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We Need To Modify The USEF Equine Drugs and Medications Rules

Speed limits: They reduce our risk of injury or death. But different streets, roads, highways and freeways each require different speed limits because these each present different risks. The degree of risk presented in each situation—whether a school crossing zone, neighborhood or highway—determines the speed limit.

We now have radar that can detect movement below a single mile per hour. Do we make laws that create a speeding violation for any movement at all? No. The presence of speed alone is not a threat. It's the speed relative to the safety risks posed by the environment in which the car is traveling that determines the threat.

Does the radar alone determine that a violation has occurred? No. The law enforcement agency must prove to the court that the radar detector is properly calibrated and can determine speeds with precise and repeatable accuracy and that the speed recorded was in excess of the posted speed limit.

The law enforcement agency does not simply have to prove that there was a vehicle and there was motion. That proves nothing of consequence.

Speed limits are regulations with a rational basis in science (statistics, safety factors related to speed, and the ability to control a moving vehicle) and are in place to protect the innocent passengers *and to protect the operators of vehicles in compliance with the limits placed from* unfounded allegations of violations.

The U.S. Equestrian Federation has Equine Drugs and Medications, Therapeutic Substance Provisions in its rulebook as GR410 and Forbidden Substances as 409. The rule does not post a "speed limit," i.e. a threshold concentration of a forbidden substance below which a positive report will not issue, for all but a very few therapeutic medications. The rule simply requires the lab detect the presence of a forbidden substance.

If the premises of GR410 were applied in the context of operating automobiles, the rule is the logical equivalent of having no speed

limit, such that any movement detected by radar is considered a violation if it has been proven that cars, at some speeds and in certain contexts, may be a threat to society. *That is absurd.*

Drivers are allowed to drink alcohol and drive. Limits are established to prevent driving while under the influence of alcohol. The limit in most states for non-commercial drivers is .08. For commercial drivers (including school bus operators) the limit is .04. At or above these quantities, it's presumed the ability of the vehicle operator is impaired.

The regulation, which is uniformly applied in most of the 50 states, is designed to allow alcohol consumption, but not to the extent that driving is adversely affected. These limits were not arbitrarily chosen and do not assume that if detected in any amount a violation has occurred.

To find a person guilty of drunken driving with a limit of .08, the evidence is gathered in micrograms, the same units as were commonly used as the standard in the 1970s when the USEF drug rule, in its present manifestation, was created. Now the USEF uses a unit of measurement one billion times smaller, picograms, or one trillionth of a gram. In 1970 the limits of detection were in the microgram (.000001) range, i.e. millionths, not trillionths (.000000000001).

To convert the .08 gram/dcl alcohol limit for driving under the influence to picograms, that would be 80,000,000,000 (80 billion) picograms. The USEF laboratory and prosecutor are calling and prosecuting positive reports at 1,000–2,000 picograms. Compare that 1,000–2,000 picograms of “forbidden substance” detected to the 80 billion picograms/dcl required to convict a drunk driver of a DWI, and you will see that the concentrations of forbidden substances identified leading to infractions called and prosecuted by the USEF are *800 million times smaller* than what the governments of most U.S. states allow in humans driving cars on public roads. Isn't this a bit like hitting an ant over the head with an oil drum?

Is There An Unfair Advantage?

That a drug can be detected in such small quantities bears no relationship to its ability to have a pharmacological effect, yet the presumption of GR410, (that if the USEF can find the substance, it must have effect) continues unchanged with the exponentially increased sensitivity of the testing instrumentation available today. To be more precise, the USEF's position, as consistently asserted by its prosecutor and its retained experts, is that the quantity does not matter because the rule simply requires the presence in any amount to constitute a violation.

There is absolutely no scientifically established correlation between the concentration of an allegedly offending substance found in the picogram levels and the potential of that concentration of forbidden substance to affect the performance of the horse. The rule allows the USEF to condemn its members without any proof that the amount detected was sufficient to affect the performance of the horse in competition.

It's as if the USEF rule has provided its prosecutor with a zip line ride to successful prosecutions without having to present any credible scientific evidence that the horse has gained an unfair advantage in competition.

We accept the .08 limit on alcohol because we know that simple, repeatable scientific research supports the limit. There's no such support offered by the USEF when the concentration detected for most, if not all, of the reported positive findings of "forbidden substances," is in the picogram or even the low nanogram levels. In fact (when the USEF lab actually determines the quantity, because the rule does not require that it do so) the USEF only has to prove that: 1) The forbidden substance is present in any amount; and 2) That in *some concentration* the offending substance "might affect" the performance of the horse, even if the concentration necessary to affect the performance of the horse could literally be billions of times more than what was actually detected.

Presently, for instance, the USEF rules permit therapeutic NSAIDs in competition measured in microgram concentrations (as was the standard measure in the 1970s) when forbidden substances are now measured in picogram concentrations. If one microgram/ ml concentrations are permitted for therapeutics, it's assumed that

below that level, they do not afford a horse an unfair advantage in competition, and they have scientific proof to establish the acceptable threshold. If the lab detects a concentration of a “forbidden” (as opposed to a therapeutic) substance, even if only measureable in picogram/ml concentrations, the case is prosecuted because if that substance had been found to have the ability to affect the performance of the horse in competition in some amount, even if that concentration would have to be a billion times, or more, higher to have such an effect, the USEF will prosecute on that basis.

