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LASIX AND HORSE RACING: TILL DEATH DO THEM PART

WES BRIGHT

I. INTRODUCTION

Throughout a normal day, people make countless decisions. They weigh the pros and cons of each available option and decide which choice is best. They will live with the consequences of that decision. However, these decisions become more perplexing when the consequences of the decisions involve others. When one is making decisions that involve animals, who cannot choose for themselves, a hotly-debated topic is guaranteed. It is this type of decision the Kentucky Horse Racing Commission ("KHRC") faced this summer when the commission debated the pros and cons of using Lasix in horseracing. With a 7-5 vote, the KHRC approved the plan to phase out Lasix by 2016.1 However, the regulation has yet to go through full processing, and therefore, the debate continues.

Drug use in horseracing is nothing new. Furosemide, better known as Lasix, was legal in twelve states as early as 1975.2 Later that year, one of the best-known forums for past performances, the Daily Racing Form, began listing the horses running on Lasix for each race.3 The developing use of the drug came after veterinarians were first able to use fiber optic endoscopes to view the upper respiratory tract of a horse.4 The veterinarians found any blood coming from a horse's nose originated in the lungs and not the head.5 A horse under the stress of racing can develop Exercise Induced Pulmonary Hemorrhage ("EIPH") causing the horse's lungs to bleed.6 For example, during a workout, small blood vessels in the horse's lungs burst, lining the lungs with blood.7 In a severe case, the blood will be visible in

3 Id.
5 Id.
7 Id.
the horse’s nostrils. Since EIPH’s discovery, Lasix has been increasingly used to lower the stress on the organs by decreasing the amount of water retained in the body just before the horse races. Lasix acts as a diuretic because expels water from the body and causes an average loss of twenty to thirty pounds. The decrease in stress allows most horses to run without any bleeding. As a result, some 92% of horses are now given Lasix before they run.

II. PRO-LASIX

A. The Case for Lasix

Proponents of Lasix can readily assert numerous reasons for using the drug in horseracing; bleeding prevention being the most obvious reason. The number of horses that bleed from EIPH is said to be close to 80%. Due to this vast majority, many studies have been done on the issue, including one completed at the University of Melbourne in Australia. This study was performed in South Africa and used 167 thoroughbreds to determine if using Lasix actually helped control EIPH. These horses were raced twice, one week apart, with every variable being controlled except for the Lasix administration. The horses were randomly selected to receive either Lasix or a placebo saline solution during the first race. Those horses receiving Lasix in the first race would then receive the saline in the second and vice versa. The study found that horses given the saline solution were far more likely to develop EIPH, and almost 68% of the horses that bled when given the saline had a reduction in the EIPH severity when given Lasix. This study is often cited in justifying why Lasix should be used in horseracing. This may be because the study is very reliable.
Those studies that attempt to determine the efficacy of Furosemide in humans are conducted in a similar method.\textsuperscript{20}

The more EIPH can be limited, the better off the horseracing industry will be. If only 20% of horses do not bleed, logically 80% of the racing population would effectively be unfit to race.\textsuperscript{21} This is because, while a horse that bleeds can still run, studies have found such horses are far less competitive and would likely bleed worse the more they run.\textsuperscript{22} A 2005 study found horses without EIPH, or with the least significant level of EIPH, were four times more likely to win a race than a horse with a greater level of EIPH.\textsuperscript{23} Also, the margin of defeat was greater in those horses with EIPH.\textsuperscript{24} Without using Lasix, horses that bleed cannot compete. Therefore, owners and trainers will not invest the time and money into horses that bleed.

EIPH worsens the more a horse runs.\textsuperscript{25} The damage to the horse’s lungs may be minimal at first; however, when a horse runs in multiple races, the damage accumulates, causing an increase of bleeding and bleeding severity.\textsuperscript{26} Rick Hiles, the president of the Kentucky Horsemens’s Benevolent and Protective Association (“KHBPA”), agrees that once a horse bursts its capillary veins, the area will always be weak.\textsuperscript{27} This mentality is pervasive because horses are being used and discarded at an alarming rate.\textsuperscript{28} There has been an outcry resulting from the abandonment and slaughtering of retired horses.\textsuperscript{29} These problems will get worse if horses are not given Lasix. The result would be large-scale abandonment and eventual slaughter of horses at the first signs of bleeding.

