



## Minutes

### Meeting of July 22, 2019

A meeting of the Commission was conducted in New York, New York.

#### 1. Call to Order and Establishment of Quorum

Executive Director Robert Williams called the meeting to order at 1:30 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Jerry Skurnik and Todd Snyder. Commissioner Poklemba presided over the meeting.

#### 2. Consideration of Minutes for Meeting of June 10, 2019

The Commission considered previously circulated draft minutes of the meeting conducted on June 10, 2019. The minutes were accepted as circulated.

#### 3. Rulemaking

##### a. **ADOPTION: SGC-17-19-00009-P, Pick-Six Jackpot Wager for Thoroughbred Racing**

The Commission considered the adoption of a proposed Thoroughbred wager to be known as the pick-six jackpot wager.

ON A MOTION BY: Commissioner Crotty  
APPROVED: 5-0

##### b. **PROPOSED RULEMAKING: Thoroughbred Show Wagering**

The Commission considered the proposal of a revision to the thoroughbred pari-mutuel wagering rules regarding show wagers.

ON A MOTION BY: Commissioner Skurnik  
APPROVED: 5-0

**c. PROPOSED RULEMAKING: Veterinary Technicians**

The Commission considered a proposal of amendments to various rules that would explicitly authorize the supervised use of veterinarian technicians at New York racetracks.

ON A MOTION BY: Commissioner Moschetti

APPROVED: 5-0

**4. Adjudications**

**a. In the Matter of Parish American Legion Post #601**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 6-0 vote to modify the Hearing Officer's Report and Recommendation, accepting the suspension recommendation but imposing a \$500 fine.

**b. In the Matter of Genting New York, LLC**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 6-0 vote to accept the Hearing Officer's Report and Recommendation that the fine imposed be reversed.

**c. In the Matter of Polish Community Center of Albany, N.Y., Inc.**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed on a 6-0 vote to accept the Hearing Officer's Report and Recommendation imposing a \$2,000 fine on the Center and suspend the Center's license to conduct games of chance for a period of one year, but defer the imposition of such sanctions for a period of three years, contingent on the Center committing no proven violations within such probationary period.

**5. Old Business/New Business**

**a. Old Business**

**1. Lasix Survey**

Director Williams provided an overview of responses to the Lasix study first discussed in May. Commissioner Poklemba requested the comments received be appended to the minutes.

**b. New Business**

No new business was presented.

**6. Adjournment**

No next meeting was set before adjourning at 1:48 p.m.

# # #

May 20, 2019



Kristen Buckley  
New York Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, NY. 12301-7500

Dear Miss Buckley,

This letter is written in response to the notification your office recently mailed to myself as well as other licensed trainers in the state of New York related to the proposal to abandon the long and time tested practice of administering furosemide to horses suffering from the disease of EIPH.

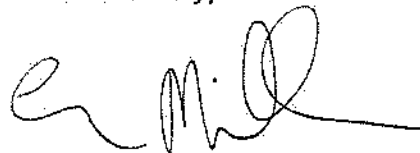
1. Due to rules set up by your department, trainers are no longer allowed to have medications administered twenty four or more hours prior to racing that aid in the prevention of EIPH because these substances will be present in a post race urine sample. Examples of these substances include ergonovine, ethamsylate, tranexamic acid, etc. These substances were and still are being used in human medicine.
2. It appears as if the racing commission is now a proponent of racing horses one start on lasix, the next start off of lasix, then back on lasix the following start. If the commission was interested in protecting the wagering public, they shouldn't be endorsing such a practice. Besides, isn't this relaxing the protocol that is currently required by the state of New York to get a horse on the bleeder's list.

3. If the state of New York was truly concerned about the welfare of it's equine athletes, they would not nor should not preclude the administration of a medication based upon age nor athletic status of the horse. The state's interest should be in the promotion of the health of it's equine athletes instead of creating horses whose respiratory system are compromised due to the detrimental effects of EIPH, which lasix has demonstrated for years to control and prevent.

4. The proposed reduction in the dosage of lasix does not appear to be science based. The Mayo Clinic suggests that a human take 80 mg of lasix either as a single dose or divided into two doses per day. So, for instance, a 140 pound human is supposed to take 80 mg which is equivalent to 0.57 mg/lb. The newly proposed guideline of 2.5 ml (125mg) for an equine athlete equates to 0.125 mg/lb for a 1,000 lb horse, 0.104 mg/lb for a 1,200 lb horse, etc.

I would encourage the state of New York to propose guidelines that promote equine wellness and avoid abandoning science based practices that have been time tested.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ervin Miller', with a stylized, cursive script.

Ervin Miller

**From:** Scott DiDomenico  
**To:** [lot.sm.NewYorkLotteryRules](http://lot.sm.NewYorkLotteryRules)  
**Subject:** Scott Di Domenico  
**Date:** Monday, May 20, 2019 10:10:18 PM

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ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Kristen

I received your letter in mail about furosemide

I am admittedly against taking lasix away from our equine athletes furosemide is a necessity to most horses racing to take away will create far more issues to the horses well being Nd there health

Sincerely

Scott Di Domenico



Sent from my iPhone

Lasix

✖ DELETE   ← REPLY   ⇐ REPLY ALL   → FORWARD   ⋮



Gural, Jeffrey [Redacted]

Tue 5/21/2019 2:46 PM

Mark as unread

To: gamingrules@gaming.ny.gov;

Cc: Robert Williams; Jason Settlemoir [Redacted]

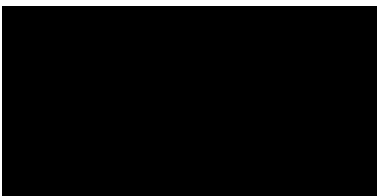
In answer to your question about Lasix, it is my intention at the Meadowlands to implement a policy beginning next year of not allowing Lasix in any races for two year old horses. The trainers I spoke with all agreed that any two year old that needs Lasix should be turned out and last year at the Meadowlands only seven two-year olds raced on Lasix. That policy will go into effect next year. Beginning in 2021 we are going to make our signature pacing race, The Meadowlands Pace, Lasix free. Currently our signature trotting race, The Hambletonian and The Hambletonian Oaks have always been Lasix free and has not created a problem. We intend to revisit this at the end of 2021 based on the experience of the thoroughbreds who obviously have a more serious problem since the fatalities in standardbred racing are rare. It would be my hope that the Gaming Commission allows us, at a bare minimum, to eliminate Lasix for all two year olds beginning next year and, maybe if acceptable I would eliminate for the Empire Breeders Classic races in 2021. Let me know what you think.

**Jeffrey Gural**

Chairman



GFP Real Estate, LLC



[gfpre.com](http://gfpre.com)

## Buckley, Kristen (GAMING)

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**From:** Christophe Clement [REDACTED]  
**Sent:** Friday, May 24, 2019 10:11 AM  
**To:** lot.sm.NewYorkLotteryRules  
**Subject:** Lasix

**ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.**

Dear Kristen,

In response to your letter, I very very much support Rule #2.

Kindest regards,

Christophe Clement

**Christophe Clement Racing Stable, Inc.**

[Facebook](#) - [Instagram](#) - [Twitter](#)

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## Buckley, Kristen (GAMING)

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**From:** Joan Taylor [REDACTED]  
**Sent:** Saturday, May 25, 2019 1:27 PM  
**To:** lot.sm.NewYorkLotteryRules  
**Subject:** Furosemide use regulation

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Gaming Commission:

I am writing in response to the May 16 letter I received from Robert Williams, Acting Executive Director of the New York State Gaming Commission, seeking public comment on possible amendments to policy on race day furosemide use. I support the proposed amendments the New York State Gaming Commission is considering regarding race day furosemide. I believe that the amendments will improve the integrity, and public perception of our sport in the following ways.

- A. Moving racing policy in the United States toward alignment with the majority of other racing nations that prohibit the use of furosemide on race day.
- B. Moving racing policy in the United States toward drug free competition on par with other sports venues in our country such as football, baseball, cycling, etc.
- C. Moving racing policy in the United States toward more uniform rules and regulations regarding race day medication.
- D. Reducing Lasix's potential influence on the selection process of the genetics of the breed, since it is currently unknown if Exercise-induced pulmonary hemorrhage has a genetic basis.

I would suggest that concurrent with these changes in the use of furosemide, a thorough review of policy regarding management of horses that do bleed at the nose (Grade 4), as well as the practice that trainers use of "drawing" horses that have a history of bleeding, be conducted to insure treatment of these animals is humane, consistent and ethical going forward.

New York has an opportunity here to lead the sport to a better future. Thank you for the opportunity to comment on these important proposed changes.

Your truly,  
Joan M. Taylor, DVM

Sent from my iPhone

Joan Taylor

Please note my new email address is [REDACTED]



# Gaming Commission

One Broadway Center  
P.O. Box 7500  
Schenectady, New York 12301-7500

[www.gaming.ny.gov](http://www.gaming.ny.gov)



May 16, 2019

Mr. William I. Mott



Dear Mr. Mott:

The Commission is considering whether to amend its rules that govern the use of furosemide (a/k/a Lasix) in horses on race day. Accordingly, the Commission is seeking public comment to consider all information and opinions.

While there is no formal proposal presently being considered, proposed amendments being advanced nationwide by a Thoroughbred racetrack coalition would:

1. allow the Commission to authorize racetracks to offer non-Lasix races, and excuse horses on the Lasix List for such races without penalty
2. prohibit the race day use of Lasix for all two-year old horses and in all Thoroughbred Graded Stakes races
3. reduce the permissible race-day dose of Lasix to 2.50 cc

The Commission is interested in receiving information, suggestions and other input you may have concerning the topic of furosemide use regulation.

