Struggling To Remain On Course: Faults Of The New USEF Rules And How They Can Get The Leg-Up They Need

Alexandra Loprete
STRUGGLING TO REMAIN ON COURSE: FAULTS OF THE NEW USEF RULES AND HOW THEY CAN GET THE LEG-UP THEY NEED

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“That the exploitation of sport for profit alone kills the spirit and retains only the husk and semblance of the thing; That the qualities of frankness, courage, and sincerity which mark the good sportsman in private life shall mark the discussions of his interests at a competition.”1

I. Introduction

With a single article published in late December 2012, Walt Bognadich and The New York Times shook the equestrian community to its core by suddenly bringing the normally secluded and traditional horse show world into the mainstream media by questioning the existence of basic values such as rider safety and horse health supposedly underlying the industry’s regulatory efforts monitoring the medicating of performance horses.2 Premised on a touching anecdote where mother and daughter watch in horror as their beloved (and undoubtedly expensive) pony hunter collapsed and instantly died at one of our country’s most prestigious and significant competitions, the article sought to bring to public attention the “influence of drugs on the safety and integrity of the sport” while exploring how the horse racing industry has dealt with the issue, and accusing the United States Equestrian Federation (“USEF” or “Federation”) of having “lagged behind” and being “ill prepared” to regulate drugs and their administration.3

One year later, Bognadich spoke at the USEF’s annual meeting in Kentucky apparently satisfied with the repercussions of the article’s publication.4 Noting the 2013 “collapse rule” and prohibition on any injections 12 hours from competition he even congratulated the USEF for

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2 Walt Bognadich, Sudden Death of Show Pony Clouds Image of Elite Pursuit, N.Y. TIMES (Dec. 27, 2012).

3 Id.

their efforts. Yet, even Bognadich qualified his view as that of “an outsider” looking in and observing the appearance of a step in the right direction. This raises the question: is all this swift and extraordinary change merely an attempt at appeasing the critical outsider without doing what is truly best for the sport?

This Note will address the issue of performance enhancing and supplemental drug use in non-racing performance horses. Specifically, it will compare the rules recently passed by the USEF – which provide for stricter medication regulations and reporting standards, but are devoid of harsher penalties – with the long-standing and constantly evolving state regulations addressing similar drug use in horseracing, particularly in Kentucky and eight Mid-Atlantic states. Through this comparison, this Note will highlight the inadequacy of the new USEF regulations because of its lack of ability to apply and enforce the rules, as well the minor disciplinary consequences that occur as the result of a violation. Rather, this Note will suggest alternatives available to the USEF in order to reform the industry and deter dangerous and illegal drug use at competition and at appropriate levels. These alternatives include an effort at comprehensively reforming the industry by promoting fairer judging and more attainable standards in order to alleviate the pressures felt by trainers from owners and riders. This reform can be accomplished through educating participants and trainers of the current rules and guidelines and how to abide by them; enacting more comprehensive rules that ban specific doses and combinations of drugs and medical practices which pose a significant danger to horses; obligating all members to sign and consent to subpoena power by the USEF in the event of a violation; and lastly, making significant effort at nationwide enforcement of the current and effective rules at all levels of the sport. By implementing these alternatives, the USEF will be able to alleviate the harsher and less

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5 *Id.*
6 *Id.*
necessary options, such as outlawing any substances unless administered by a USEF registered veterinarian or banning all substances from any competing horse 12 hours prior to competition.

Section II of this Note provides a relevant background and history of both industries with regard to drug and medication regulatory practices, as well as the cultures of the sports. Section III analyzes recent USEF regulations and their possible effect in comparison to similar horseracing provisions regulating performance-enhancing drugs. Finally, Section IV explores the viable alternatives available to the USEF including both stricter disciplinary consequences as a result of a violation the USEF regulations, as well as a comprehensive effort to reform the industry into one where natural equine behavior is rewarded, and over medicated, lethargic, or otherwise lame horses are penalized. This section includes a new focus on the safety and ability of the rider and health of the horse as a priority above prize money, blue ribbons, and return on investments.

II. The Subjectivity of Show Jumping v. Horseracing’s Rush to the Finish Line

The issue of equine overmedication is not unique to America’s equestrian community. State racing commissions across the country have taken various approaches to monitor performance-enhancing drugs and medications administered at racetracks since the 1930s. On the other hand, the development of drug regulations in the equestrian and show jumping community is still somewhat recent and controversial. Although equestrian competition and horse racing share the same high risk, high stakes nature, the differences in culture and regulatory practices between the two industries are tremendous and extreme – a fact that seems to elude critics suggesting regulations in both sports mirror one another.

Whereas the racing industry has long struggled with uniformity between states in order to

ease participant's compliance with Racing Commission laws, the USEF is a nationwide non-
profit organization capable of promulgating guidelines and requirements applicable to
equestrians coast-to-coast.\(^8\) Thus, the relevant question has evolved into one that compares the
state-regulated horse racing industry with that of the seemingly relaxed approved guidelines
governing the equestrian community nationwide. One crucial difference is pari-mutuel betting in
racing, which allows the state power to regulate, an element not present in the show horse world.

a. Curves, Calm, and Technique: The Unique Nature of Showjumping

With equestrian sport, regardless of discipline, comes the inherent risk of injury or death
that naturally accompanies any activity involving a large animal with a mind of its own.\(^9\) This
risk is present irrespective of a rider's years of experience, therefore making ownership of a
horse not necessarily equivalent to expertise or ability of the participant.\(^10\) While safety should
always be a primary concern, it is often overshadowed by its more glamorous counterpart:
winning.