Additionally, it is possible horsemen will result in exercising cruel practices to keep a horse from bleeding if Lasix is banned.\textsuperscript{30} For example, they can reduce the amount of stress on the organs by withholding water for long periods of time before a race or resort to using less effective drugs.\textsuperscript{31}

\textsuperscript{21} Hinchcliff et al., supra note 11, at 76.
\textsuperscript{22} See generally Larson, supra note 19 (indicating EIPH and the associated side effects cause poor racing performance).
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} See id.
\textsuperscript{26} Id.
\textsuperscript{27} Kentucky Horse Racing Commission, Transcript of Meeting Minutes 52, 54 (Apr. 16, 2012) (casting the 7-7 vote at the KHRC meeting).
\textsuperscript{29} Id.
\textsuperscript{31} Id.
One trainer was known to have his groomsmen use red towels to wipe off the blood before others noticed. Further, this will not bode well for the small-farm horsemen. With the price of some horses already difficult to bear, prices will only rise. After all, when supply goes down, price goes up. Therefore, those horsemen not having the funds to buy and sell million-dollar horses will be put out of business.

B. Lasix Supporters

There are many in the industry, including horsemen, who believe Lasix should remain. Highly touted trainers from across the country have stated their reservations about banning Lasix. Renowned thoroughbred trainer Bob Baffert has stated, “[i]f they take race day Lasix away, I will recommend to all of my clients to sell their broodmares ASAP. Racing will not survive.” Many of them have different reasons for why they believe the industry is better off if Lasix remains.

Dale Romans may be the biggest supporter of Lasix. Romans was essentially raised in the industry and, is most recently known for training Shackleford, the 2011 Preakness Stakes winner. In a letter to the Courier Press, Romans indicated he believed foul play was involved in the Racing Commission’s vote, and urged the Governor of Kentucky to inform the Commission that their position is secure and to vote how they see fit. Romans bases his view on the science surrounding Lasix and the impact the decision could have on the horseracing industry in Kentucky.

Bob Baffert who has won multiple Triple Crown races throughout his career, and was inducted into Thoroughbred Racing’s Hall of Fame in

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32 Id.
36 Nancy Sexton,'I believe I have given myself an advantage by not using Lasix', THE FREE LIBRARY (July 5, 2012), http://www.thefreelibrary.com/"I+b+elieve+l+ave+g+iven+m+yself+a+n+advantage+by+not+using+Lasix'+THED...-a0295272524.
39 Id.
2009. Baffert strongly opposes the ban on Lasix. Baffert believes Lasix use is in the best interest of the horse and the industry. In his opinion, the fight against Lasix is merely a way to make trainers look bad. He stated, “[b]reeders do all sorts of things with their foals, and trainers are made out to be the bad guys. And for what? Giving Lasix and trying to take care of the health of their horses?” Lasix may simply be a scapegoat for other problems in the industry.

Todd Pletcher and Bill Mott are also well-known trainers that support Lasix. These trainers base their decision to support its use on the overt fairness involved when the drug is used. Not only do they believe it is fair to the horse, but that the drug also promotes fairness within the industry and for the betting public. Generally, Lasix has been associated with cheating but Pletcher and Mott dispel this idea. Simply put, Lasix has been proven to be good for the horse and the public knows the use of it; therefore, there is no chance of foul play when betting on these horses. If everyone knows which horses are given Lasix before every race, it eliminates the concept of having inside information. Thomas Tobin, a professor of Veterinary Science at the Gluck Equine Research Center on the University of Kentucky campus, states it would be much harder for the betting public to evaluate how non-Lasix horses will perform. This is because there is a possibility that bleeding will occur with every race, making betters blindly guess on whether a horse will bleed. Further, if Lasix is banned, trainers will result to other methods like the previously discussed “drawing” of a horse by taking away its water the day before the race. Handicappers will have no way of knowing whether the trainer has used these methods. The more informed the betting public, the better off they are.

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41 Nancy Sexton, 'I believe I have given myself an advantage by not using Lasix', THE FREE LIBRARY (July 5, 2012), http://www.thefreelibrary.com/lb+elieve+lh+ave+given+m+yself+a+n+advantage+by+not+using+Lasix'+THED..a0295272524.
43 Id.
44 Id.
45 Bossert, supra note 35.
46 Id.
47 Id.
48 Dr. Thomas Tobin & Dr. Kimberly Brewer, Medication Committee Corner: Lasix and Bleeders – A Classic American Horsemen’s Story, KY. HBPA (May 16, 2012), http://www.kyhbpa.org/NewsDisplay.asp.
49 Id.
51 Id.
Since Lasix was introduced, the number of favorites to win has decreased. This is good for the sport; fans love to see upsets during March Madness, and there is a loud cry for a salary cap in baseball. Bettors can also make more money. Before the prevalence of Lasix, the horses with the best chance of winning were the ones who did not bleed; now, however, all competing horses are seemingly on an even playing field. Almost every horse in the race has a chance to win.