If you wish to provide any input, please submit your comments in writing to Kristen Buckley, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500 or [gamingrules@gaming.ny.gov](mailto:gamingrules@gaming.ny.gov) by June 6, 2019.

Robert Williams  
Acting Executive Director

*We should get rid of all race day medication in NY. And end the controversy, however we need reasonable threshold levels for all drugs, therapeutic and/or non therapeutic.*

**RECEIVED**  
JUN - 3 2019  
NEW YORK STATE  
GAMING COMMISSION

**The Finger Lakes  
Horsemen's Benevolent and Protective Assoc.**



Kristen Buckley - Director  
NYS Gaming Commission  
PO Box 7500  
Schenectady NY 12301

5/30/19

Dear Ms. Buckley:

I am responding to Mr. Williams's letter of May 16, 2019 to our past President, David Brown as I have recently become President of the FLHBPA.

The FLHBPA and its membership believe performance-enhancing drugs have no place in thoroughbred racing. Those who are found to be intentionally administering drugs that have no legitimate therapeutic use should face suspension and/or revocation of their licenses.

We support uniform medication rules and the application of science-based thresholds in post-race testing. The FLHBPA encourages the highest standards of horsemanship to continuously improve the care, health and safety of the horse, and its members aim to provide the best health care possible for competing racehorses while ensuring the integrity of the sport. The FLHBPA position is that all therapeutic medications should be administered to racehorses by or under the direction of a licensed veterinarian and health care decisions on individual horses should involve a veterinarian, the trainer and the owner with the best interests of the horse as the primary objective.

We at the FLHBPA also strongly encourage continued peer-reviewed research in determining regulatory threshold levels and appropriate withdrawal times that represent responsible use of therapeutic medications in the racehorse. We also strongly support the use of race-day lasix. From a review of the available scientific literature it appears that:

1. Studies have proven close to 80% of thoroughbreds have an EIPH (exercise induced pulmonary hemorrhage) episode within three races to some measurable degree.
2. Lasix is proven to prevent and/or lessen the severity of an EIPH episode.
3. EIPH is a progressive disease (Classified by the American College of Veterinary Internal Medicine) and if untreated may cause irreversible scarring of the lungs.

4. Lasix has not been shown to be performance enhancing in racehorses.
5. Lasix administration obviates the need for the old practice of withholding food and water from a horse prior to race day which is more detrimental to equine well-being than the unproven concerns about Lasix administration.
6. No long term negative effects have ever been shown through research on horses who are administered Lasix.

I have enclosed "Comments on Lasix Rulemaking" which was submitted in May of 2012 by NYTHA. The issues have not changed in the ensuing years and the opinions cited mirror our overall position on race-day Lasix administration.

Any ban on race day administration of Lasix would most certainly eliminate a percentage of horses from the racing population due to increased episodes and severity of EIPH. These horses may be retired or may move to other states who adhere to the current veterinary standard of care allowing for the administration of Lasix. Given the present breeding statistics and the lack of horses available to fill races, New York's present field size issues may well become even more acute should race day Lasix be banned.

Regarding the three issues addressed in your letter:

1. The FLHBPA has no objection to individual racetracks if they so desire to offer non Lasix races.
2. We strongly oppose the prohibition of race day Lasix under any circumstances for the reasons set forth above.
3. Presently the maximum dosage of Lasix allowable in NYS is 10cc. We have no objection to a scientifically based reduction in the maximum dose of race day Lasix but 2.5cc is clearly much too low and would be ineffective in a large percentage of horse suffering from EIPH.

Finally, if anyone has seen a horse bleed profusely from both nostrils following a race or training (as I have) they would understand how necessary Lasix is the equine well-being. Thank you for allowing us to comment on this most important issue.

Respectfully Yours;



Chris Vaccaro  
President - FLHBPA



# COMMENTS ON LASIX RULEMAKING

Submitted by

New York Thoroughbred Horsemen's  
Association

May 14, 2012

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## Introduction

On April 30, 2012, the New York State Racing and Wagering Board (the "Board") requested comments regarding the use of furosemide (marketed for equine use under the trade name Salix, but generally referred to in the industry as "Lasix") for racehorses and on equine medication policy in general.<sup>1</sup> Specifically, the Board issued an advance notice of proposed rulemaking regarding Lasix and seeking comment on seven specific questions about Lasix in particular and equine medication policy in general.<sup>2</sup> Briefly, the Board's questions address the following issues:

1. Cost-benefit analysis of Lasix use;
2. Possibilities for introducing a ban on Lasix without causing major hardship;
3. Costs of a ban or limitation on Lasix, and who should bear those costs;
4. Prophylactic effects of Lasix use;
5. Impact of Lasix use on racing fan support;
6. Possible trainer reaction to a Lasix ban and likely substitutes for Lasix; and
7. Other medication policy changes that might be implemented.

The New York Thoroughbred Horsemen's Association ("NYTHA") is the officially designated representative of Thoroughbred owners and trainers racing at tracks operated by the New York Racing Association ("NYRA"). This submission represents the official view of the horsemen and women who race at Aqueduct, Belmont and Saratoga and who provide the product on which New York's reputation as the premier racing jurisdiction in the United States is based.

We urge the Board to consider the views of the members of the industry with the utmost seriousness, and to take into account the wealth of scientific evidence attached to this submission, documenting the therapeutic benefits of Lasix use, the significant negative impact of a ban on Lasix, and the other medication policies that the Board could adopt to improve racing's image as well as the fairness of racing, while at the same time attending to the welfare of the horse.

Not all medications are the same. The call for "drug-free" racing misses the point. What we should be seeking is racing that is safe, for both horses and riders, that is fair, and in which no one has the opportunity to gain an advantage

<sup>1</sup> Open Letter from NYSRWB, April 30, 2012 (Exhibit 1).

<sup>2</sup> NYSRWB, *Advance Notice of Proposed Rulemaking*, April 30, 2012 (Exhibit 2).



through the use of illegal, performance-enhancing medications. By all means, the Board should go after the cheaters, but it should not harm the horse in the process.

In fact, NYTHA itself has put forward a plan for further curtailing the use of true performance-enhancing drugs on the racetrack. In our letter of April 13th, 2012,<sup>3</sup> addressed to NYSRWB Chairman Sabini, we advocated three new rules limiting the use of painkillers, clenbuterol and corticosteroids. We also advocated codifying the existing practices of having Lasix administered on raceday only by veterinarians employed by the racetrack or the State and continuing to ban all "adjunct" bleeder medications, permitting only Lasix. These proposals address real issues to protect the health and welfare of the horse and to reduce the use of artificial performance-enhancing medications.

### The Case for Lasix

Race horses bleed. We've known this since at least the early 18<sup>th</sup> century, when a brother of the foundation stallion Flying Childers was given the nickname "Bleeding Childers" because of his propensity to bleed from the nose after exercise.<sup>4</sup> And they bleed without regard to geography; bleeding is not limited to North America.<sup>5</sup> Without Lasix, some amount of bleeding occurs in a minimum of nearly four out of five horses.<sup>6</sup> Other studies put the percentage of horses showing evidence of bleeding after exercise at 90% or more.<sup>7</sup> Some investigators put the percentage of horses that will show some evidence of EIPH over their careers at virtually 100%.<sup>8</sup> With Lasix, the percentage of horses showing even

<sup>3</sup> See Exhibit 3.

<sup>4</sup> Derksen, Williams and Stack, *Exercise-Induced Pulmonary Hemorrhage in Horses: the Role of Pulmonary Veins*, Vetlearn.com, Compendium: Continuing Education for Veterinarians, April, 2011 (Exhibit 12).

<sup>5</sup> Testimony of Dr. Alice Stack, DVM, at Kentucky Horse racing Commission, Race Day Medication Committee, November 14, 2011, p.8 (Exhibit 10).

<sup>6</sup> Hinchcliff, Morley & Guthrie, *Efficacy of furosemide for prevention of exercise-induced pulmonary hemorrhage in thoroughbred racehorses*, 235 JAVMA 76 (July 1, 2009) (hereafter, "South African Study") (Exhibit 4). This research study, the most complete to date on the effects of Lasix (furosemide), was sponsored by the Grayson-Jockey Club Research Foundation and the Racing Medication and Testing Consortium, among others. It is the first, and thus far the only, study of the effects of Lasix to adhere to generally accepted scientific methodology based on a comparison of the effects of a medication (Lasix) with the effects of a placebo. Earlier studies, using less precise methodologies, had estimated the incidence of EIPH at anywhere from 44% to 75%. See, e.g., Mason, Collins and Watkins, *Effects of bedding on exercise-induced pulmonary hemorrhage in racehorses in Hong Kong*, Vet. Rec. 1984; 115: 268-269; Raphael and Soma, *Exercise-Induced pulmonary hemorrhage in thoroughbreds after racing and breezing*, Am. J. Vet. Research 1982;43: 1123-1127.

<sup>7</sup> Derksen, et al., *supra* Note 4.