Equestrian sport's several disciplines are each derived from separate origins and focused
on distinct equine breeds, as well as unique methods and techniques of competition.\(^11\) The
equestrian discipline of show jumping is sub-divided into three categories: hunters, jumpers, and
equitation.\(^12\) Unlike the jumper divisions, where speed and agility are valued by rewarding the
fastest and cleanest horse, show hunters and equitation horses are judged subjectively and are

\(^8\) Id. at 397; Who We Are, USEF.ORG, http://www.usef.org/_IFrames/AboutUs/WhoWeAre.aspx.
\(^9\) Loren Speziale, Walking Through the New Jersey Equine Activity Statute: A Look at Judicial Statutory
\(^10\) Id.
\(^11\) Equitation Explained: What is Hunter/Jumper?, MEDALMACLAY.COM,
   http://www.medalmaclay.com/eqexplained/#hjmean
\(^12\) Id. (stating that show jumping, also referred to as stadium jumping, is "a specific equestrian discipline or style of
   riding where horses are ridden English style and jump over a series of obstacles, also called fences or jumps. A
   series of fences is called a 'course'". )
valued for being steady, calm and well mannered.\textsuperscript{13} “Temperamental horses with unnecessary movement or exuberance show poorly,” and stand very little chance at a prize.\textsuperscript{14}

However, the evolution of this standard is becoming increasingly worrisome. “The hunter norm has become an eerily quiet and slow-motion horse with an exaggeratedly careful jump . . .”\textsuperscript{15} The result is an environment that encourages “‘longe[ing] till dead,’ crippling shoeing, and horses getting a list of meds [sic] as long as your arm every day.”\textsuperscript{16} Not only do calming drugs increase a horse’s chance at a win, but they allow difficult horses to be ridden by less skilled riders that simply pay to compete, regardless of their ability.\textsuperscript{17} This practice has aptly been described as “putting training wheels on a horse.”\textsuperscript{18} In part, horses traversing the ring in a lethargic state have become a benchmark for success in the hunter and equitation rings.\textsuperscript{19}

The common practice of overmedicating and over training horses has resulted in creating an uneven playing field in the sport, and has the effect of increasingly endangering the safety of both the horse and rider.\textsuperscript{20} At the June 3, 2013, Federation Town Hall meeting, Bill Morony,

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\textsuperscript{13} Hunters, USEF.ORG, https://www.usef.org/_IFrames/breedsDisciplines/discipline/allhunter/about.aspx
[H]unter’s roots were established in Europe when gentry rode across the countryside hunting for game, often aided by dogs used to track the prey. The horses were necessary to carry their riders many miles over the varied terrain of the countryside in pursuit of their game, often negotiating the creeks, ditches, walls and fences they encountered along the way. Although somewhat recreational from its beginning, the task of the working hunter became less rugged and more refined and competitive, thus the show ring hunter was born. Subjectively judged, the modern show ring hunter must still exhibit the traits desired of a good field hunter – calm disposition, good manners, smooth gaits, steady way of going and pleasant and efficient jumping ability – but must do so with style, presence and superior technique. Conformation, athleticism, disposition and jumping form all combine to define a winning show ring hunter. \textit{Id.}

\textsuperscript{14} Bogdanich, \textit{supra} note 2.


\textsuperscript{16} \textit{Id.}

\textsuperscript{17} Bogdanich, \textit{supra} note 2.

\textsuperscript{18} \textit{Id.}


\textsuperscript{20} \textit{Id.} In addition, this practice serves to “stunt the development of many young riders,” as articulated by George H. Morris.
President of the United States Hunter Jumper Association ("USHJA") defended judges by pointing out "they get blamed for transforming the oddballs into winners that change the game." He continued by stating, "I don't think it's the judging that is the cause of everything." Although Mr. Morony may be right to some extent, it's difficult to ignore the role of judges altogether.

Seldom mentioned in any article, blog, or news post is the obvious pressures trainers experience from wealthy, untalented, or undedicated riders and owners. The idea that most, if not all, drug violations are for the sole purpose of maintaining happy clients and sponsors has become a taboo subject. Show jumping, much like horseracing, is a sport supported by owners and sponsors who view their horses as investments and are known to take extreme measures to gain a competitive advantage, including the abuse of performance-enhancing drugs. For example, just recently a new record for the sale of a show jumper was set at approximately $15,000,000. Prize money at American competitions has increased with "breathtaking speed" in recent years, and although this seems part of a clear effort to raise the stakes and attract competitors of better quantity and quality, many are left wondering if money is all it takes to raise the bar in equestrian sport. Classes awarding over $500,000 are no longer uncommon and are understandably seen by some as "an embarrassment in riches for a competition that is challenging without hitting the highest level of difficulty." Importantly, horses that win large

21 Stassburger, supra note 15.
22 Id.
26 Id.
and prestigious events increase in value, with price tags rising well into hundreds of thousands of dollars, and many more frequently reaching the millions.\textsuperscript{27} This increase in prize money, as well as inflation in the price of equine competitors and insurgence of wealthy unskilled riders, has served to increase the pressures imposed upon trainers, professional riders, and veterinarians alike. As owners and sponsors continue to demand their horses remain sound, quiet and competitive, the USEF is challenged with creating realistic and practical guidelines to ensure safety of both horse and rider remain a priority.

In 2013 the USEF amended and added several rules that focused primarily on the problem of injectable drugs and horse collapses and deaths. Presently, the USEF oversees about 2,500 competitions a year and from those approximately two-dozen equine collapses and/or deaths occur.\textsuperscript{28} The recent development in rule changes by the Federation focused primarily on the problem of injectable drugs and not oral medications.\textsuperscript{29} Specifically, Magnesium and Oxytocin injections as well as the injectable supplement Carolina Gold were of main concern – understandably because of the worrisome reaction and high risk of spike in pulse and respiration that can easily result in an equine death.\textsuperscript{30} Magnesium sulfate, an active ingredient in all three drugs, directly affects the heart, forcing it into a state of arrhythmia and sometimes resulting in total shut down of cardiac function, equine collapse, or death.\textsuperscript{31} In 2011 alone, the USEF reported seventeen equine deaths due to unidentified problems likely attributable to drugs.\textsuperscript{32}