The USEF rule does not require the USEF or its prosecutor to produce any evidence that in the actual concentration detected, the performance of the horse could have been affected during competition.

Could our state governments arbitrarily choose a zero tolerance/or limit of detection by lab instrumentation approach to the prosecution of driving after consumption of alcohol without evidence that its presence in certain concentration in the blood of a human being affected the ability to drive the car? No. There has to be a reasonable basis, i.e. reliable scientific *evidence*, to support the assertion that the concentration of alcohol detected represents a threat to society.

Why does the USEF not have to prove some sort of effect on the performance of the horse at the actual concentration detected? Because it notes, time and time again, that the USEF rule is *qualitative*, not quantitative. If its lab can detect a “forbidden substance,” it is a rule violation, so long as the substance detected in *some* quantity *might* affect the performance of the horse.

It is far easier and less costly for the USEF to make the same assumption that it did in the 1970s (that detection of microgram/ml concentrations of forbidden substances did affect the performance of the horse) without any proof that there was such an effect, and it absolves the USEF of any need to present evidence to establish a scientific basis necessary to support the assumption.

Despite the increased sensitivity of testing technology that now measures forbidden substance in trillionths parts rather than millionths, the rule has remained unchanged. Accordingly, the

burden of proof upon the USEF to find a person in violation of the rule *has been lowered exponentially*. It is far, far easier to detect concentrations of forbidden or therapeutic substances in the blood or urine of horses in the present technological age. With the laboratory instrumentation available today, and the rule as written, it is almost no burden upon the USEF at all to prove a rule violation. It is the proverbial uncontested slam dunk.

Is that an approach that is fair to USEF members? Do they even know that they are subject to such an outdated and arbitrary rule?

Was There Intent?

To enforce the rule as written, without any requirement that there be scientific evidence that the horse enjoyed an unfair advantage, means that no medication (other than the few therapeutic substances listed in the rule) or foreign substance in any concentration can be present.

Yet some medications are useful to treat illness, injury, or as veterinary diagnostic tools. Some metabolize at unpredictable rates, binding with receptors in cells only to be excreted at a later time at unpredictable rates. Some are excreted months after administration or ingestion.

Exposure to contaminants in feeds, supplements, unclean stall surfaces and beddings could all lead to low concentration of forbidden substances in horses' urine or blood with no fault by the USEF member responsible for the condition of the horse and without any reasonable way to protect from this exposure and the sanctions arbitrarily imposed by USEF GR410. Contamination from prescription drug residue on the hands of grooms, riders, braiders or others having direct contact with horses could result in a serious rule violation, suspension, fine, damage to reputation as well as a direct economic threat to a USEF trainer.

With the stakes so high, USEF members deserve better. The USEF Medication and Forbidden Substances rule is founded upon a false assumption that presence of an offending substance, which might affect the performance of the horse, has done so, regardless of any scientific proof that it could do so in the concentration detected.

The burden established by GR410 is so low for the USEF prosecutors that no evidence is required beyond: A) the lab report of a positive finding; and B) a statement by an expert that in some concentration the offending substance could affect the performance of the horse, even if the concentration necessary to establish a pharmacological effect would need to be 800 million times higher.

The archaic drugs and medication rule needs to be updated to reflect the exponential advances in modern day drug detection technology. *The concentration (quantity) of a substance found in the blood or urine of a horse does matter.* It can be determined whether the concentration detected actually had an effect on the horse's performance.

Other regulatory bodies governing domestic and international sport have established "no effect thresholds" in labs all over the world. This has not compromised the integrity of sport; in fact it has enhanced the appearance of fundamental fairness in the regulation of sports. The USEF needs to amend its rule to come out of the dark ages of drug rule enforcement. It needs a quantitative rule that affords members the consideration of scientific evidence to prove with a degree of scientific certainty that the concentration detected in the charged party's horse actually created an unfair advantage in competition.

Honest, hard-working trainers and owners are being handed heavy fines and long suspensions for inconsequential concentrations of forbidden substances, with no proof that the concentration had any effect on the performance of the horse. This should not be acceptable to any USEF member.

We all want to see those individuals punished if they intentionally attempt to circumvent the rules to gain an unfair advantage by improperly medicating or otherwise treating their horses with forbidden substances. If it's to be done, however, it should be done with the requisite proof that the concentration of a forbidden substance detected *actually affected the performance of the horse in the competition*, not that it might have in some huge quantity more than was detected, in some hypothetical scenario testified to at hearing by the USEF's retained pharmacologist. Accordingly, GR410 must be amended to establish fundamental fairness for its

members in the prosecution of drug cases by the USEF.

JOEL TURNER is involved in a full range of equine legal services: syndicate, co-ownership, partnership, pinhooking and limited liability company agreements, equine lending documentation, purchase and sale agreements, private and public placements, administrative hearings and appeals, gaming regulatory matters, tax and estate planning, and litigation. He is knowledgeable in racing legislation and horse showing (USEF/FEI) regulation in the United States and is actively working with horsemen throughout the country to attend to the needs of breeders, owners and trainers. He and his wife live on a small Thoroughbred farm in Prospect, Ky., where he re-trains retired race horses for other purposes.

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