<sup>8</sup> Stack, *supra* Note 5, at p. 10.

slight bleeding drops to 57%, and the severity of bleeding decreases in virtually all cases, reducing the likelihood that bleeding will prevent a horse from performing to the best of its natural ability and that severe bleeding will prove fatal to the horse.<sup>9</sup>

More specifically, bleeding, or exercise-induced pulmonary hemorrhage ("EIPH"), interferes with oxygen exchange between a horse's respiratory system and its bloodstream. Decreased oxygenation of the horse's blood can result in decreased oxygen supply to various organs and contribute to fatigue, organ damage, metabolic disturbances and, ultimately, breakdowns on the racetrack, when fatigued muscles can no longer cushion and absorb the shock that is increasingly placed on the tendons, ligaments and musculo-skeletal system of the horse.<sup>10</sup>

It's not just Thoroughbred racehorses. Bleeding affects quarter horses, standardbreds, barrel racers, in short, any horse that is asked for short-term extreme performance. A Thoroughbred, especially when racing more than six furlongs, goes into "oxygen debt" as the race progresses. In these circumstances, even minor pulmonary bleeding can substantially interfere with a horse's ability to run its race.

#### **A. Lasix is not like other medications**

Lasix works. According to the definitive South African Study,<sup>11</sup> horses that were treated with a placebo (saline solution) were 7 to 11 times more likely to exhibit Grade 2, 3 or 4 EIPH than horses treated with Lasix. That represents a very significant increase in the likelihood that, without Lasix, a horse will not be able to perform up to its natural ability. In New York, episodes of external bleeding have declined by more than 76% since Lasix was introduced in 1995.

Lasix does not artificially improve a horse's performance above what the horse could naturally accomplish. Rather, the use of Lasix permits a horse to perform to the best of its natural ability – not to perform above that ability. "No amount of Lasix can make a horse run faster than its natural ability," according to Dr. Scott Palmer, speaking at the "Lasix Summit" at Belmont Park in June, 2011.

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<sup>9</sup>*Id.* At 80.

<sup>10</sup> Dr. Brian McNamara, submission to NYSRWB, May 8, 2012. (Exhibit 19).

<sup>11</sup>*Supra*, Note 6.

The use of Lasix actually benefits a horse's health and its improves potential for a longer career on the racetrack. As detailed below, the effect of EIPH is almost certainly cumulative. Each episode of bleeding both creates scar tissue, reducing the horse's oxygen-carrying ability, and increases the risk of future bleeding. With each rupture of the capillaries in a horse's lungs, scar tissue forms, rendering the horse more exercise intolerant and more and more likely to bleed with each successive exertion. Thus, a horse treated with Lasix from the beginning of its career will necessarily have a greater chance of running more races than either a horse that is never treated with Lasix or one that is not treated with Lasix until it has shown clinical signs of bleeding.<sup>12</sup>

The question of whether a particular medication is therapeutic (i.e., treats a physical condition) or performance-enhancing (i.e., makes a horse run faster or further) is misleading. The answer is almost always – both. Science has shown that horses suffering Grade 2 EIPH can have their performance impaired by 2.3 to 6.1 lengths compared to those running without bleeding. Thus, if the use of Lasix reduces the level of EIPH from Grade 2 to Grade 1, as the South African study shows it can, the horse is likely to run several lengths faster than when it raced and bled without Lasix. It is clear that the use of Lasix is performance-enabling, not performance enhancing. Horses don't run faster because of Lasix; they run slower due to bleeding

Except for narcotics and other substances possessing no therapeutic value whatsoever, the dichotomy of "therapeutic" vs. "performance-enhancing" is a false one. Racing regulators, relying on the best available scientific findings and advice, must find an appropriate balance between preserving a horse's health and facilitating that horse's ability to safely compete. Generally, in North America, that balance has been found by permitting raceday Lasix and banning raceday painkillers. We believe that is the right balance.

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<sup>12</sup> Stack, *supra* Note 5.

**B. The vast majority of horses bleed; it's inhumane to withhold therapeutic medication.**

As indicated above, the vast majority of Thoroughbred racehorses bleed as a result of exercise at or near their physical limits. When a horse bleeds to even a moderate degree, well short of epistaxis or visible bleeding from the nose, it will suffer internal distress, struggling to get sufficient oxygen. In extreme cases, horses have been shown to die from EIPH<sup>13</sup> – deaths that can be averted through the use of Lasix. When a horse dies on the track, the incident endangers its jockey as well as other horses and riders in the race; with Lasix, that danger is effectively eliminated. In the "gold-standard" Jockey Club-sponsored South African study cited earlier,<sup>14</sup> not a single horse that received Lasix before racing showed visible evidence of Stage 3 or 4 EIPH, the levels that are generally considered to represent immediate danger to the horse. In New York, since raceday Lasix use was approved in 1995, the incidence of epistaxis, or visible bleeding, has declined by 76%.

In the light of the proven discomfort to the horse and the proven link between extreme EIPH and equine mortality, the use of Lasix represents a compassionate response to the needs of most horses. To withhold a proven therapeutic remedy could well be seen as cruelty to animals. The leading North American organization of equine veterinarians, the American Association of Equine Practitioners ("AAEP") fully accepts this reasoning, and has adopted an official position supporting the use of raceday Lasix.

**C. Lasix does not mask the presence of other medications**

In the past, critics of Lasix use have argued that Lasix hides or masks the presence of other medications in a horse's system, thereby compromising post-race drug testing. While this may have been true at the time that Lasix use was first introduced in North American racing in the 1980s, such is not the case today. Leading veterinary testing experts now agree that the sensitivity of modern testing methods has increased enormously. As Dr. Thomas Tobin, one of America's most distinguished pharmacologists and toxicologists, stated in a letter to NYTHA President Richard Violette, "Lasix does not in any way interfere with plasma concentrations of drugs, and as such does not in any way interfere with

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<sup>13</sup> See Exhibit 5.

<sup>14</sup> See Note 6.

the testing process in blood." Moreover, even in those jurisdictions that test only urine, not blood or plasma, Dr. Tobin notes that "under the Lasix [testing] protocols in place today, there is no significant interference whatsoever with urine testing for drugs."<sup>15</sup>

With the strict guidelines for administration of Lasix that are now in place – Lasix is administered only by NYRA veterinarians and not closer than four hours to race time – there is no possibility that Lasix will "mask" or interfere with testing for other substances.

#### **D. Horse racing already has the strictest medication rules of any sport**

In the major racing jurisdictions like New York, equine testing labs analyze samples from the racetrack for the presence of more than 900 separate chemical compounds. With advanced technology, such as the spectrometer that NYTHA paid for and donated to the state's official testing lab, run by Dr. George Maylin, toxicologists can now identify virtually all known performance-enhancing drugs. As Dr. Tobin noted, there is no interference with such drug testing as a result of Lasix use. The challenge for equine toxicologists today is not to detect other medications despite the presence of Lasix; that's already been accomplished. Rather, the challenge is to develop tests for emerging new drugs, such as synthetic EPO, gene therapy and the like. To focus on Lasix as a testing problem would be to ignore the very real issues in contemporary drug use. Like the Board, NYTHA wants to eliminate the cheaters in racing. But the way to do that has nothing whatsoever to do with Lasix. Rather, as noted below, it turns on developing scientifically valid testing protocols, adapting regulations to the actual science, and then adopting firm, consistent enforcement guidelines.

A recent report by the Association of Racing Commissioners International (RCI)<sup>16</sup> makes the point that Thoroughbred racing in North America is already subject to the most aggressive drug testing program of ANY professional sport, testing for more substances, with greater sensitivity, than baseball, football, or even the often-praised World Anti-Doping Agency standards for international athletics. Yes, Lasix is not permitted in many other sports, but those sports are contested

<sup>15</sup> See Exhibit 5; See also testimony of Dr. Rick Sams, DVM Kentucky Horse racing Commission, Race Day Medication Committee, November 14, 2011, p.87 (Exhibit 10).

<sup>16</sup> Association of Racing Commissioners International, *Drugs in U.S. Racing 2010: the Facts*, (September 2011). See Exhibit 21.

by humans, not horses. The difference in physiology thoroughly justifies a difference in medication classification.<sup>17</sup>

Compared to New York, which tests for over 900 different substances, post-race drug testing in Europe and elsewhere is rudimentary. The European Scientific Committee's list of prohibited raceday medications and detection times<sup>18</sup> includes barely two dozen drugs, compared to the 900-plus that New York tests for. To claim that European racing is "drug-free" misstates the reality, which is that European and other international racing, with a few exceptions, is largely test-free.

\* According to the RCI, in 2010, 324,215 biological samples were taken and tested. Lab results show that 99.5% of those samples were found to contain no foreign or prohibited substance. In other words, only 1/2 of 1% of samples tested was found to have contained a substance in violation of the rules. An examination of racing commission data also reveals that, in those relatively rare instances when a violation of a medication rule does occur, most were associated with a legal substance administered in the normal course of equine care by a licensed veterinarian and cannot be characterized as 'horse doping' or as indicative of a 'drugging.' Those substances that could legitimately be construed as a 'horse doping' (RCI Classification Categories I and II) represent just 47 instances out of 324,215 samples tested in 2010. That represents 0.015% of all samples tested. The use of terms like 'rampant,' 'endemic,' 'widespread,' 'chemical warfare,' or 'racing's drug addiction' do the sport and the tens of thousands of families who rely on it a great disservice."

"Horse racing's anti-doping program tests for more substances at deeper levels than any other professional sport. These facts are inexplicably ignored by many who wish to opine on this matter and have been successful in drawing attention to their assertions by spinning negative headlines about the sport. The perception created is not consistent with the facts."<sup>19</sup>

<sup>17</sup> See, e.g., the lists of permitted and prohibited substances of WADA (Exhibit 22), WADA's standards for "therapeutic use exemptions" (Exhibit 23), US Anti-Doping Agency athlete handbook (Exhibit 24), major league baseball's joint drug treatment and prevention program (Exhibit 25), the National Football League's list of prohibited substances (Exhibit 26), RCI's Uniform Classification Guidelines for Foreign Substances (Exhibit 27), European Horserace Scientific Liaison Committee, list of detection times (Exhibit 29), and the FEI Equine Prohibited Substances List (Exhibit 28).