\textsuperscript{27} Bogdanich, supra note 2.
\textsuperscript{28} Id.; Note that this number does not include the number of equine collapses or deaths that occur outside of USEF endorsed competitions, including at unrated horse shows or once a horse has made it home to the farm.
\textsuperscript{29} Strasser, supra note 15.
\textsuperscript{30} Id.; Bogdanich, supra note 2.
\textsuperscript{32} Id.
Highlighted in The New York Times December 2012 article, the USEF experiences significant limitations in its rules and procedures, which govern its investigative and enforcement abilities.\textsuperscript{33} Without the power to serve subpoenas, USEF inquiries and investigations rely on the voluntary cooperation of its members.\textsuperscript{34} Although the Federation has formulated a test to detect the presence of Carolina Gold in a horse’s body, at least as of December 2012, there was no available test to detect increased levels of injected Magnesium, partly because it is a naturally occurring substance in a horse’s body, and also because of the high level at which it metabolizes.\textsuperscript{35} Some have described it as “the perfect drug” because it has no traceable component and any reliable testing for its presence would have to be completed moments after injection.\textsuperscript{36} Understandably, the complex nature of the testing process makes it virtually impossible to determine the widespread use of this drug and many others.\textsuperscript{37}

b. If You’re Not First, You’re Last: The Background and Objective of Horseracing

Horseracing is the sport of running thoroughbred horses and their riders in speed races, typically with substantial betting by fans on the outcome.\textsuperscript{38} In the United States, the racehorse industry has an economic impact of approximately $13.1 billion and directly provides over 193,000 full-time jobs.\textsuperscript{39} In 2013, Americans bet over $130 million in wagers on the outcome of a single race, the Kentucky Derby.\textsuperscript{40} Today, nearly $11 billion dollars are bet annually on horseracing, with ninety percent of that emanating from off-track wagers, generally occurring

\textsuperscript{33} Bogdanich, supra note 2.  
\textsuperscript{34} Id.  
\textsuperscript{35} Bogdanich, supra note 2; Sorge, supra note 31.  
\textsuperscript{36} Greenwood, supra note 19; Sorge, supra note 31.  
\textsuperscript{37} Sorge, supra note 31.  
\textsuperscript{40} Hearing on Medication and Performance-Enhancing Drugs in Horse Racing: Before the Commerce Committee, (opening statement of Sen. Tom Udall) July 22, 2102.
across state lines.41

The Interstate Horseracing Act of 1978 governs interstate wagering on horseracing.42 Empowered through the Commerce Clause, "[t]he Act regulates interstate horserace wagering by balancing the interests of the horseracing industry against those of the interstate off-track wagering industry."43 Congress enacted the Act to further both the industries of horseracing and interstate off-track wagering and to ensure that each state has the power to monitor and control gambling within its borders.44 It is clear Congress has the power to regulate these industries given the size and impact of the horseracing and off-track betting on interstate commerce.45 "There is no dispute that [r]acing activities affect interstate commerce and generate hundreds of millions of dollars of gross income."46

III. Recently Enacted USEF Rules Compared to Horseracing Regulations in New York and Kentucky

The Kentucky State Racing Commission is an independent state agency tasked with the obligation of maintaining integrity, honesty, and safety in horseracing.47 The Commission endeavors to accomplish these goals by promulgating rules and regulations that are effective in "preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they are to participate." 48 Because the Commission is "vested with all powers necessary and proper to carry out fully and effectively those duties imposed upon it by the statutes," it is able to create,
apply, and enforce the necessary rules and regulations backed by the power of the state.\textsuperscript{49}

The Commission is vested with the jurisdiction and power to license all those professionals involved in the practice of pari-mutuel horseracing within the state.\textsuperscript{50} With that comes the power to issue subpoenas for the attendance of witnesses before the Commission and for the production of documents, records, supplies, devises, and equipment, including any other instrumentalities related to horseracing.\textsuperscript{51} The Commission also has jurisdiction over any manufacturer, wholesaler, distributor, or vendor of equine drugs, medications, therapeutic substances, or even metabolic derivatives which are either purchased by or delivered to a person participating in Kentucky horse racing, whether that purchase occurs through the Internet, mail delivery, or in-person. Yet, the far-reaching powers of the Commission don’t stop here; they may also visit, investigate and have free access to the office, track, and facilities of any person owning a horse or performing services regulated by the Commission.\textsuperscript{52}

With regard to the regulation of medications and drug testing procedures in horseracing, the regulations permit Bute, flunixin (Lasix) and ketoprofen (therapeutic anti-inflammatory and pain killer). These drugs, however, are only permitted at a certain concentration on race day.\textsuperscript{53} The penalties for violating these regulations are usually the same – returning the purse, fines and suspension – but the degree of punishment can vary greatly across states.\textsuperscript{54} For instance, in Kentucky a trainer may be suspended for a second drug offense for three to five years.\textsuperscript{55}

a. Horseracing’s Drug Regulations Lag Behind, But Only by a Nose

In May 2013, for the first time in 139 years, the Kentucky Derby contenders were under
complete 24-hour surveillance 72 hours prior to starting time. The trainers, veterinarians, and staff for the twenty Derby horses were required to log in and out each time they accessed the barn, and the horses were subject to expanded drug testing, as well as a mandatory collection of all syringes.

Previously, similar surveillance measures were utilized by authorities in New York prior to the Travers Stake in Saratoga, although horses were permitted to stay in their own barns. In addition to being a part of eight Mid-Atlantic States that recently agreed to operate under a uniform set of strict medication restrictions, New York has also “enacted a series of rules – among the most aggressive in the nation – to restrict the use of legal drugs on horses and require trainers to disclose what treatments their horses have received.” Kentucky is expected to adopt these uniform measures sometime before the first quarter of 2014. Although the new security measures are not popular among trainers, they are an important step towards transparency and presenting a clean and safely run race to the wide spectrum of fans attracted to the sport.

The new Mid-Atlantic Uniform Medication Reform allows just 24 specifically named medications with scientifically proven therapeutic uses and clearly established withdrawal times to cease administration before race time. Lasix will be the only medication permitted to horses

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57 Id.

58 Id.


60 Uniform medication and drug testing program implemented, THE SPORTS NETWORK (March 12, 2013 4:52 p.m.) Copyright 2013 Computer Information Network Inc.