Horsemen associations all over the country agree with these trainers. The KHBPA has long supported the use of Lasix. In a document given to the New York State Racing and Wagering Commission to oppose a proposed ban on Lasix, the New York Thoroughbred Horsemen's Association set forth a number of reasons justifying why Lasix is good for the industry. Lasix is not like other drugs that allow a horse to run above and beyond its natural abilities. Instead, it allows a horse that bleeds to run to its non-bleeding potential, but does not go beyond that. The New York Association states, "[h]orses don't run faster because of Lasix; they run slower due to bleeding." Drugs that should be banned, such as steroids, allow horses to artificially exceed their capabilities. Since Lasix does not endanger the horse by allowing them to exceed their natural abilities, it does not belong in the same class as drugs such as steroids. Yes, Lasix is technically a performance enhancer. Water also helps horses hydrate and therefore be better prepared to run. Should that be banned as well?

III. ANTI-LASIX

A. Over Use

There are several issues that are cited heavily by opponents of Lasix use. The first issue is the notion that trainers are abusing the drug by administering Lasix to horses that do not bleed. Those who oppose Lasix question the need for the drug in horses that do not have severe EIPH. Some think that 95% of the horses running on Lasix should be spared the

52 Id.
56 Id.
57 Id.
drug's harsh side effects. Studies show that only 2-3% of horses have EIPH severe enough to prevent them from competing. Opponents contend that trainers are using these drugs to make their horses run faster for their own benefit, not for the health benefits of the horse. However, this view overlooks the widely accepted notion that the more a horse bleeds, the more likely they are to bleed in the future. Although only a small percentage of horses may have severe EIPH now, if Lasix is not used to keep the bleeding from cumulating, a horse's EIPH can easily become severe.

One such opponent to Lasix use is D. Wayne Lukas. Lukas has won each leg of the Triple Crown multiple times and has been training horses since 1974. He does not dispute that horses bleed, but does not believe that every horse bleeds every race. Essentially, Lukas thinks Lasix is used as a crutch; in his opinion, the industry was thriving before Lasix was introduced, and therefore, it is not needed now. The problem with his view is that before today's endoscopic abilities, the only way to know if a horse was bleeding was to see blood in the nostrils. It is likely that horses have always suffered from varying levels of EIPH, but owners and trainers simply were simply unaware of it. Were the winners of the past, such as Secretariat and Affirmed, simply among those few who did not suffer from this condition?

B. Breakdowns

One of the side effects of Lasix is that it dehydrates the horse. Opponents of the drug have attributed it to the increased number of horses breaking down on the track. The International Federation for Horse Racing Authorities (“IFHA”) takes the stance that the ban is important for the safety of both the horses and the jockeys. While some jockeys attribute the increase in horses breaking down to the introduction of Lasix,
others, such as Hall of Fame jockey Jerry Bailey, disagree; "I've never had a horse break down under me because of Lasix."\textsuperscript{71} The Jockey's Guild, which consists of jockeys from across the country, believes that Lasix is good for the horse.\textsuperscript{72} During an informational meeting with the KHRC, Terry Meyocks, representing the Jockey's Guild, said, "[o]ur riders do not want to be riding a horse that suffers a rupture of the pulmonary artery in the middle of a race."\textsuperscript{73} Studies have shown that sudden injuries while exercising commonly occur from EIPH.\textsuperscript{74} However, these injuries happen when athletes of any kind are exerting maximum effort. If the injuries are due to Lasix use, banning the drug will not solve the problem. Injuries will occur from EIPH or other sources. Injuries come with the territory. It must be accepted.

\textbf{C. Weakening of the Breed}

Opponents have also blamed Lasix for weakening the breed over the last few decades.\textsuperscript{75} The most highly touted of these opponents is likely Bill Casner. Casner is a former owner of WinStar Farms, probably the most successful and well-known farm in horseracing.\textsuperscript{76} The focus of his opposition to Lasix is in regards to the drug's side effects; he maintains the industry would be better off without it.\textsuperscript{77} In conducting his own study, Casner found that horses on Lasix usually took approximately two weeks to gain back the weight lost on race day.\textsuperscript{78} Due to the loss in electrolytes and dehydration that comes with the Lasix use, Casner contends the drug can be attributed to horses making fewer starts each year.\textsuperscript{79} He cites to the fact that over the last twenty years, Lasix use among horses has risen, while the average number of annual starts has drastically fallen.\textsuperscript{80} His reasoning fails to consider the increase in the sport's popularity over that time period.

\textsuperscript{71} Zorn, supra note 30.
\textsuperscript{72} TRANSCRIPT OF MEETING, supra note 54, at 184.
\textsuperscript{73} Id. at 184.
\textsuperscript{74} See, e.g., L.L. Donaldson, A Review of the Pathophysiology of Exercise-Induced Pulmonary Haemorrhage in the Equine Athlete, 15 VETERINARY RES. COMM. 211, 211 (1991).
\textsuperscript{77} See Casner: Weight Loss, Recovery Time the Key Problems with Anti-Bleeding Medication, supra note 75.
\textsuperscript{79} Casner: Weight Loss, Recovery Time the Key Problems with Anti-Bleeding Medication, supra note 75.
\textsuperscript{80} Frank Angst, Casner 'Weighs' the Consequences of Salix, RACING MEDICATION & TESTING CONSORTIUM (Dec. 6, 2011), http://www.rmtcnet.com/content_headlines.asp?id= &s=&article=971.
Purse money has risen 52% over the last twenty years, allowing trainers to run their horses less often for more money.81