<sup>18</sup> See Exhibit 29.

<sup>19</sup> Ed. Martin, RCI "Drugs in U.S. Racing -- 2010. Exhibit 22.

The US racing industry as a whole spends more on drug testing -- \$35 million annually -- than the entire worldwide budget of WADA (\$26 million). And these efforts have paid off. Despite ever more sensitive testing, medication violations declined by 20% from 2001 to 2010. Racing regulators and test laboratories are doing an ever better job of catching the cheaters. Forcing the labs to focus on Lasix would represent a step backward in racing's real war on drugs.

**E. The use of Lasix Does Not have a significant effect on the marketability of North American-bred horses**

The Board's Notice of Advance Rulemaking included the following statement;

*Some owners and breeders oppose race day Lasix. Heredity is a factor in EIPH. Lasix keeps horses from being culled from the breeding pool. A single stallion can have a large impact on the breeding pool. The market for race horses is becoming more international than ever. With increasing financial rewards for New York State breeders as a result of VLTs at Aqueduct, the marketability of New York horses is important, and there is worry that American horses are losing their standing and value in the international market.*

Contrary to the implications of this statement, North American-bred horses continue to do well. Prices at the recently completed "select" sales of two-year-olds in training were up substantially this year, returning to peaks not seen since the collapse of international financial markets in 2008. While it is true that the quality of stallions standing overseas has improved in the past three decades, that improvement is largely the result of sustained buying of North American-bred stallion prospects by deep-pocketed foreign buyers such as the Coolmore group in Ireland, the royal family of Dubai, and buyers associated with the Japan Racing Association. After 30 years of raiding the American market, these buyers have understandably improved their own stallions and breeding operations. Nonetheless, they continue to buy at the North American sales and, to an increasing extent, to race their horses in North America.

One would expect that, if foreign buyers were shunning North American sales because of the Lasix issue, the effects would be seen most clearly at the annual sales of Thoroughbred breeding stock. But, in fact, foreign buyers continue to be the mainstays of those sales. Lasix has been permitted for raceday use everywhere in North America since 1995, but US exports of Thoroughbreds continue to rise well into the 21<sup>st</sup> century, right up to the present, with a decline

in 2008 that was clearly due to the global economic crisis, not to the presence of Lasix.

Thoroughbred exports to Europe increased 54.3% from 2003 to 2007. While overall volume declined in 2008 and thereafter for a time (early results of 2012 sales indicate the market is returning to its pre-crash levels), the leading sales in the US continue to draw foreign buyers. In 2008, five of the top 10 buyers at the premier Keeneland November bloodstock sale were from outside the US: one from Dubai, two from Japan and two from Saudi Arabia. In 2009, once again, five of the top 10 buyers at the sale were foreigners: one from Ireland, two from France, and two from Australia. And in 2010, again, five of the top 10 buyers were foreign: two from Japan, two from Australia and one from England. At the Keeneland November sale in 2011, two French buyers, two Japanese, one Australian and one Irish buyer all spent more than \$1 million for US bloodstock. The continued presence of foreign buyers at the top end of the US bloodstock market, long after US breeding has come to be based almost entirely on horses that raced on Lasix, offers powerful evidence that Lasix use is not an impediment to the commercial breeding industry in North America.

This conclusion is even stronger in the case of breeders based in New York. These breeders have never had a significant presence in the international marketplace. For a variety of reasons, including the incentives provided to race New York-breds in New York, New York-breds appeal primarily to New York and other East Coast horsemen. Also, there are few, if any, proven turf sires standing in New York, and European and Japanese buyers are primarily interested in turf racing; hence, few New York stallions, Lasix or no Lasix, would draw international attention.

Europeans have not, in fact, been supporting their own breeding industry since the start of the global economic crisis. The foal crop in England and Ireland dropped by almost 40% between 2007 and 2010, from a peak of 18,472 in 2007 to 12,253 in 2010, with a further drop to 11,300 estimated for 2011. In a presentation at the Tattersall's sales company in June, 2011, Weatherby's executive director Paul Greeves stated that "the speed and quantity of the reduction in numbers [of English and Irish foal crops] is unprecedented in modern times." He added that there had not yet been a parallel drop in the number of broodmares, but that breeders were, for the time being, choosing not to breed their mares, as no market existed for the foals.



Thus, comments that European buyers are shunning North American bloodstock because of Lasix use in North America miss the mark. The declines in European foals crops, evidently, were due to fundamental economic conditions and had nothing to do with the use of Lasix in some jurisdictions. If Lasix had been a factor, one would have expected that European breeders and owners would have relied more on their own bloodstock, rather than, as they did, continuing their historic ratios of North American to home-grown horses.

Moreover, there is no scientific evidence to support the claim that susceptibility to EIPH is a condition that is being bred into horses, or that horses that have run on Lasix shouldn't be allowed to go to the breeding shed.<sup>20</sup>

## II. Cost-Benefit Analysis of Lasix Use

### A. The Annual Cost of Lasix

Pre-race Lasix administration at NYRA tracks is performed by NYRA veterinarians. NYRA charges the horse owner \$20 per injection. In addition, most trainers use Lasix before a scheduled timed workout, or "breeze." Lasix for breezes is generally administered by private-practice veterinarians, who bill the owner or trainer directly, usually at \$25 per dose. Horses will generally breeze about once a week while in training at the track, skipping a week or two after a race. Assume that the average horse starts seven times a year, and that it breezes another 14 times a year. That makes the total cost of Lasix administration approximately \$500 per year per horse. In contrast, the total cost of keeping a horse in training at NYRA tracks, even allowing for some time off during the year, is on the order of \$35,000-\$40,000 per year.<sup>21</sup> To earn even a modest profit on the annual training cost, once one takes into account the trainer's and jockey's fees and other costs of racing,<sup>22</sup> a horse needs to earn about \$60,000 per year in gross purses.<sup>23</sup>

<sup>20</sup> Stack, *supra* Note 5, at p. 61.

<sup>21</sup> Zorn, *Update: the Cost of Thoroughbred Ownership in New York*, Business of Racing blog, March 1, 2012; available at <http://businessofracing.blogspot.com/2012/03/update-cost-of-thoroughbred-ownership.html>.

<sup>22</sup> In addition to commissions for the trainer and jockey, and the \$20 Lasix administration fee, NYRA charges owners the following amounts:

- A. Backstretch insurance (BEST): \$12.50 per start
- B. Jockey Club: \$2.50 per start
- C. Jockey insurance: 0.9% of the purse, plus \$840 per owner per year.
- D. Backstretch pension fund: 1.0% of the purse
- E. NYTHA: 2.0% of the purse
- F. NYSRWB Fee: \$10 per start.

Against this overall cost of ownership, the actual cost of Lasix is insignificant. \$500 per year represents from 1.2%-1.4% of total training costs, much less than the costs of a farrier (perhaps \$1,400 per year, and much more if a horse needs glue-ons or other special shoes) or of the non-Lasix charges of veterinarians, which are conservatively estimated at upwards of \$3,000 per year and can be much, much higher.<sup>24</sup> The annual cost of Lasix is less, in fact, than the cost of transporting a horse from Belmont to Saratoga and back once a year for the Saratoga meet.

The fact that Lasix is so universally favored by trainers, many of whom are part- or full owners of their horses, is in itself convincing evidence that Lasix is a cost-effective solution to the bleeding issue.

### **B. The Cost of Alternatives to Lasix**

If Lasix is not permitted on raceday, horsemen would have only three options: (1) find other medications or training techniques that help prevent EIPH; (2) retire those horses that prove unable to compete because of EIPH – estimated at anywhere from 2-5% of all horses; and (3) give horses additional time off between races. None of these are adequate solutions, and all of them impose additional costs on owners, trainers, racetracks and the state, whose income from pari-mutuel wagering would decline as fewer races are run with fewer horses.

At present, some jurisdictions permit "adjunct" medication, such as tranexamic acid or aminocaproic acid, to be administered in addition to Lasix on raceday. If Lasix were banned, presumably such adjunct medications would also be banned. In any event, even if trainers were allowed to use adjunct medications, none of these have proved nearly as effective as Lasix in preventing and reducing the severity of EIPH, nor have a variety of homeopathic remedies that have been used in the past. In contrast to Lasix, none of these homeopathic or so-called "natural" treatments have been proven effective in any scientific test. That leaves these options: First, a trainer could withhold water, and perhaps food,

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Trainers generally charge 10-13% of all purse money won by a horse, in addition to their "day rate" of \$90 and up. Jockeys are paid 9.167% of the owner's share of a win purse and 5% of the owner's share of the purse for a second or third-place finish. Jockeys not finishing in the money generally receive \$100 per ride.

<sup>23</sup> See Note 13 above.

<sup>24</sup> *Id.*

from a horse for 24 hours or more before a race. Before Lasix use was permitted, many trainers did just that, with the result that their horses arrived in the paddock looking "drawn up." Surely everyone would agree that withholding water and food is an inhumane practice, but, denied recourse to a safe and effective therapeutic medication, trainers might feel they had no choice. Alternatively, a small minority of trainers would search for some substance that, while banned for use on raceday, might somehow go undetected in post-race samples. In contrast to the proven effectiveness of Lasix, any such unproven substance is certain to be less effective, more dangerous to horses, and more problematic for post-race testing.<sup>25</sup> And, because such substances would be used only by a few cheaters, the relatively level playing field that now characterizes racing at major-league tracks such as NYRA's would be tilted in favor of the rule breakers.