61 Drape, supra note 59.

62 Uniform medication and drug testing program implemented, THE SPORTS NETWORK (March 12, 2013 4:52 p.m.) Copyright 2013 Computer Information Network Inc.
on race day. To date, the Mid-Atlantic Medication Reform has acquired participation by nine states that consist of New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Massachusetts, and Texas. Additionally, ten other states are actively considering adopting the uniform rules.65

Aware that doping and cheating would destroy the sport’s bottom line, The Jockey Club remains actively engaged in the debate.66 The Jockey Club remains a firm supporter of medication reform in the industry while recognizing the exorbitant costs; recently the Club announced an offer to pay for up to $500,000 of out of competition drug tests over the next five years.67 “Horseracing officials have taken significant steps to clean up their sport,” presumably due to the fear of losing costumers and possible federal intervention.68 For example, proposed legislation, The Horseracing Integrity and Safety Act, “would give the United States Anti-Doping Agency the authority to develop rules for permitted and prohibited substances.”69 While horseracing remains under strict scrutiny from the public, within the industry a comprehensive effort of reform is alive and growing, undoubtedly giving way to a safer and fairer sport.

b. Rules of the Ring: USEF Regulations & Developments

The USEF rules regulating showjumping mirror those of horseracing in only minor respects. All horses and ponies on competition grounds are subject to evaluation by a licensed veterinarian, which generally includes a physical examination, a blood or urine test, and any

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63 Uniform medication and drug testing program implemented, THE SPORTS NETWORK (March 12, 2013 4:52 p.m.) Copyright 2013 Computer Information Network Inc.
65 Id.
67 Drape, supra note 59.
68 Id.
69 Id.
other tests a veterinarian may deem necessary in order to detect a drug violation. The USEF randomly drug tests 10,000 to 12,000 horses and ponies a year at Federation-endorsed competitions. A horse or pony may be drug tested whether entered to compete at a licensed competition or not, so long as the horse is present on show grounds. Refusal to submit a horse or pony to requested testing or evaluation, or refusal to cooperate with veterinarian during the course of testing and evaluation will be considered an automatic violation of the USEF medication rules. In order to fund such testing and evaluation as required by the rules, each licensed competition must charge exhibitors an $8.00 fee for each horse or pony entered. For classes that must comply with international regulations under the International Equestrian Federation ("FEI"), competitions may charge a $20.00 fee.

Trainers are responsible for preventing the administration by anyone, or the horse’s exposure by anyone, to any forbidden substance. Any stimulant, depressant, tranquilizer, local anesthetic, psychotropic substance, or any drug that might affect the performance of the horse is prohibited. Any corticosteroid (other than the common antihistamine dexamethasone), and any anabolic steroid are also prohibited. Any substance that is administered in excess of the

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71 Bogdanich, supra note 2.
72 GR 402, supra note 70.
73 Id.
75 Id. Recently, the FEI has promulgated plans to amend their “Prohibited Substances” list effective as of January 1, 2014. Edited Press Release, Items Added to FEI Prohibited Substance List, THE CHRONICLE OF THE HORSE (October 3, 2013) available at http://www.chronofhorse.com/article/items-added-fei-substances-list. The two controlled substances added to the list include metformin, described as a “potent but legitimate oral anti-diabetic drug with potential welfare risk,” and levothyroxine, a thyroid hormone replacement drug that the FEI is concerned may affect horse performance. Id. Three previously unlisted substances were also added to the list based on their potential to be abused and their effect on enhancement of performance, including injectable ammonium chloride, gamma-butyrolactone, and gamma-hydroxybuturate. Id.
77 Id.
78 Id.
maximum amount allowable is prohibited.\textsuperscript{79} Any substance, no matter how harmless or innocuous, that might interfere with the detection of any forbidden or allowable-in-limited-amount substance is forbidden.\textsuperscript{80} Therapeutic medication necessary for a diagnosed illness or injury is sometimes permitted in limited amounts.\textsuperscript{81} Diclofenac, Bute, Lasix, dexamethasone, firocoxib, methocarbamonal, and theobromine are among those medications permitted in specific limited amounts.\textsuperscript{82}

Once an alleged violation is established, the competitor may be subject to a vague suspension provision, where the horse or pony may be suspended from competition for any necessary period of time after the responsible party has been seen before a Hearing Committee.\textsuperscript{83} Penalties may also include whatever the chairman of the Equine Drugs and Regulations Committee deems necessary.\textsuperscript{84} The specific circumstances and relevant factors of the event will be taken into consideration including: past violations, penalties to others in similar situations, the good faith and credibility of witnesses and statements, reliance upon a veterinarian or other professional, and the pharmacology of the forbidden substance.\textsuperscript{85} Under the USEF, no mandatory minimum fine and suspension for violations exist as are implemented in horseracing.

Throughout early 2013 the USEF organized a series of town hall meetings to focus on the over-medication of horses and foster debate among the industry’s leading professionals in order to deal with the obvious and overwhelming problem. On June 3, 2013, in a USEF Town Hall meeting focused on performance horse welfare, a group of USEF veterinarians, officials, and horse welfare advocates discussed the necessity of a “collapse rule” due to a recent “spike in the

\begin{footnotesize}
\begin{itemize}
\item 79 \textit{Id.}
\item 80 \textit{Id.}
\item 81 \textit{GR 402, supra note 70.}
\item 82 \textit{Id.}
\item 83 \textit{Id.}
\item 84 \textit{Id.}
\item 85 \textit{Id.}
\end{itemize}
\end{footnotesize}
number of equine fatalities and collapses at its events.” 86 Senior Vice President and General Counsel of the Federation, Sonja Keating, explained that in the year preceding the June 3rd meeting, the Federation “started getting unofficial phone calls making inquiries about collapses witnessed at shows.” 87 Keating also stated that in that year, seventeen horses were reported dead at USEF competitions. 88 This, she stated, helped the Federation realize that “we need to know what’s [sic] going on in the field and at least have a system in place to look at these, see if there’s any common thread, and try to reduce the number of collapses occurring at these competitions.” 89 While previous Federation rules required owners to report equine fatalities occurring at competitions within 24 hours, the industry was clearly lacking regulations regarding equine collapse. 90