There is a theory that EIPH is hereditary, yet there is no proof this is true.82 Even if true, records of horses bleeding stretch back to the days of Eclipse, widely considered the father of racehorses.83 To find a pedigree that did not have bleeder in it would be very difficult. Eclipse’s lineage is prevalent in almost all modern thoroughbreds.84 Furthermore, foreign jurisdictions, like Europe, allow Lasix when the horse is not racing.85 According to Rick Hiles, “they have another drug to take its place over there that they use on race day instead of Lasix.”86 It has the same effects as Lasix and so a change to it is unwarranted. It is also prevalently used in training, and therefore, must have some positive use for the horsemen in those jurisdictions.87

The argument that Lasix has weakened the breed is becoming increasingly popular among opponents to its use.88 The IFHA and others have cited it as a main reason for banning Lasix.89 Foreign jurisdictions have become less willing to pay the high cost for the American breed.90 They contend their breeds are better because the percentage of bleeders in their countries is significantly less.91 However, Commissioner Northrop attributes this to the different environments horses are faced with in foreign jurisdictions.92 He states, “[w]e have a totally different environment of racing, number of races, year around racing, that our horse cannot adapt like they can in the country-side of England and France.”93 More likely, the problem lies in the method of counting affected horses. While foreign jurisdictions only classify a horse as a bleeder when there is visible bleeding in the nostril, horses in the U.S. are classified as bleeders when the veterinarian finds any blood in the lungs using their fiber-optic endoscopes.94 Unfortunately, organizations like the Jockey Club and

81 See Moon, supra note 60.
83 See Tobin & Brewer, supra note 48.
84 Id.
85 Transcript of Meeting Minutes, supra note 27, at 52.
86 Id.
87 See id.
88 Casner: Weight Loss, Recovery Time the Key Problems with Anti-Bleeding Medication, supra note 75.
89 See IFHA Chairman Applauds Lasix Ban in Kentucky, supra note 69.
90 See id.
92 KENTUCKY HORSE RACING COMMISSION, TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING 32 (2012).
93 Id.
94 Wittstruck, supra note 82.
foreign buyers rely on these statistics in forming their opinion that these foreign industries are better off than the United States.  

D. Masking of Other Drugs

Because Lasix is a diuretic, many believe that it is a mask for other drugs because it washes them out of the horse’s system. According to Chris Wittstruck, there are three issues with this argument: “First, blood serum is now more widely tested. Second, the efficiency of testing equipment has greatly increased. Third, and most importantly, it is widely accepted that the present strictly regulated timing and amounts of race day Lasix administration have effectively negated its usefulness as a masking agent.”

E. Public Perception

Finally, the most popular reason for banning Lasix is that the drug is a black eye to the sport’s public perception. The Jockey Club cites a poll conducted by the Horseplayers’ Association of North America (“HANA”) that found almost 75% of its members supported the phasing out of Lasix. They state, “the public is against race-day medications. And the concerns go beyond race-day medications. . . [t]hey’re against the idea of performance enhancing drugs in sports.” However, if we believe the sport’s popularity is dwindling, it may be because the public is not informed enough to understand the phrase “performance enhancing” does not always involve steroids. Organizations and the public see studies finding horses on Lasix run better than those without, believing such a drug must be like steroids. However, if the public’s comprehension of what qualifies as a “performance enhancer” was altered, it is likely that it would realize the need for Lasix.

Commissioner Jones addressed this problem when speaking during the vote by the KHRC on June 13, 2012. Jones diffused this argument by indicating it is just a perception that popularity is down. He highlights the
attendance records set in 2012 at tracks such as Keeneland, Gulfstream, and Santa Anita.104 Records were made for all three of the Triple Crown events, with the Belmont’s television ratings up 44%.105 Further, betting on the races was up in 2012 as well.106

IV. THE PHASE OUT PLAN

Kentucky’s current regulations regarding Lasix use are simple.107 It is the only drug that can be given within twenty-four hours of the race, but the single dosage must be given more than four hours before post time.108 A horse is eligible to run on Lasix if a licensed trainer or licensed veterinarian believes it to be in the horse’s best interest.109 The horse cannot receive more than 500mg and the price for administration is set at twenty dollars.110

A movement to alter these regulations began with a push by the Jockey Club.111 The Jockey Club presented a report to the KHRC showing that horseracing was losing fans, and that race day medications, such as Lasix, would hinder the sport from gaining them back.112 In Kentucky, the legislature has given regulating powers regarding horseracing to the KHRC.113 With this authority comes the responsibility to promulgate the horse industries’ rules and regulations regarding Lasix.114 The Racing Commission first attempted to phase out the Lasix use in all races by 2016. Due to the inability to obtain a majority with a 7-7 vote, the plan failed.115