It is impossible to estimate the costs of these training alternatives. Since we don't know what alternative medications trainers would turn to, we cannot put a price on them. But they would cost something, and, given the low cost of Lasix use, it is unlikely that the cost of Lasix alternatives could be significantly less than the \$500 or so that it now costs to use Lasix. And, because trainers would be unable to use the "public option" of having Lasix administered by NYRA veterinarians on raceday, it is quite possible that higher costs for owners, resulting from greater use of private vets, could be incurred.

In addition, trainers would undoubtedly need to use post-race therapy, including antibiotics and hyperbaric chambers, for horses that bled during races. These therapies would involve significant, if unmeasurable, costs.

The second cost of banning Lasix would be the forced retirement of a certain number of race horses who could not perform effectively without the medication. No one knows how many they might be, or which horses they might be; the forced retirees could include \$7,500 claimers or Grade I-winning stakes stars. In Hong Kong, where Lasix use is not permitted, from 1-2% of horses are retired annually because of bleeds,<sup>26</sup> but Hong Kong treats as bleeders only those horses that present with epitaxis (visible bleeding from the nose) or with serious (Stage 3 and 4) tracheal bleeding. And, in fact, the number of horses reported as bleeding in Hong Kong, even with this limited definition, is far higher than in New

<sup>25</sup> See *Nicky Henderson* [trainer for Her Majesty the Queen] *tells vets' inquiry 'plenty' used banned drug*, *The Guardian*, 2/15/2011, in response to positive test for transexamic acid in one of Henderson's horses.

<sup>26</sup> See Exhibit 20.

York: 6.4% of all starters, compared to 1% in New York, with Lasix use. Hong Kong and Singapore, both non-Lasix jurisdictions, report the highest rates of bleeding of any major racing venues. Remember that, in New York, there has been a 76% reduction in epistaxis (horses bleeding through the nose) since raceday administration of Lasix was first permitted.

Third, horsemen would be forced to drop their horses that bleed to lower competitive levels (e.g., from allowances to claiming races) so that those horses could be competitive while they were bleeding.

### **C. The impact of racing without Lasix on horses and on fan perception**

When horses race without Lasix, they bleed more. When horses bleed, they are more likely to bleed severely, to the point where they bleed visibly and, on too many occasions, die on the racetrack from bleeding.<sup>27</sup> As Hall of Fame jockey Jerry Bailey noted on this year's Kentucky Derby telecast, "I've never had a horse break down in a race because of Lasix." The impact on the horse of racing is simple: more horses will bleed, they will bleed more severely, and some of them will die.

The impact on fan perception is hardly more complicated. Most surveys of racing fans' view of Lasix are marked by seriously flawed methodology. For example, a McKinsey & Co. Thoroughbred racing consumer survey in 2011,<sup>28</sup> commissioned by The Jockey Club, found that only 36% of racing fans thought that "medication is one of the top three issues facing racing," and that 38% "would bet more if they knew horses were not being given drugs." Similarly, in a 2009 survey by the Horseplayers Association of North America ("HANA"), only 59% of those surveyed reported that they were "extremely concerned" with the use of illegal medication and drugs." And in a 2008 survey by the National Thoroughbred Racing Association ("NTRA"), the top three concerns of racing fans were reported as being (1) the health and safety of horses; (2) performance-enhancing medications; and (3) therapeutic overages.

But none of these surveys, nor any others that have been reported in the press, distinguish between illegal medications, or illegal levels of permitted medications, on the one hand, and legal dosages of Lasix on the other. When fans respond to

<sup>27</sup> For visible evidence of epistaxis-related fatalities on the track, see Exhibit 9.

<sup>28</sup> McKinsey & Co., *Consumer perceptions about medication and integrity*, (October 2011). See Exhibit 30.

such surveys, explicitly in the case of the McKinsey Report that referred only to illegal drugs (i.e., not Lasix), and implicitly in the case of other studies that just referred to "drugs" without specifying which ones, they are simply not being asked to take a position on Lasix. Thus, the fan surveys relied on by opponents of Lasix prove -- absolutely nothing.

The McKinsey & Co. survey asked questions about drug use in a number of different ways,<sup>29</sup> yet none of its questions differentiated between Lasix and other medications. Without such differentiation, its conclusions are essentially meaningless in the context of a discussion of Lasix alone.

Racing fans and bettors do take drug use seriously. Dedicated handicappers don't want illegal drug use to interfere with their handicapping. They want the race to be run fairly and transparently. Lasix is not a problem for them; its use is regulated through independent third-party administration of the medication, and the fact that it is being used is available in the racing program and all online handicapping sites. Of far more concern to the bettors is the hidden use of illegal performance enhancers. Serious and consistent enforcement of medication rules already in effect, plus the changes suggested in NYTHA's five-point plan,<sup>30</sup> would allay the concerns of both serious bettors and casual racing fans. Lasix has nothing to do with their perceptions.

### **III. How could a Lasix ban be introduced?**

The Board's Notice of Proposed Rulemaking asked for comment on how a ban on Lasix might be introduced, offering a variety of alternatives.<sup>31</sup> NYTHA believes that any ban on Lasix would be detrimental to horses and to the sport of Thoroughbred racing. Nonetheless, we offer the following comments on the various options offered by the Board.

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<sup>29</sup> E.g., "which of these statements about raceday medication do you strongly agree with;" "How has the thoroughbred industry dealt with performance-enhancing drugs?" "How likely would you be to support federal legislation to end raceday medication?"

<sup>30</sup> See below, at page 20.

<sup>31</sup> See Exhibit 3.

### **A. Two-year-olds only**

The effect of EIPH is cumulative; the more times a horse bleeds, the more likely it is to suffer pulmonary scarring and to bleed again. It has been conclusively proven that the incidence of EIPH increases with age.<sup>32</sup> The reason appears to be that pathologic changes resulting from EIPH start with mild symptoms at the very back of the lung, then gradually become more severe and affect more of the lung with each new episode.<sup>33</sup>

While some foreign jurisdictions claim that their horses "are not bleeders," that claim is based on a very different definition of bleeding than the one used in the South African study. A definition that classifies a horse as a bleeder only when it bleeds through the nose (epistaxis) will always result in a very small number of horses being classified as bleeders. This is archaic and barbaric: waiting for a horse to bleed visibly, in crisis, is irresponsible.

Banning Lasix for two-year-olds only would merely expose those horses to additional bleeding episodes, thus increasing the likelihood, and the severity, of bleeding in future years. There seems to be no logic behind a ban on Lasix only for a horse's two-year-old season; the likely effect would be that fewer horses would race at age two. Since two-year-old racing is a major part of NYRA's program, especially with the two-year-old graded stakes at the Saratoga meet, such a ban would negatively impact both the quality and the revenue-generating ability of NYRA's racing program.

### **B. Beginning with foals of a specified year**

One of the most common proposals for restricting Lasix use involves a rolling ban, starting with foals of a given year (e.g., two-year-olds of 2013). In each successive year, an additional class of foals would be covered by the ban. Such a proposal has two major problems.

First, for races that are designated as "three-year-old and up" or "four-year-old and up," the proposal would eventually result in younger horses running without Lasix against older horses running with Lasix. It is still common to see nine-year-olds running, and running well, at NYRA tracks, so it would be many years

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<sup>32</sup> Stack, *supra* Note 5, at p. 40.

<sup>33</sup>*Id.*

before all races were, in fact, Lasix-free. In the interim, one can be certain that trainers would be reluctant to run their non-Lasix horses against older horses. Again, this would reduce field size and, consequently, revenue to the state, NYRA and horsemen.

Second, the rolling ban only deals with Lasix, and not with the reality of EIPH. The horses will not magically stop bleeding because we stop giving them Lasix; they will bleed more.

### **C. Stakes Races**

A Lasix ban applicable only to stakes races would require trainers to adapt their practices if they merely thought a horse might qualify for stakes company. Currently, if you take a horse off Lasix, you can't run back on Lasix for a minimum of 30 days. Trainers often enter stakes-level horses in allowance races at some point in the season; should they run in the allowance race with or without Lasix? Should they risk letting the horse bleed?

How would horseplayers react to a horse that was running on Lasix one month and off Lasix the next? This certainly would create more guesswork and frustration for a fan base already shrinking due to competition for the gambling dollar.

Because all trainers have the option of using raceday Lasix, it creates a level playing field that will no longer exist if a ban is enacted. As its use and administration is strictly regulated by the NYSRWB, it ensures the welfare of the animal, and the integrity of the race for all competitors and for the betting public. This is important in every race, especially the graded events that are so vital to the breeding industry.

### **D. Reduction in Allowable Dosage Studies**

The default Lasix dosage in New York is 5 cc, although trainers may specify the dosage in a range going up to a maximum of 10 cc. Generally, the ideal dosage for fillies tends to be somewhat lower than for males. In the South African Study, all horses receiving Lasix were given a dosage of 10 cc.

If Lasix is allowed at all, there would seem to be no point in reducing existing dosage levels. Trainers are the best judges of which dosage level works for their horse; too much will, as a result of Lasix's diuretic effect, remove too much water from the horse's system, thus impairing its racing ability. Too little will merely be ineffective in preventing EIPH. This is a case where a little Lasix may be more dangerous than just the right amount.