On July 22, 2013, at a USEF Mid-Year Board Meeting, the Board of Directors approved two proposed rule changes to go into effect that same year. 91 First, General Rule 843 titled “Mandatory Reporting & Cooperation of Horse/Pony Collapse,” outlines various requirements for riders, trainers, and owners upon a horse or pony’s collapse or death at a USEF endorsed competition. 92 Effective August 1, 2013, this “collapse rule” is controversial, fostering much discussion concerning the definition of the word “collapse,” and what some believe to be harsh consequences and extraordinary penalties for participants who fail to meet the reporting and investigatory requirements within the mandated three hours of an equine death or collapse. 93

Second, under the USEF General Rule 414 titled “Prohibited Practices,” participants are

87 Id.
88 Id.
89 Id.
90 Id.
91 Id.
93 Strassburger, supra note 15.
categorically restricted from administering injectable substances into their horses within twelve hours prior to competition, with three notable exceptions for therapeutic fluids, antibiotics, and dexamethasone. These exceptions are permitted only when: (i) the substance is administered by a licensed veterinarian no less than six hours prior to competing; and (ii) the "trainer" (as defined under General Rule 404) properly files a medications report form with the Steward or competition office representative within one hour after administration. This rule, that became effective December 1, 2013, has sparked tremendous debate on both sides of the fence as either being too harsh and restrictive too quickly, or too lax to remedy the problem of overmedicating horses with unregulated drugs.

The purported goal of these new rules is to protect horses from abuse and maintain a level playing field so that no horse and rider team "gains an unfair advantage through chemistry." This likely can be interpreted to mean the rules seek to combat the problem of the overmedicated hunter and limit the advantages gained through medication that perpetuate an uneven playing field. However, with the view that education is more imperative than adjudication, the USEF has made it apparent that deterrence is not the main goal. In either event, the question remains whether all this swift and extraordinary change is merely an attempt at appeasing the critical outsider, or will it really accomplish a true change in the sport.

c. Where the New USEF Rules Fault

A point of debate under the new rules is how to define a "collapse" versus a "fall." For

95 Id. Or a report must be made within one hour of the Steward or competition office representative returning to duty if the drug administration occurred at a time outside competition hours.
96 Strassburger, supra note 15.
98 Id.
99 Strassburder, supra note 15.
now, a collapse is defined as “a fall to the ground with no apparent cause at any time from when
the entries arrive at the venue until departure from the venue.” An equine “fall” that is
attributed to a slip, trip, or any incident where the cause can be determined will be excluded from
the collapse rule. To tell one from the other, the USEF instructs “there should be a bubble over
the horse’s head that says, ‘what happened?”

However, the issue of overmedicating and overtraining horses only sometimes results in a
“collapse” as defined above. Many times it is apparent a horse is heavily drugged or not in good
health when no collapse event has occurred. Although there are rules to prevent overtraining,
over-longing, and horses from competing when in bad health, there are no reporting guidelines in
place and no immediate recourse to drug testing. This allows instances of rule violations and
illegal drug use to continue unfettered and without consequences. Without an avenue of reporting
and immediate consequences including drug testing, harmful practices are simply prohibited
without any method of detection, investigation, enforcement, or deterrence. Thus, another
unsolved issue is the lack of enforcement of the rules that are in place.

It is no secret that the equestrian world is rich in tradition and sometimes slow to accept
change. Indeed, several USEF members and professionals have urged for a delay in such drastic
reform, desiring to find a consensus among all active and all less active members across all
levels and disciplines. If not, many are concerned that the industry will spend the next year
“with five percent of the [USEF] membership complaining about these regulations being
rammed down their throats.” With knowledge and awareness of the rules an integral part of
reform, it seems those shy to change could effectively hold the whole industry back.

However, others believe the USEF and FEI have responded to recent years’ bad publicity by changing their drug rules and procedures “in what they hope will appear to the public as the sport’s valiant effort at reform.”\textsuperscript{105} Nevertheless, the “cheaters” have yet to be stopped and many argue the only road to successful reform is through increased regulation, vigilant enforcement, more aggressive prosecution, and stiffer penalties.\textsuperscript{106} Consistent with this mindset, arguments for off-competition-grounds testing, mandatory minimum penalties for certain substances, sentencing guidelines similar to those used by criminal judges, and even warrantless search and seizure have been supported.\textsuperscript{107}

Those involved in lower level competition take a dissimilar view and oppose newer and stricter rules, particularly those that prevent injections less than twelve hours before competition.\textsuperscript{108} The concern is that older horses and lesson horses used heavily in lower level competitions for novice and beginner riders may be precluded from competing altogether.\textsuperscript{109} Banning most substances within twelve hours of competition will prevent many of these horses from being sound, and in turn will block many novice and beginner riders from competing.\textsuperscript{110} This rule may also serve to preserve the gap between the wealthy and unfortunate competitor; where one can afford to pay for a mount that is sound, safe, and at the prime of their lives, the same price tag may well exceed what the less fortunate competitor paid for their home, forcing them to rely on lesson horses and ponies.\textsuperscript{111} Although many professionals once started their

\textsuperscript{105} Krycia Nelson, Drug Medications “Reform” – What’s Next?, http://www.psdressage.com/viewarticle.php?id=754 (October 21, 2013 at 4:03 p.m.).
\textsuperscript{106} Id.
\textsuperscript{107} Id.
\textsuperscript{108} Interview with Claudine Liberatore, Sports Promoter, Event Host, and USEF Licensed Official in Englishtown, N.J. (Jan. 16, 2014).
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
careers on such horses, the new USEF injection rule will inhibit such practices.\(^{112}\) In addition, the rule effects those who ride only recreationally, perhaps only once or twice a week, and compete on a vastly different level than any performance hunter or international show jumper.\(^{113}\) Although all horses can benefit from preventative maintenance before and after the show ring, there are far more dangerous drugs and combinations that have caused concern than the maintenance required by safe but ailing lesson horses.\(^{114}\) While recognizing that safety of both horse and rider should always be paramount, and that it is sometimes difficult to separate the necessary maintenance drug with an effort of illegally enhancing a horse’s performance, the question still remains whether lower level recreational riders and competitors should be burdened with strict and harsh regulatory requirements.