The KHRC continued to allow the conversation, holding informational sessions for the newly-developed race day medication committee throughout the year; one such session was held on November 14, 2011.116 The Commission brought in Bill Casner, Dr. Thomas Tobin and Bill Fravel, the President and CEO of the Breeder’s Cup, in addition to representatives from organizations such as: the American Association of Equine Practitioners ("AAEP"), the Kentucky Association of Equine Practitioners ("KAEP"), the Racing Commissioners International ("RCI"),

104 Id.
105 Id.
106 Id.
107 810 KY. ADMIN. REGS. 1:018 (2012).
108 Id.
109 Id.
110 Id.
111 Drape, supra note 9.
113 KY. REV. STAT. ANN. § 230.215 (West 2013).
114 Id.
115 Hegarty, supra note 1.
116 See generally TRANSCRIPT OF MEETING, supra note 54.
The Jockey’s Guild, and the KHBPA. As a result of these informational meetings and a 5-4 vote against banning Lasix use by the Equine Drug Research Council, the Commission voted on June 13, 2012 to phase out Lasix use in stakes races by 2016. The vote passed 7-5 with one abstention. Commissioner’s Beck, Farmer, Bonnie, Houston, Lavin, Leavitt and Phillips voted in favor of the phase out, while Commissioner’s Conway, Jones, Kling, Northrop and Travis were the dissenters.

However, when analyzing those commissioners who voted in favor of the phase out regulation, some questions arise. Commissioners Houston and Leavitt did not make comments outside of Commissioner Houston’s statement that the industry had bigger fish to fry. Commissioner Phillips supported the regulation due to its “limited, very limited, application as a practical matter that it will have in the next 3, 4 years.” He cited the public perception of Lasix, and the racing industry’s inability to frame the issue so that the media and public will understand the drug’s uses. Commissioner Lavin based her vote on the belief that Lasix is not everything it is said to be; she stated, “I think when they bleed, it does not always—in fact probably mostly—does not impede their ability to run to their potential.” However, this was proven false in the South African study.

Commissioner Bonnie utilized the performance enhancer argument by citing a study performed by Dr. Hinchcliff that found horses running on Lasix were three to five lengths faster. However, Commissioner Bonnie uses the phrase “performance enhancer” out of context. He believes this advantage is why more trainers are not willing to run without Lasix, and if they could vote, they would actually want the ban implemented. He believes horsemen only run on Lasix because it is necessary to stay competitive. If all trainers were forced to run without Lasix, he believes they would embrace and support the idea. However, who are these trainers, and why are they not voicing their opinion now? Further, those horsemen

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117 Id.
118 TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 56-57.
119 Id. at 57.
120 Id. at 56-57.
121 Id.
122 Id. at 37.
123 Id.
124 Id. at 35.
125 Id. at 38.
126 Id.
127 Zorn, supra note 30.
128 TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 42.
129 Id. at 43.
in favor of the ban have reasoned that the advantage lies with not giving Lasix on race day.\textsuperscript{130}

Commissioner Farmer stated horseracing, like basketball and baseball, cannot survive with drugs.\textsuperscript{131} Steroids are illegal in both of these sports.\textsuperscript{132} However, these sports do not ban medications that allow the athlete to perform up to their potential without being hampered by an injury.\textsuperscript{133} Athletes in other sports are allowed to take measures to assure that they are healthy enough to play, such as a basketball player draining the fluid from his knees.\textsuperscript{134} Yet there have been proposals to do that very thing to horses.\textsuperscript{135} Baseball still allows their players to take highly controversial cortisone shots in order to get out on the field day in and day out.\textsuperscript{136}

Chairman Beck also voted in favor of the regulation.\textsuperscript{137} He sidestepped Commissioner Jones’ statement that attendance at tracks is rising by stating the regulation targets those that are staying away from the track because they think it is riddled with drugs.\textsuperscript{138} He implicitly acknowledges that the industry is growing, but for him the problem is that it is not growing fast enough. It seems there is a sense of greediness that accompanies this regulation. Is it worth putting both horsemen and the horses at risk because the industry is not growing fast enough? Beck overstates the findings in the poll of HANA members mentioned above by saying it found that 75\% of people want nothing to do with Lasix.\textsuperscript{139} In fact, the survey asked its members if they supported the Jockey Club’s position on Lasix, not random people.\textsuperscript{140} However, this poll may be a bit skewed due to the respondent having to click on a link to find what the Jockey Club’s view is.\textsuperscript{141} Another poll completed in 2009 found that 41\% of its members did not think illegal use of medications was a large


\textsuperscript{131} \textsc{Transcript of Meeting Minutes from Phase Out Hearing}, \textit{supra} note 92, at 48.