#### **E. "Grandfathering" in horses currently racing on Lasix**

This proposal is essentially the same as the rolling ban, beginning with a specific foal crop, discussed above. The only difference is that a few unraced two- and three-year-olds would be unable to use Lasix, even though their age peers that have already raced would be allowed to continue on Lasix. For the same reasons discussed above with respect to the rolling ban, this is an impractical idea.

#### **F. Alternatives for proven bleeders**

Since virtually all horses bleed, the meaning of "proven bleeders" needs to be defined before one can discuss alternatives for them. In many jurisdictions that impose mandatory rest periods or that bar horses that "bleed," the term essentially means horses that display epistaxis, or visible bleeding from the nose. If that definition is applied, then anywhere from 1% to 6% (the latter figure reported in Lasix-free Hong Kong) are classified as bleeders. If Lasix is used, then there are virtually no "bleeders" in that sense.<sup>34</sup>

In the absence of a clear classification, then discussing alternatives for "proven bleeders" makes little sense.

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<sup>34</sup> See South African Study, *supra* Note 6.



#### **IV. The costs of a Lasix ban**

This topic is fully discussed above, at pp. 11-13. To summarize, there would be substantial additional costs, both in the health of the horse and in dollars spent by owners and trainers, all of which would be unnecessary if raceday Lasix use is permitted to continue.

Additionally, there would be at least a short- and medium-term reduction in field size. Because betting handle is directly proportional to field size, any reduction in field size reduces betting volume, which in turn reduces the amounts received by Thoroughbred owners in purses, by NYRA for its operations, and by the State in the form of taxes.

The most significant cost is the devaluation of the horse. We already have enough physical issues with Thoroughbreds; they are very fragile. To add another issue, bleeding, to the list when we have a scientifically proven remedy does not make sense and will drive owners away in droves.

#### **V. Lasix and two-year-olds: the prophylactic effect of early Lasix administration**

As stated earlier, the effect of EIPH is cumulative; the more times a horse bleeds, the more likely it is to suffer pulmonary scarring and to bleed again. The incidence of EIPH increases with age. The reason appears to be that pathologic changes resulting from EIPH start with mild symptoms at the very back of the lung, then gradually become more severe and affect more of the lung with each new episode.

The faster a horse runs, relative to its natural ability, the more likely it is to suffer the effects of EIPH. Thus, introducing Lasix from the beginning of a horse's career is the most effective way to minimize the incidence and severity of EIPH over the horse's career.

#### **VI. Racing fans' perceptions of Lasix and other medication use**

This topic is also fully discussed above, at pp. 13-14. Many fans are, quite rightly, concerned with illegal drug use in racing. But no study has shown that fans or bettors are concerned with Lasix per se. What we can be sure of, however, is that fans will react negatively to the sight of a horse lying on the

track bleeding to death. And that's a sight that can be easily avoided by allowing the continued use of raceday Lasix.

## **VII. Likely trainer reaction to a Lasix ban**

Most trainers play by the rules. As the RCI report on medication violations<sup>35</sup> indicates, the overwhelming majority of horses that are tested are clean. As long as the rules are clear and precise, the Board can expect that almost all trainers will try to comply with them.

### **A. Medication alternatives**

In most jurisdictions where Lasix is not permitted on raceday, trainers may still use the medication in between races. Where Lasix is not permitted on raceday, trainers still use a variety of other medications. To date, none of these alternative medications have proven nearly as effective at reasonable cost as Lasix. If a better alternative were available, one can be sure that trainers would be delighted to adopt it.

Specifically, the most likely alternatives would be the various "adjunct" medications that are already prohibited in New York, such as tranexamic acid, or the already illegal "Kentucky Red" (Carbazochrome) that was widely used before Lasix was permitted (and is still used in Dubai, among other jurisdictions).<sup>36</sup>

A ban on raceday Lasix would undoubtedly trigger a rush to find and use substances that have some effect of EIPH, but that are not yet the subject of equine toxicology testing. Such medications would almost certainly be less effective than Lasix while at the same time imposing additional burdens on the testing labs to develop new test protocols, thus diverting funds and resources that could be better used to improve the testing of substances that do have performance-enhancing effects, such as gene therapy and synthetic EPO.

### **B. Non-medication alternatives; withholding water and nutrition**

Prior to the legalization of Lasix, many trainers tried to reduce the incidence of EIPH by withholding water, and sometimes food, from horses scheduled to race

<sup>35</sup> See Exhibit 21.

<sup>36</sup> Stack, *supra* Note 5, at p. 59.

in the next 24 to 48 hours. Apart from the obvious cruelty of such an approach, withholding food and water is simply less effective than Lasix and usually results in a horse's being less able to perform up to the limits of its natural ability.

Another possible approach is the use of external nasal strips to improve breathing. Scientific evidence of the impact of such treatment on EIPH is lacking, and the strips are, at the moment, prohibited in New York. A ban on Lasix would undoubtedly increase pressure for the use of nasal strips in racing.

### **C. Ease of detection for Lasix alternatives**

As noted earlier, the sensitivity of modern equine toxicology testing is extremely high. Known medications, such as the "adjunct" medications, are already tested for. The testing problem that would result from a Lasix ban concerns the unknown medications -- new formulations for which it would be necessary to create new tests. Where an existing medication -- Lasix -- is safely administered by track or state veterinarians and can be easily monitored, it seems counterproductive to invite a new "arms race" that will require more spending and more staff to police.

## **VIII. Beyond Lasix: recommendations on overall medication policy**

### **A. NYTHA's position on recommended changes**

While NYTHA strongly believes that raceday Lasix use should continue to be permitted, we do urge the Board to take additional steps to further solidify New York's position as the most drug-free jurisdiction in the US. As outlined in our letter of April 13<sup>th</sup> to NYSRWB Chairman John Sabini,<sup>37</sup> we advocate three additional rules, in addition to continuing the current ban on "adjunct" raceday medication and continuing the current NYRA policy of having third-party administration, by either the racetrack or the State, of raceday Lasix.

The three new rules that we recommend are:

1. Replacing the current withdrawal-time rule for Bute with a 2 mcg threshold testing level;

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<sup>37</sup> See Exhibit 3.

2. Instituting a 15-day withdrawal time for Depo-Medrol (methylprednisolone acetate) and a four-day withdrawal time for all other corticosteroids; and
3. Instituting a seven-day withdrawal time for clenbuterol.

Bute's anti-inflammatory effect can mask the presence of injury that can lead to musculo-skeletal failure and catastrophic, often fatal, breakdowns. Below certain concentrations, however, Bute simply will not be effective in masking pain. The proposed 2 mcg threshold level is well below the level that would materially affect a horse's performance and well within current testing capabilities.

Depo-Medrol is a particularly potent and long-lasting corticosteroid, generally administered by injection as an anti-inflammatory to address musculoskeletal conditions, including the pain and lameness associated with acute localized arthritic conditions and general arthritis. It has also been used to treat equine rheumatoid arthritis, osteoarthritis, periostitis, synovitis, tenosynovitis, tendinitis and bursitis. Other corticosteroids, both topical and injectable, are often used to treat arthritis-type conditions and a wide variety of other conditions.

Because corticosteroids are treatments of existing medical conditions, rather than preventatives like Lasix, NYTHA opposes their use on raceday. Generally, a four-day withdrawal period should be adequate to ensure removal of the medications from a horse's system, although the American Quarter Horse Association and the US Equestrian Federation mandate a seven-day withdrawal period before competing. Because of Depo-Medrol's long-lasting effect, we would suggest a 15-day withdrawal period.

A majority of trainers use clenbuterol, which is not a steroid, but rather a bronchodilator and decongestant, from time to time in training to ensure that their horses have clean airways. Because clenbuterol, like other medications that are banned on raceday, treats an existing condition, we support the ban on its use. We believe, based on the veterinary evidence and discussions with Dr. George Maylin, that a seven-day withdrawal period would be adequate to ensure that clenbuterol would have no material effect on raceday.

As these suggestions show, NYTHA fully supports rational, fact-based efforts to limit medication use on the racetrack and to assure a level playing field. What we do not support is making medication decisions based on feelings or intuition that fly in the face of the scientific evidence.

## **B. Owner and breeder responsibility for violations**

Owner responsibility for drug violations has been suggested at various times as a means of guaranteeing that owners will not patronize trainers who misuse medications; if an owner suffers sanctions, so the theory goes, the owner will be more likely to police the trainer.

We disagree. The owner of a horse that tests positive for illegal medications already suffers the serious consequence of losing the purse money for the race. In most cases, that means the owner will have to dig into his or her pocket, since the positive test report will come well after the purse money has been made available by the horsemen's bookkeeper. To add additional sanctions on top of losing the purse, such as a suspension of the owner or of the horse, is unlikely to result in any greater vigilance on the part of owners. If owners were in a position to fully police medication use, they would have to be in their horses' barns as much as the trainers. That is simply unrealistic.

These comments regarding owners apply with even greater force with respect to breeders, who are far removed from involvement in the racing careers of horses that they have bred.

NYTHA does, however, support the concept of having breeders and owners contribute to the safe, healthy retirement of race horses, perhaps by means of mandatory payments for foal registration by breeders and payments by each new owner when a horse changes hands. Such a system would go a long way to address the very real crisis of thoroughbred retirement.

## **C. Mandatory recovery periods**

The horse is the innocent party in any illegal medication incident. While it is completely appropriate to penalize a trainer for a medication positive, penalizing the horse – and the owner – by imposing a mandatory recovery period on the horse in all cases of medication violations seems unnecessary.

