representing 164,707 horses in 48 countries that were recorded by the International Federation of Horse Racing Authorities in 2017, the latest year of reporting, none of those starts occurred with race-day administration of Lasix.

Supporters of H.R. 1754 rely upon these facts in their unanimous assertion that the majority of racehorses do not need Lasix to compete. In fact, horses that race on Lasix in the U.S. may export to compete and win in international races without Lasix only to return and go back on Lasix.

The Honorable Larry Bucshon (R-IN)

1. Significant concerns have been raised about the use of performance-enhancing and illicit drugs and improper and unethical practices in the breeding industry that may endanger the safety and welfare of young horses to be sold for racing purposes. Many horses are being sold at auction with undisclosed pre-existing conditions and conditions that are masked that can put them at risk. We further learned that the breeding industry in this country is not regulated, is not subject to any oversight and resists being subject to oversight and regulation.
 - a. Does this legislation extend jurisdiction and oversight to the breeding industry, breeders and breeding practices?
 - b. Do you support regulating and overseeing the breeding industry, and would you support amendments that would confer jurisdiction and oversight over the breeding industry, breeders and breeder's practices?

Answer:

a. As presently written, HR 1754 covers horses in competition beginning with the date of their first official timed workout that is published in the racing program and other media. It does not, per se, apply to the breeding industry, breeders and breeding practices. However, breeding practices (i.e., the mating of a stallion and a mare) are tightly controlled and closely monitored by the breed registries for each of the three primary racing breeds in the United States. Moreover, the bill in its current form or by simple amendment can have application to certain performance-enhancing or horse endangering medications (e.g., steroids, bisphosphonates) that are discovered to have been used on a horse prior to its first official workout.

It should also be noted that far more protections for horses and for participants in the buying and selling of horses exist in their early years than the preface to this question suggests. Focusing on the Thoroughbred breed, each year 32,000 mares are bred by stallions, resulting in approximately 20,500 registered foals. Although all states will report some level of breeding activity to The Jockey Club, 10 states typically account for approximately 80% to 85% of the registered Thoroughbred foal production in the United States. Virtually all breeding activity occurs within the confines of a single state. In other words, a mare that is boarded in the state will be bred to a stallion that stands in that state, and once the foal is born it will typically remain in that state until it is sold at auction or moves to another state to begin training. Thoroughbreds are sold at public auction as weanlings when they are less than a year old, as yearlings when they are 18 to 20 months old, or as two-year-olds in training when they are just over 24 months old.

Of the foals registered each year, approximately 74% will race, with the balance going to other disciplines or other purposes. Approximately 56% of the Thoroughbreds that eventually start a race are previously sold at public auction. All major auction companies have long recognized the threats posed by drugs and illegal substances and have included anti-doping provisions into their agreements with buyers and sellers as Conditions of Sale. These provisions include tests of blood, urine and even hair for the detection of inappropriate substances, including anabolic steroids. Buyers are given the right to void the purchase upon a positive finding, which provides a powerful deterrent when a potential multimillion-dollar sale hinges on the results of drug testing.

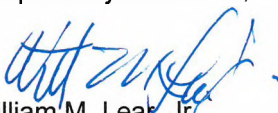
The purchase and sale transactions at public auctions are between sophisticated buyers and sellers, each typically supported by skilled professionals, including veterinarians, blood stock agents and trainers. Prospective buyers have, and almost always take advantage of, the right to inspect and have their trainers and veterinarians inspect the horses, conduct endoscopic examinations of the horses, view radiographs (X-rays) of the horse placed in the depository on sale grounds which are required to show more than 20 specific views of key parts of the horse's skeleton. The Conditions of Sale, and the practices detailed above, are virtually identical among all the major sales companies and at all the major auction sales events. They serve to protect not just the buyers and sellers, but also the horses themselves by deterring the use of medications and methods which could be harmful to the horses in addition to impairing the owner's ability to sell them at auction. It is not a stretch to say that a Thoroughbred sold at public auction in the United States is subject to greater scrutiny and more disclosure than applies to the sale of any other animal bought and sold in this country.

The major sale companies react quickly and forcefully to address any new medication threat that arises. In mid-2019, the major public auction companies jointly announced an anti-doping program designed to detect the presence of drugs containing bisphosphonates, a powerful medication of very recent interest that may potentially affect the durability of bones when used, inconsistently with label instructions, to treat younger horses. With the majority of Thoroughbreds that eventually participate in covered races going through an auction sale first, they are protected by an effective and agile anti-doping program administered by the public auction companies prior to the point in time that jurisdiction under HR 1754 attaches.

HR 1754 in no way inhibits the ability of the public auction companies and other interested organizations to establish and expand their oversight of medications in the pre-racing timeframe. And with its emphasis on enhanced research, this legislation will provide additional information to be used by those entities in protecting horses, buyers and sellers.

b. As noted in the answer to the previous question, we believe HR 1754 as currently written creates jurisdiction sufficiently broad to address the use of certain horse-endangering and performance enhancing medications and methods employed prior to the first timed workout; or by simple amendment could be extended to do so. Further extension beyond that is problematic primarily because the singular basis for federal jurisdiction in the bill is the involvement of horse racing in interstate commerce, principally through training for and participation in covered races (i.e., those that are subject to interstate off-track wagers and thus to the application of the Interstate Horseracing Act of 1978), and the movement of horses among the states for racing. By contrast, breeding is almost entirely an intrastate activity as is the raising of young horses. In addition, a significant percentage of Thoroughbreds, and in all likelihood Quarter Horses and Standardbred foals as well, never participate in a covered race. In light of these jurisdictional constraints, and the existing protections discussed in the response to the first question, we do not favor attaching the provisions of HR 1754 to an earlier point in time than is currently proposed.

Respectfully Submitted,



William M. Lear, Jr.
Vice Chairman
The Jockey Club