\textsuperscript{133} Paul Hagen, \textit{Despite Risks, Cortisone Still a Familiar Remedy}, \textsc{MLB.COM} (Oct. 26, 2012, 10:00 AM), \url{http://mlb.mlb.com/news/article.jsp?ymd=20121025&contentid=40044350&vkey=news_mlb&c_id=mlb}.

\textsuperscript{134} Tim McMahon, \textit{Dirk Nowitzki has Knee Drained Again}, \textsc{ESPN Dallas/Fort Worth} (Oct. 12, 2012, 4:19 PM), \url{http://espn.go.com/dallas/nba/story/_/id/8495123/dirk-nowitzki-dallas-mavericks-knee-drained-second-time-month}.

\textsuperscript{135} \textit{See generally} Jerry Bossert, \textit{After Saddling Shackleford to Preakness Win, Dale Romans Announces Retirement of Paddy O’Prado}, \textsc{NYDailyNews.COM} (May 23, 2011, 3:28 PM), \url{http://www.nydailynews.com/sports/more-sports/saddling-shackleford-preakness-win-dale-romans-announces-retirement-paddy-o-prado-article-1.146238}.

\textsuperscript{136} See Hagen, \textit{supra} note 133.

\textsuperscript{137} \textsc{Transcript of Meeting Minutes from Phase Out Hearing}, \textit{supra} note 92, at 55.

\textsuperscript{138} \textit{Id.} at 49.

\textsuperscript{139} \textit{Id.} at 50.

\textsuperscript{140} Thoroughbred Safety Committee, \textit{supra} note 95.

\textsuperscript{141} \textit{N.Y. Thoroughbred Horsemen’s Ass’n, The Lasix Question 9}, \url{https://www.nytha.com/pdf/the_lasix_question.pdf}.
In 2011, only 36% felt that medications were one of the top three issues facing the industry. As Dale Romans noticed, there seems to be something off in how this regulation was passed. Chairman Beck had a “Lasix committee” hold a public forum, but they did not create a report; they simply drafted a regulation that was up for a vote. The regulation did not go through the drug research and rules committee like most regulations of this type. Further, the Commission did not produce any type of study as to the regulation’s effects. During the April vote, Commissioners Ludt and Pitino voted against the ban of Lasix for all two year olds, but on the June 13 vote, Pitino was not in attendance and Ludt abstained from voting. It is difficult to understand why Commissioner Pitino would be absent to vote on such a big issue.

Although, the phase out plan passed, Commissioner Beck has made it clear that the Commission would revisit the issue if no other states followed Kentucky’s lead. Beck stated that he believes, “if we are sitting here January 1 of 2014 and we were the only state that had taken action, I would think that it would merit some review at that time. But that’s not part of the language of the regulation.” However, Commissioner Ludt is not convinced this will happen. He stated, “I am just very concerned that we are going to lead in an area that we don’t have the support.” Commissioner Ludt abstained from voting because there was not an amendment requiring the Commission to take this action, which he had been told would be added to the proposal. This also seems strange. Commissioner Ludt had to know entering the vote that his abstention could be the deciding factor. If he did not want the regulation to pass because it did not include an amendment he felt should be included, he should have voted against it, not abstained from voting altogether.

Other Commissioners are skeptical whether states will actually follow Kentucky in the ban. Commissioner Ludt joined this idea stating, “I wouldn’t want to bet in the next 60 days how many states are going to

142 Id.
143 Id.
144 Romans, supra note 38.
145 TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 26.
146 Id.
147 Id.
148 Id.
149 Hegarty, supra note 1.
150 TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 21-22.
151 Id.
152 Id. at 45.
153 Id.
154 Id. at 47, 57.
155 Id. at 41.
jump on this bandwagon. I have gotten no confidence." Commissioner Conway thinks that Kentucky’s actions have already separated it from other jurisdictions and left us on an island alone; “[w]hen New York sees the benefits that flowed to them from this action [approving the phase out plan in Kentucky] they are not going to create a second island called New York.” Commissioner Conway believes that New York is not foolish enough to follow our lead after many owners and trainers have been scared away from Kentucky. It does not take the actual enforcement of the plan for owners and trainers to abandon racing in Kentucky. The uncertainty of this plan is enough to do that. If Commissioner Conway is correct, it might already be too late for our industry. The regulation not going into effect might not matter if horsemen have already left in anticipation of it.

Commissioner Travis says it is uncertain what New York will do based on the fluctuation in New York racing over the weeks before the vote took place. He goes farther in saying that Kentucky must be joined by "states that make a difference." In making his assessment of these states, he listed Pennsylvania, Florida, West Virginia, New York and California as such states. He does not think Ohio, New Mexico, or Arizona hold enough weight on a national platform to be considered.