Track veterinarians already have the authority to put horses on the "vet list" when they see evidence of a physical issue with a horse, and to require that the horse breeze in the presence of the vet before being entered again. That solution

is the appropriate one, and is more attuned to the specific needs of each horse. While some jurisdictions, e.g., Hong Kong, impose mandatory recovery periods for epistaxis, in our view the better solution is to leave the decision as to whether a horse is fit for racing in the hands of the track veterinarians.

#### **D. Use of painkillers during training**

Very few jurisdictions bar the use of painkillers during training. The difficulty in imposing a blanket ban is that it is entirely appropriate to treat various injuries with painkillers while the horse remains in the trainer's barn at the racetrack. As long as the painkillers are not used to mask injury while the horse is being asked for maximum exertion, there is no reason to deny the horse the pain relief offered by medications such as Bute, banamine and certain corticosteroids. Provided, of course, that in all cases, the medications are used far enough before raceday so that no significant amounts remain in the horse's system at post time.

#### **Conclusion**

For all the reasons stated above, NYTHA strongly supports the continuation of the current Lasix rules, including mandatory administration of raceday Lasix by NYRA or State veterinarians at least four hours prior to racing and in dosages within prescribed limits. To change the rules and bar Lasix would be to inflict unnecessary harm on the Thoroughbreds that we care for and to impose unnecessary costs on owners, trainers, NYRA and the State itself.

Respectfully submitted,

Richard A. Violette, Jr., President  
New York Thoroughbred Horsemen's Association



The Jockey Club

May 30, 2019

Robert Williams  
Acting Executive Director  
New York Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, NY 12301-7500

Re: Furosemide use regulation

Dear Mr. Williams:

I am writing in response to your letter of May 16, 2019 to James Edwards, The Jockey Club steward at New York Racing Association tracks.

The Jockey Club appreciates the opportunity to offer its input concerning the regulation of furosemide (Lasix) in Thoroughbred racing. The Jockey Club has a longstanding position that horses should only be allowed to compete when free from the influence of medications, Lasix included.

Regarding the three proposed amendments identified in your letter, we offer the following comments:

1. We support enabling racetracks to establish race conditions restricting the use of Lasix. In the event that such an authorization is contemplated by the Commission, The Jockey Club would welcome the opportunity to aid in the development of final rules and procedures for allowing horses to move on and off the Lasix list without penalty.
2. Consistent with The Jockey Club's stated position in the second paragraph above, we support the elimination of Lasix in all two-year-old races and in all stakes races (not just graded stakes). In the event that the Commission considers implementing a Lasix prohibition for stakes races, The Jockey Club would welcome the opportunity to aid in the development of rules and procedures for managing circumstances when horses participate in both stakes and non-stakes races.
3. While The Jockey Club supports the immediate elimination of the use of Lasix in all races, the stated reduction in the permissible dosage of Lasix is an acceptable initial step towards that end. We note, however, that a recent coalition of racetracks announced support for a limit of 5cc per dose, and not 2.5cc.

Thank you.

Sincerely,

James L. Gagliano  
President & COO

**Buckley, Kristen (GAMING)**

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**From:** McLaughlin Racing [REDACTED]  
**Sent:** Saturday, May 25, 2019 10:14 AM  
**To:** lot.sm.NewYorkLotteryRules  
**Cc:** McLaughlin Racing  
**Subject:** My opinion on Lasix - Kiaran McLaughlin

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or execute macros.*

Dear Mr. Williams,

I personally feel that the majority of horsemen want to be able to use lasix for all their horses. Studies have shown that approximately 80 percent of all horses bleed.

I have no problem with non-lasix races being offered.

I also have no problem with next year's two year olds racing lasix free and on thereafter but it's going to be hard to implement the no lasix rule for the same group when they turn three because of races that are for "three year olds and up." As far as using no lasix in all graded stakes races, you would have to start with the two year olds and go along as they get older.

It's a difficult situation.

Best Regards,  
Kiaran McLaughlin  
Owner/President  
Kiaran McLaughlin Racing Stable, Inc.





## **STABLES**

Mr. Robert Williams  
Acting Executive Director  
Gaming Commission  
One Broadway Center  
PO Box 7500  
Schenectady, NY 12301-7500

Dear Ms. Kristen Buckley:

I am in receipt of your letter of May 16, 2019 asking for comments regarding rule amendments about the use of race day Lasix (furosemide) in thoroughbred race horses. My comments are presented below.

Lasix is a loop diuretic which promotes the formation of urine by inhibiting reabsorption of electrolytes by the nephron. Simply put, this drug effectively enhances the elimination of water, sodium and potassium by the kidney. It has little or no other pharmacologic action. It is not a CNS stimulant. It does not confer local anesthetic activity on skeletal joints. It has no anabolic properties. It is a diuretic, pure and simple. As such, and given as a single iv dose, promotes urination and slightly decreases circulating blood volume. This is the reason it has beneficial effects in reducing microcapillary hemorrhage in race horses. By slightly decreasing circulating blood volume, pulmonary artery pressure is reduced in the horse when racing. This leads to a reduction in pulmonary capillary rupture and hemorrhage permitting the horse to run as he or she is physiologically capable.

Non-Lasix Races. We do not oppose offering non-Lasix races without penalty for those horses on the Lasix list.

Use in Two-Year Old Horses. We oppose the banning of Lasix use in two-year old horses as there is no difference in pulmonary function between a two-year old and an older horse. Why do we have to race a horse until it bleeds to then realize that they should have received Lasix? Either they merit the use of Lasix prophylactically or

not. We favor prophylactic use thereby preventing or reducing the risk of race induced pulmonary hemorrhage.

Reduction in Race Day Lasix Dosage. The use of a suboptimal dose of Lasix can be no better than no Lasix at all. Why impose this regulation when the benefits of it are de minimus? Lasix use in race horses is episodic being given on race days only. The toxicity of the drug given this way is extremely limited. In humans, this drug is given chronically and there is extensive experience available to indicate how Lasix side effects can be treated. We understand that it is not a trivial drug when given chronically, but when given episodically not so. There have been no indications in our 20+ years of thoroughbred racing experience to demonstrate any adversity when a full dose of the drug is given on race days only. In fact, it is beneficial.

We understand that animal rights activists believe that the use of Lasix, like other performance enhancing drugs, should be discouraged or prohibited. This anti-Lasix hysteria has to be ignored if the welfare of the horse is to be of primary importance. Short of banning thoroughbred racing entirely, such decisions should be made on the basis of facts, not emotionally-driven suspicion.

Sincerely

Robert A. Vukovich  
WellSpring Stables LLC

## **Buckley, Kristen (GAMING)**

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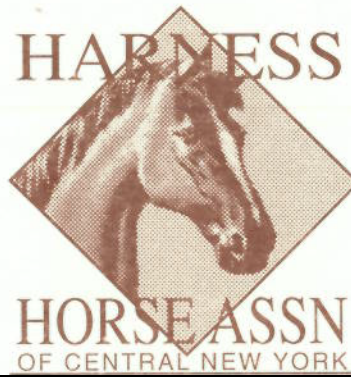
**From:** JULIE MILLER [REDACTED]  
**Sent:** Sunday, June 02, 2019 7:09 AM  
**To:** lot.sm.NewYorkLotteryRules  
**Subject:** lasix

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Kristen Buckley,

I appreciate the Commission wanting feedback concerning Lasix in Standardbreds use and regulation. I agree with prohibiting Lasix in 2 year olds. A trainer and their primary veterinarian should concur a 2 year old would need rest from racing and training. I am a proponent of Lasix in aged horses. Lasix is beneficial to the health of the horse racing. Through scientific findings, it has been proven Lasix is a therapeutic treatment. The State track veterinarian and/or the trainer's primary veterinarian recommends Lasix and prescribes the amount and usage of Lasix. Lasix closely monitored by a veterinarian is a benefit to horses racing.

Regards,  
Julie Miller



June 3, 2019

Kristen Buckley  
New York Gaming Commission  
One Broadway Center  
PO Box 7500  
Schenectady, NY 12301

Dear Ms. Buckley,

The Harness Horse Association of Central New York does support the use of race-day Furosemide (Lasix) and the current dosages.

According to the American College of Veterinary Internal Medicine, the use of Lasix decreases the severity and incidence of exercise induced pulmonary hemorrhage (EIPH).

Dr Thomas Tobin started researching "Lasix" in 1975 and has concluded that it does not mask performance enhancing drugs.

We do not believe that the proposed amendment by a Thoroughbred racetrack coalition should pertain to Standardbred racehorses. The New York Gaming Commission rules for use of Lasix is appropriate for our sport.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Papa".

Richard Papa, President



**From:** William Wilmot [REDACTED]  
**Sent:** Wednesday, June 05, 2019 6:10 PM  
**To:** lot.sm.NewYorkLotteryRules <GAMINGrules@gaming.ny.gov>  
**Cc:** Williams, Robert (GAMING) [REDACTED]  
**Subject:** Furosemide Use Regulation

*CAUTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unknown email addresses.*

Kristen Buckley & Robert Williams  
NYS Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, NY 12301-7500

Dear Kristen, Robert & Gaming Commission:

I am responding to your letter of May 16, 2019 requesting information/suggestions/other input concerning the topic of furosemide (Lasix) use regulation. I have been involved in the Thoroughbred industry since the early 70's — starting as a hot walker, then a groom, then a trainer/owner, and later as a breeder, veterinarian and farm owner. I also serve on the NYS Thoroughbred Breeding & Development Fund Corporation (the Fund) and represent the Fund on Cornell's Zweig Committee for Equine Research. In addition I am a Mayoral appointee to the Saratoga Race Course Local Advisory Board which was established as part of the franchise renewal for the "new" NYRA.