Each of these arguments, either in supporter or opposition, effectively blurs the lines between possible solutions and inevitable setbacks. It is only through careful consideration of each position that the USEF will come to a solution amenable to all.

IV. Getting Back on Course: How the USEF Can Help the Industry Come Clean

At the forefront of the overmedication and equine collapse dilemma is which path to take in order to effectuate meaningful change throughout the show jumping industry. On the one hand, critics unfamiliar with the fundamental differences between the worlds of show jumping and horseracing urge equestrians to adopt the same hardline, stringent guidelines that the state’s use to govern Thoroughbreds.\(^{115}\) On the other hand, many within the equestrian community continue to view the USEF efforts as “extraordinary rule change[s]” and question the Federation’s funds and ability to pay for and enforce drug testing and equine necropsies required

\(^{112}\) *id.*
\(^{113}\) *id.*
\(^{114}\) Interview with Claudine Liberatore, *supra* note 108.
\(^{115}\) Bognadich, *supra* at note 2.
by the new rules.\textsuperscript{116}

The entire equestrian community, including show jumping, lacks the benefit of interstate commerce occasioned by pari-mutuel betting that is bestowed upon horseracing. The benefits, as far as regulation is concerned, make it possible for fans of the sport to have confidence in the system's transparency, as well as reassure participants of an even playing field and safe environment.\textsuperscript{117} Because show jumping regulations lack authority through the state, an alternative path to maintain the integrity and safety of the sport is necessary.\textsuperscript{118}

a. Reform the Industry and Extinguish the Imaginary Ideal

Underlying each effort at regulation is the conversation of industry reform and "competition culture" initiated by the USEF.\textsuperscript{119} Even the USEF has recognized the problem and taken actions to act responsibly by acknowledging that, "it's hard to ignore the mainstream media and public scrutiny of horse sports."\textsuperscript{120} In not so many words, the USEF has admitted that what is rewarded in the sport ultimately encourages the deleterious practices to take form in the first place. For example, the system currently rewards horses for machinelike behavior in the show ring and often requires them to compete repeatedly and frequently in order to attain qualification and year-end points. As a result, trainers and veterinarians resort to medications and supplements in an effort to gain an advantage in extremely compensative arenas while maintaining intensely demanding schedules. In other instances, many trainers resort to these tactics in order to make unskilled riders and their otherwise unsuitable horses perform well and meet the exacting standards judges demand. Rarely will the fresh but athletic horse guided by the talented yet inexperienced rider surpass their expensive lethargic competition.

\textsuperscript{116} Strassburger, \textit{supra} note 15.
\textsuperscript{117} Drape, \textit{supra} note 56.
\textsuperscript{118} Bognadich, \textit{supra} note 2.
\textsuperscript{119} Bailey, \textit{supra} note 101.
\textsuperscript{120} \textit{Id.}
It follows that "the pressure to run a business, keep clients, qualify for competitions, and meet goals can distract from doing what is best for the horse." Accordingly, efforts at reaching out to owners, trainers, veterinarians and other professionals is imperative in order to create a culture that does the right thing for the horse first, epitomizing the philosophy that what is good for our horses is good for our sport. Without this effort, it's easy to imagine trainers and riders continuing the methods and practices that have continually helped them achieve success in the past to the detriment of the sport.

Ms. Winkel, a registered judge and chairwoman of the officials committee for the USHJA, "called for judges to stop rewarding horses for robotic conformity." She suggested that professionals in the industry take a little more time to train horses properly, educate clients, and provide them with better horsemanship skills, rather than "bring out a needle and a syringe every time we have a horse show." The hope is that as people begin to realize that it's acceptable for horses to be a little fresh and happy in the ring, over preparation and medications will become less of a necessity to attain success and more natural displays of equine athleticism will be rewarded.

Moreover, some veterinarians suggest a similar solution, albeit a simpler one. Where many clients may request an abundance of drugs and substances for their horses, vets should be skeptical of the excuse that without the medications the horse will have to be longed longer and trained harder in order to behave "acceptably" and will ultimately become lame. Combatting the problem at this level requires the reply that if a horse must be longed and medicated

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121 Bailey, supra note 101.
122 Id.
123 Id.
124 Id.
125 Id.
126 Interview with Claudine Liberatore, supra note 108.
excessively in order to perform properly for their rider, then perhaps it is not a suitable horse for the job. Supra note 19. Suitability and soundness are reoccurring problems throughout all levels of competition. Although it would be easy to suggest that veterinarians must take a stand, it is hard to imagine that they, as one of the least responsible parties, should bear the burden of industry reform.

Ultimately, extinguishment of the imaginary ideal that is the “winning show hunter” is a crucial step in ending the USEF’s ongoing war on drugs and over-medication. Cultural reform of the industry is necessitated by the fact that “[t]he problem will not be solved by writing stronger rules, as there will always be people ahead of the curve.” There is no doubt that changing what is acceptable inside the ring, will dictate acceptable practices outside of the ring.

b. Avenues of Information and Enforcement

Although sport wide reform appears to be the best theoretical solution, it is undeniable that a complete transformation of the sport is a somewhat unattainable and unrealistic option. The hunter industry is a billion dollar industry that, like racing, is fueled by aspirations for achievement at the highest levels. The hunter ideal is a long-standing tradition of the sport, and so long as hunters are required to go around in a quiet and relaxed manner in any respect, participants will be finding ways around the rules in order to gain a competitive edge.

Furthermore, the USEF’s Equine Drugs and Medications Committee is composed of many of the same people that write the rules and participate in the sport as judges and trainers. As writers of the rules, members of the committee are bound by the Federation to close the

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127 Id.
128 Greenwood, supra note 19.
129 Id.
130 Id.
131 Id.
loopholes for any drug that changes a horse’s performance.\textsuperscript{132} Ironically, that same committee member may simultaneously be attempting to get a very talented yet nervous horse to perform well for its timid rider in the show ring, or may judge a competition by rewarding only the quietest, softest, and seemingly effortless horses of the field.\textsuperscript{133} For these reasons, it’s unreasonable to expect the culture of the industry to reform itself into a safe and drug free state.\textsuperscript{134} Therefore, exploration of other options and alternatives are crucial to ultimately creating a safer and more even playing field across the sport. Only by reaching out to each of the involved parties and all levels of participants will a true solution be discovered.