While speaking before the vote took place, Chairman Beck assured the others that he has had discussions with executive directors and Chairmen of Commissions in other states, and they supported this ban. While they could not effectively guarantee that their states would follow Kentucky, it was clear that the support was there.

This plan is slated to begin in 2014 by banning the Lasix use on race day to any two year old horse competing in any graded or listed stakes race or any horse that competes against a two-year-old horse in a stakes race. It was originally supposed to take effect January 2013, but the Cabinet for Public Protection indicated it would not get through the legislative process until well into 2013. In 2015, two and three year olds competing in a stakes race, or any horse running against them, will be prohibited from using Lasix on race day. By January 1, 2016, Lasix will

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156 Id. at 46.
157 Id. at 28-29.
158 Id. at 29.
159 Id. at 40.
160 Id. at 41.
161 Id.
162 Id. at 39.
163 Id. at 52.
164 Id.
165 Prohibition on Furosemide on Race Day (proposed June 7, 2012) (to be codified at 810 KY. ADMIN. REGS. 1:300) (as of Jan. 12, 2013, the Kentucky Horse Racing Commission has yet to file this proposal with the Kentucky Legislative Research Commission).
166 TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 20.
167 Prohibition on Furosemide on Race Day, supra note 165, at 2.
be completely prohibited from any stakes race in Kentucky. The penalty for violating these rules would include the forfeiture of any purse money along with fines and suspensions to the guilty licensees. The severity of those fines will depend on whether and how often the offense has occurred in the past.

Although this ban has been approved by the KHRC, they have not filed the regulation with the Legislative Research Commission. This hesitation may be because the Commission wanted to wait to see if other states follow their lead. The Research Commission will review the regulation to ensure that it has been drafted properly. The regulation will then be open for public comment for a period of thirty days. The regulation must also pass through the Administrative Regulation Review Subcommittee. This subcommittee has the power to make a non-binding consideration that the regulation is deficient. If the regulation is found to be deficient, it will be sent to the Governor; the Governor can either agree with the finding or he can override the Committee's finding of deficiency. Therefore, there is still time for the regulation to be withdrawn. One thing is clear: the debate on the ban is sure to continue.

V. POSSIBLE EFFECTS ON KENTUCKY'S INDUSTRY

Everyone involved in the horseracing industry in Kentucky knows it is suffering. Kentucky is one of the few states that does not allow casino gambling at its racing venues. As a result, purses are low which has influenced trainers and owners to move out of the state in search of better gains. Large groups of brood mares and stallions are leaving, and horse farms are frequently being sold. Dale Romans, a Kentucky native, has moved his business to New York. In a meeting with the KHRC, Romans stated this regulation would put the final "nail in Kentucky racing," and
would be “the most drastic change to American racing ever.”\footnote{Bruce Schreiner, Proposed Ban on Race Day Medications in Kentucky Fails, USA TODAY (Apr. 17, 2012, 11:50 PM), http://usatoday30.usatoday.com/sports/horses/story/2012-04-17/Ban-on-race-day-drugs-in-Ky/54371884/1.} Bob Baffert has opined, “Lasix is so important to racing, banning it would not only be disastrous for the business, but harmful to the horses.”\footnote{Marty McGee, Churchill Downs Notes: Derby Trial Attracts Field of 11, DAILY RACING FORM (Apr. 25, 2012, 2:38 PM), http://www.drf.com/news/churchill-downs-notes-derby-trial-attracts-field-11.} Baffert will advise all of his clients to get out of the business as soon as they can.\footnote{Sexton, supra note 41.}

The President of Churchill Downs, Kevin Flanery, agrees that this regulation will not be positive for Kentucky racing.\footnote{Id.} He also cites the low purses in Kentucky and diminishing foal crops around the country that are increasing competition.\footnote{Id.} He states, “[p]utting us on an island, putting us at a competitive disadvantage to recruit horses to come to Kentucky, is not something that makes sense at this time.”\footnote{TRANSCRIPT OF MEETING MINUTES FROM PHASE OUT HEARING, supra note 92, at 28.}

What happens to the best horses that bleed must be considered. The trainer will have three options. First, they can give the horse a long layoff and eventually keep running in stakes races with the hope the bleeding does not happen again. Second, they can take the horse elsewhere and run on Lasix. Finally, they can put the horse in a lower allowance race where it can have Lasix, but run for less money. It is unlikely that trainers will be willing to do take the risks associated with the first option if they know they can go elsewhere without much difficulty. The third option creates a dilemma. Having horses that have the ability to compete in stakes races competing in lower level races means that these lower races will no longer be competitive. The allowance race would eventually turn into the race with the best horses. This is also unlikely to happen if trainers can move their horse to another state and run for more money. Therefore, the second option is the most likely. Commissioner Conway agrees stating, “any valuable horse that has become a bleeder, injured himself, needs Lasix, will not be staying in Kentucky to race.”\footnote{See Ray Paulick, Rock and a Hard Place: Behind the Breeders' Cup Lasix Decision, PAULICK REP. (Mar. 11, 2013, 1:21 PM), http://www.paulickreport.com/news/ray-s-paddock/rock-and-a-hard-place-behind-the-breeders-cup-lasix-decision/.} It would be a shame to lose the best horses that Kentucky has to offer.