Limited testing and lack of enforcement due to USEF limitations, either through lack of funds or opposition to rigid rules, is also an obvious and large problem. Recognizing these limitations in an industry slow to change, the USEF advances education as the key to reform.\textsuperscript{135} The rules are carefully crafted and often densely worded, but truly lay out the responsibility attributed to the person signing the entry form.\textsuperscript{136} For that reason, the USEF maintains that it is essential that trainers and responsible parties actually read the rules and become familiar with them.\textsuperscript{137}

It is uncontested that gathering information in order to formulate the best regulations and enforcement measures is one of the biggest obstacles faced by the USEF. Some analogize expecting trainers to report a death or collapse of an overmedicated horse to expecting criminals to report a robbery at the scene of a drug deal.\textsuperscript{138} When presented with this dilemma, Bill Morony pointed out we live in a world of social media, and no matter where the collapse occurs,

\textsuperscript{132} ld.
\textsuperscript{133} ld.
\textsuperscript{134} Greenwood, supra note 19.
\textsuperscript{135} Pascoe, supra note 97.
\textsuperscript{136} ld.
\textsuperscript{137} ld.
\textsuperscript{138} Sorge, supra note 31.
more people than just the owner and trainer will be aware of it.\textsuperscript{139} Borrowing a strategy from the Thoroughbred Racing Protective Bureau and the FEI, one suggestion is creating a tip line available to members in order to make reporting collapses and other welfare issues they may observe simple and easy.\textsuperscript{140} Not only would this eliminate the issue of relying on trainers and owners to report themselves, but it would be a clear and easy way for the USEF to become privy to some of the more secretive practices occurring at Federation-endorsed competitions across the country.

Part of the threat of equine welfare is that multiple medications in several combinations are being administered to horses in a short period of time before they compete.\textsuperscript{141} A veterinarian may prescribe medication for a particular ailment, and as that horse travels from show to show each prior medication goes unnoticed by the next treating veterinarian, creating the potential for veterinarian contribution to dangerous drug combinations.\textsuperscript{142} Veterinarians and the USEF alike recommend participants keep an accurate medical record for their horse, as well as any borrowed horses, and teach grooms to document in writing all treatments administered including the date, time, dose, method of administration, as well as name and qualifications of veterinarian.\textsuperscript{143}

As part of the philosophical concept of horse welfare that the USEF hopes to encourage, the committee on Drugs and Medication has required the Federation to provide a logbook to all members, with the first few pages providing an explanation of the purpose of the logbook and the philosophy of horse welfare it hopes to protect.\textsuperscript{144} Equine logbooks are already a requirement

\textsuperscript{139} Bailey, supra note 101.
\textsuperscript{140} Id.
\textsuperscript{142} Id.
\textsuperscript{144} Lieser, supra note 141.
for FEI competition and serve a formal and official purpose, sometimes used as evidence in a tribunal when an alleged violation occurs.\textsuperscript{145} Yet, USEF committee members currently feel logbooks should remain only a strong recommendation for national competition, and serve the less formal purpose of providing owners, barn managers, trainers, and grooms one place to record information for private use only.\textsuperscript{146}

Perhaps this relaxed introductory approach should give way to a more stringent requirement. Requiring all owners and trainers of travelling horses on the horse show circuit to maintain an accurate log of the equine medications given throughout the year is not an unfavorable option. This alternative would be of little cost to the USEF and of slight inconvenience to trainers and owners, in some instances even easing the process by creating a clear record. Having these official logbooks available during the process of investigating and penalizing for violations would ultimately deter the practice of illegal drug use and stacking of substances without the cost of USEF-funded drug testing in every questionable instance. It would also ease the investigatory process and give way to faster and clearer results so that violators can be dealt with appropriately.

Others suggest that a salient way of dealing with the problem is by requiring veterinarians who administer medications to performance horses to join the USEF.\textsuperscript{147} Not only would this create an opportunity for the USEF to educate and distribute program information to practicing veterinarians, but it would also act as a way to hold veterinarians responsible in instances when they contribute to the problem.\textsuperscript{148} Undoubtedly, catching veterinarians that are trafficking

\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Bailey, supra note 101.
\textsuperscript{148} Id.
substances will reduce over-medication. However, requiring a USEF veterinarian to prescribe and administer every supplement or medication a horse ingests before competition would ultimately cripple the industry and only further extend the gap between rich and poor competitor.

c. Legal Remedies

The USEF seems adamant in pursuing methods of education and obtaining information in recent reform efforts, yet it is unclear that mere education and information will effectuate the type of reform necessary to remedy the problem. Many demand harsher penalties for USEF drug and medication infractions and promote specific tactics and legal remedies borrowed from horseracing. "But, if we are going to go this route, shouldn’t we devise our own system and not copy-cat an industry that has very different regulations from our own[?]"

New York recently approved an enhanced racing regulation that allows for a ten-year minimum suspension as a consequence for using prohibited substances listed in the regulation. Ultimately, New York’s Appellate Division determined that the list of prohibited substances provided was not so vague as to require annulment of the provision as violative of the state’s statutory power because the regulation is neither arbitrary nor capricious. The court reasoned that a ten-year suspension is justified by the nature of the offense, and was purposefully included as part of the effort to deter serious violations that compromise both the integrity of safety of the

149 Id.
150 Interview with Claudine Liberatore, supra note 108.
151 See generally, Nelson, supra note 108.
153 Nelson, supra note 105.
sport. The court also looked to two other jurisdictions with similar laws to support the conclusion that the regulation was reasonable. Contrast this decision with the current USEF approach to enforcement and the deficiencies are overwhelming. After notice and a hearing where the accused is permitted, but not required, to introduce evidence and appear before a committee, violations are generally met with a fine ranging from $750 to $5000, and a suspension of up to only five months. Although the USEF lacks the power of the state, there are no reasons to justify why penalties for proven violations result in mere monetary fines and innocuous suspensions.