The Breeder’s Cup, seen as an international competition, has decided to ban the use of Lasix because it is what the rest of the world is doing.\footnote{Id.} They began this year by banning Lasix in all juvenile races. Mark Casse was upset when he heard this news, but it was nothing
compared to his feelings on the subject after his horse Spring in the Air bled badly following its juvenile race. Blood was visible and the two-year-old philly continued to cough after the race. Casse predicts that the Breeder’s Cup entries will be down if they continue to ban Lasix. Two other horses also bled in the two days that make up the Breeder’s cup. How long will trainers like Casse continue to run in Kentucky if this is the result?

The regulation does not address whether horses running without Lasix in Kentucky will be able to return to running with Lasix in other states. Forcing a horse to run with and without Lasix interchangeably can be hard on the horse. If this is not allowed by those other states, trainers will not be willing to send their horses to Kentucky. This would result in fewer outside horses running in Kentucky stakes races.

Horsemen are already running for less money in Kentucky than anywhere else. This, combined with the fact that the trainers cannot use Lasix therapy to treat potential bleeding, means that these trainers have no reason to remain in the state. This regulation will make the prestige of running at tracks like Churchill Downs and Keeneland the only reason to run in Kentucky. Eventually, the prestige of those tracks will dwindle. When that happens, horseracing in Kentucky may never be the same.

VI. CONCLUSION

This summer, Bill Casner and 39 other horse owners pledged to not run their 2-year-olds on Lasix this year. The owners have had some recent success and attribute it to the non-use of the drug. If owners or trainers feel that not using Lasix gives their horse an advantage, allowing it to run more often, they should be free to not use the drug.

However, those viewing Lasix as a safety measure should be free to use the drug as they see fit. Rick Hiles, representative of the KHBPA, was asked during the information session with the KHRC whether any of the horsemen in his organization would support a Lasix ban if another drug that

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191 Id.
192 Id.
193 Id.
194 Gregory Hall, Horse Drug Regulation Faces Legislative Test, KY. HBPA (July 11, 2012, 5:00 AM), http://www.kyhbpa.org/NewsDisplay.asp.
195 See Ellis Park Horsemen’s Committee Meeting July 16, 2009, KY. HBPA (July 17, 2009), http://www.kyhbpa.org/NewsDisplay.asp.
197 See id.
did not have to be used on race day would help alleviate EIPH. He believes that most horsemen would probably support that, but they must have something to treat their horses when they do start bleeding. He stated, “I usually try to run them as long as I can without Lasix. But I know in my heart that there is just a matter of time [until] . . . they are going to bleed. And it always has happened.” Trainers like Hiles will no longer be able to look out for the best interests of their horses if Lasix is banned and no alternatives are given. These horsemen will be forced to run a horse until it bleeds, and then they will likely have to retire it.

Horseracing is one of the world’s most heavily regulated sports. Its athletes are tested more often and for more drugs than any athletes in the world. Some of the organizations that oppose Lasix admit that it is “good for the horse, but bad for horseracing,” yet they attack the opposition by saying they are not looking out for the horse. Ironically, the organization pushing this Lasix ban, the Jockey Club, actually funded the South African study that everyone cites for the helpful effects of Lasix.

If the drug is good for the horse, but bad for horseracing, then the problem must lie in the public’s perception of the drug and the money that follows that perception. Commissioner Lavin admits that economics is the main concern, not the horse. Assuming that Lasix does have a bad economic effect on the industry, the choice becomes which is more important: the horse or the pocketbook?

Chairman Beck closes his comments with the classic definition of insanity; “continuing to do what you have done in the past and expect the things to change.” This definition is accurate, but the application is not. This industry is suffering compared to other states. Our solution is not to imitate them and get back on their level, but to separate Kentucky even more. Hurting the horse does not solve the problem. Instead of finding a way to ban the drug, the Kentucky Legislature should spend its time finding ways to spread information about the drug’s positive effects on the horse so that horseracing fans can truly understand the implications of banning the drug. As Chairman Jones states, “It would make a lot more sense if we devoted our time and energies to working on solutions that built Kentucky
racing, not further uncertainty." A truly informed fan will see that Lasix is in the horse's best interest. However, according to Commissioner Phillips, alerting the public to the truths of Lasix will be difficult; [t]he non-racing media has the attention of a light bulb, a flash bulb. The public is maybe a little shorter than that." While changing the public perception will be difficult, this is not a justification to force something that is bad for the industry and bad for the horse.

207 Id. at 27.
208 Id. at 35.