New York has also upheld off track and off premises testing, authorized drug testing of all racehorses under the care or control of a licensed trainer that are anticipated to compete at a New York racetrack within the following six months, and required horses to submit to testing anytime regardless of location. Not only are veterinarians forced to travel to barns located within the state to effectuate this testing, but any out of state participant within 100 miles of the track will be required to ship their horse to that location for testing. This approach not only widens the pool of participants to be tested, but acts as a more powerful deterrent encouraging all trainers and owners to be familiar with and abide by the state regulations.

To the contrary, the USEF tests only horses on competition grounds, and through random selection with an emphasis on high placing competitors. Ultimately, the USEF completes...
fewer than 13,000 tests per year.\textsuperscript{162} The USEF website reports anywhere from 84,000 to 91,000 total members.\textsuperscript{163} Astoundingly, this means that at best 71,000 to 78,000 USEF members exist without ever being subjected to drug testing throughout the year. While racing regulations are becoming more expansive and progressive each year, USEF regulations affect only a drop in the bucket of yearly competitors.

An additional implication of New York upholding this regulation is the authorization of racing officials to engage in searches and seizures within all areas of racetracks, including provided stabling.\textsuperscript{164} The regulation allows for veterinarians to enter the property of licensed trainers or owners, or property rented to them, in order to test horses (in other words, search them) for banned substances.\textsuperscript{165} These search and seizure regulations, subject to constitutional scrutiny because they are effectuated through state power, withstood the courts’ scrutiny.\textsuperscript{166} It follows that if the USEF were to enact similar enforcement measures, including a search and seizure provision, it would likely survive legal scrutiny. The Constitution applies only to state actors, and since the USEF is a private organization that members elect to join, it is not subject to the confines of the Fourth Amendment. Therefore, not only is it well within the USEF’s purview to enact such regulation, it would combat the massive problem the USEF faces when it comes to investigating and condemning violators.

For example, the investigation and disciplinary process for the pony death at Devon in 2012 resulted in no established rule violation.\textsuperscript{167} Despite records of the pony being injected with seven different substances within the three days prior to his death, the substance injected within

\textsuperscript{162} Bogdanich, supra note 2; Allen, supra note 143.
\textsuperscript{164} Nelson, supra note 105.
\textsuperscript{165} Id.
\textsuperscript{166} Id.
minutes of the pony’s death was never confirmed because no confession was obtained and the syringe was never made available for testing. There is little doubt that the combination of NSAID, corticosteroid, muscle relaxant, multiple joint therapies, estrogen and progesterone the pony received went well beyond treating general aches and pains associated with shipping and competing, and is likely to have contributed to the pony’s death. Rarely does a more egregious case than this come to light and result in absolutely no consequences, especially since top trainers have traditionally been under the microscope and subject to stricter rules. But this raises the question: are stricter rules enough if there is no way to enforce them? The simple solution of USEF search and seizure, subpoena power, or some other method of compelling evidence and cooperation with investigations seems an obvious, yet often ignored solution.

For as long as the USEF has operated it has relied on the voluntary cooperation of members when they come under investigation, with no penalty in place for refusing to do so. In addition to not being able to gain the proper evidence, the USEF could not compel the pony’s trainer to either produce any information or to testify, and no penalty resulted. Ned Bonnie, an attorney and outspoken advocate for increased regulation and enforcement, has acknowledged drafting a change in application for membership to this end. This change would require any person wishing to gain USEF membership (and henceforth be eligible to compete in USEF competition) to consent to the requirement of answering questions presented to them by a USEF attorney, and to produce records of that exhibitor including, inter alia, vet bills. Not only would this requirement constructively contribute to an effective drug program, but it would also

168 Id. Through the use of a medical report it was determined the pony received Banamine, Dexamethasone, Robaxin, Legend, Adequan, Esterone and what appeared to be Depo-Provera.
169 Id.
170 Lieser, supra note 141.
171 Id.
172 Id.; Nelson, supra note 105.
173 Lieser, supra note 141.
combat the limitations of the laboratory and other strictures confining enforcement.\textsuperscript{174} Stricter penalties and stronger enforcement efforts are no match for the lack of funds and lack of testing the USEF struggles with. Although promoting education and gathering information is a stride in the right direction, having the power to gather offense-specific facts will give enforcement the kick it needs to act as a deterrent.

This provision, although it is less likely to fault, still falls short of addressing some major underlying problems with USEF policy. Lack of disclosure and information seems to be one of the biggest obstacles to enforcement, yet the rules make it no small feat for an exhibitor to file a complaint when they have reason to believe a violation has occurred. In accordance with General Rule 603, in order to file an official grievance with the USEF a member must submit a written and signed complaint to horse show management within 48 hours of the violation’s occurrence, or directly to the USEF within ten days of the last day of the show.\textsuperscript{175} A member will additionally be required to submit a hefty $200.00 filing fee with each complaint and $300.00 for each non-member complaint.\textsuperscript{176} While the USEF has proffered education and information gathering as its biggest goals, it has yet to address these obvious obstacles to that end. Not only does this provision place a high burden on the reporting person with respect to time and money, but it also makes anonymous complaints impossible. The only other method of reporting violations is through a USEF official that witnesses the violation. Yet each USEF show, regardless of competitors is required to have just one USEF steward on the show grounds at all times, many times responsible for overseeing rule compliance for thousands of horses. Ultimately, each one of these shortcomings undoubtedly inhibits exhibitors and participants from

\textsuperscript{174} Id.
\textsuperscript{176} Id.
reporting, and makes gathering information and enforcing the rules more difficult.

It is my hope that careful consideration of each of these inquiries and alternatives will lead to the necessary shift in industry ideals and values the equestrian community deserves. A crucial shift in drug policy and industry values is not just about the substances in a horse’s system; it is about all members of the equine community coming together to protect the welfare of the horse and maintain integrity of the sport.