Lasix was not allowed to treat EIPH (bleeding/Exercise Induced Pulmonary Hemorrhage) when I first began training horses in New York, the last state to allow the use of Lasix on race day. At first, Lasix was only allowed on horses certified by a veterinarian as "bleeders." Eventually that process eroded and virtually all horses were, and still are, able to "qualify" as bleeders. Most trainers today have never worked without Lasix on race day.

No one knows for sure why some horses bleed when doing strenuous activity, like racing. A recent article in the Thoroughbred Daily News (TDN) by Sid Fernando cited bleeding as affecting some of the founding stallions of the Thoroughbred breed — hundreds of years ago. Some people believe there may be a genetic component to EIPH. If so, we could be unknowingly selecting for bleeders by allowing the race day use of Lasix...

In my opinion, race day Lasix should not be allowed in Graded Stakes since these races have such a big impact on our gene pool. Germany does not allow horses who have raced on Lasix to stand at stud.

Empirical data strongly suggests that race day Lasix helps lower the incidence, and probably severity, of bleeding. Andy Beyer, the noted racing journalist and handicapper, was among the first to note that "first time" Lasix "moved horses up." Most people would agree that this characteristic of Lasix would put it into the category of a Performance Enhancing Medication (PEM). (Lance Armstrong quenched most folks' thirst for this sort of substance.)

The common belief is that Lasix, a powerful diuretic, causes horses to drop many pounds of water weight just before competing. Weight carried is the great equalizer in horse racing. An old saying in racing is, "It's not the weight you carry, it's the weight you give away that matters." A horse with Lasix is carrying 20+ pounds less than an untreated horse.

Lasix is also thought to decrease blood pressure and so put less stress on the lung's capillary network, thereby decreasing the tendency for capillaries to rupture = bleeding from the lungs.

So, Lasix is both performance enhancing and protective of the lungs.

The thing I find counter-intuitive to the use of Lasix just before strenuous exercise is that it makes a horse lose important electrolytes via the huge urination it causes. Along with that, the horse has the largest spleen (which stores many red blood cells) of any land mammal. Upon strenuous exercise, the spleen contracts and sends those red cells into the peripheral circulation (to enhance Oxygen distribution) which dramatically elevates the packed cell volume (PCV). The blood then gets so "thick" with red blood cells, that it is almost like sludge. Lasix gets rid of liters of the "liquid" part of the blood, so the "sludge" gets even thicker. Certainly that would seem to not be a good thing for the "fragile" capillaries.

Also, electrolytes — like Calcium — which are lost through Lasix induced urination are an integral part of dynamic bone metabolism. We are so concerned with catastrophic fractures in the limbs of race horses that it would seem prudent to limit sudden electrolyte loss just before competition in case there was any as yet undiscovered impact on bone health. Research in this area would seem to be indicated.

We need additional research to be done to find the cause(s) of bleeding, as well as better treatment options for bleeding which would not be given on race day.

The racing public is largely spared the sight of horses bleeding profusely from the nostrils as they "finish" a race because of race day Lasix. In this time of rising public awareness of animal welfare, profuse bleeding will be another problem to deal with if Lasix is stopped.

Also, the old custom of "drawing" horses — withholding water and often feed for hours before racing — will return as another potential animal welfare issue if race day Lasix is discontinued.

Lasix seems to be good for the race horse, but bad for horse racing as society grows ever less tolerant of "drugs" in competition, especially in creatures who have no say in the matter.

Those who say, "Racing horses without Lasix is inhumane" are on slippery slope, since it then becomes easy for some to say, "Racing horses is inhumane."

Since most of the rest of the world does not allow any race day medication, including Lasix, I feel it is time for the USA — and certainly New York — to follow suit.

However, we must strive to avoid unintended consequences in doing so. People hate change. So, I think the South American "Lasix withdrawal model" as detailed by Chelsea Riley in a recent TDN article which includes excellent quotes from Americans John Fulton and Steve Jackson [sent to Robert under separate cover] is a great blue print for gradual withdrawal from race day Lasix use. We don't want to put trainers and owners out of business, so we should phase in a Lasix ban, such as is suggested in your letter.

Start with two-year-olds and Graded Stakes races.

In this same article Steve Jackson details how improving the air quality at Japanese racing centers has apparently considerably lowered the incidence of bleeding. He calls Lasix a "crutch."

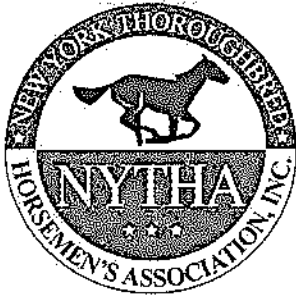
Improving air quality for horses at NY tracks should be looked at as part of this Lasix phase out initiative.

Carding non-Lasix races seems to have merit, as does giving weight allowances to horses racing "not on Lasix."

As far as reducing the allowable limit of Lasix to 2.50 cc, I am not sure. It seems reasonable as a "phasing out tool," but I do not have enough first hand experience to say yes or no.

New York's leadership in equine racing safety is the best in the USA. Let's keep moving forward to keep all the participants safe and the public engaged in our sport.

Sincerely,  
William B. Wilmot, D.V.M.



June 6, 2019

Mr. Robert Williams  
Acting Executive Director  
New York State Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, New York 12301-7500

Dear Mr. Williams,

The New York Thoroughbred Horsemen's Association (NYTHA) and the New York Thoroughbred Breeders (NYTB) have been leaders in the Thoroughbred community advocating for the safety of our equine athletes. We represent the stakeholders who have bred, purchased and care daily for these animals – we are their stewards.

As such, we do not believe that the Gaming Commission should significantly alter the current regulatory structure regarding the use of Furosemide.

The Gaming Commission has informed NYTHA that the New York Racing Association (NYRA) has the ability to offer a limited number of races that prohibit Furosemide use. Subsequently, NYRA, along with a number of other racetrack operators, has announced its intention to begin such restricted races in 2020. NYTHA and NYTB both believe that there are two compelling reasons why the Gaming Commission should take a watchful waiting approach to regulating this endeavor:

- 1) Furosemide has been in widespread use for over 30 years. Its withdrawal, even the limited one envisioned, will have unknown effects on the population of racing Thoroughbreds. Before any permanent rules are decided, we should use this as an opportunity to study the issues surrounding its use. Simply put, we will have much better data in 2024 than we have today.
- 2) While NYRA may intend to follow through with the stated initiative, it remains to be seen if other track operators will have the wherewithal to stick to the plan or the ability to navigate each state's regulatory environment. Failure on the part of other racetrack operators could leave NYRA isolated as the only operator offering restricted races. NYRA should have the ability to change their rules quickly in response to an evolving business environment.



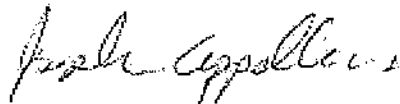
In particular, we would object to a lowering of the dosage of Furosemide without further study. Dosing is the result of scientific practice and should be done at the direction of accredited veterinary review.

To lessen any potential burden on the Thoroughbreds we suggest three things:

- 1) The Gaming Commission should allow for one exception to current regulation. If a horse goes off Lasix to run in a stakes race where Lasix is prohibited, it should not affect its qualification to receive Lasix in races where its use is permitted.
- 2) Significant investment should be made in researching alternate treatments so that our horsemen have the correct tools to properly prepare our Thoroughbreds for the races. As the last jurisdiction in the country to accept its use, Furosemide became permissible in New York 24 years ago. Consequently, many of our trainers have never worked in an environment where its use is restricted. How are we assisting our trainers in gaining the necessary knowledge by 2020?
- 3) A properly designed academic research program should be designed around this initiative. This experiment will be large enough that there will be significant data, collected in a real-world setting, so its effects can be properly studied and enable the industry to make better long-term determinations.

Thank you for the opportunity to comment on the rules consideration. As always, NYTHA and NYTB stand ready to assist in the promotion and protection of our Thoroughbreds, and in any endeavor to provide our horsemen with the information needed to navigate future changes in the New York racing landscape.

Sincerely,



Joseph Appelbaum  
President  
New York Thoroughbred Horsemen's Association, Inc.



Thomas J. Gallo, III  
President  
New York Thoroughbred Breeders, Inc.



VIA EMAIL: [gamingrules@gaming.ny.gov](mailto:gamingrules@gaming.ny.gov)

June 6, 2019

Ms. Kristen Buckley  
New York State Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, New York 12301-7500

Re: Consideration of Rules' Amendment Related to Lasix® (furosemide)

Dear Ms. Buckley:

In accordance with the correspondence of Acting Executive Director Robert Williams dated May 16, 2019 soliciting public comment as to the Commission's consideration of rules' changes to the race day Lasix® (furosemide) program, please accept the following comments as the position of the Standardbred Owners Association of New York (SOA):

1. The SOA opposes any proposal that would authorize racetracks to offer non-Lasix races, even with the proviso that horses on the Lasix List for such races would incur no penalty.

First, such a proposal would serve to confuse the betting public; our all-important constituency, who would now be required to handicap against the backdrop of changes in circumstances brought about by shifts from, and then to Lasix; and then perhaps from the reverse.

More importantly, the SOA, like the Commission, its predecessor Racing Board, and its decades-long chief chemist, is of the opinion that Lasix is a therapeutic medication. Thus, there is no legitimate reason why its use should be curtailed. Based upon a plethora of scientific information, the United States Trotting Association continues to support the continued use of race day Lasix.

In this regard, the attempted connection of dots between catastrophic breakdowns and the use of Lasix is disingenuous at best; at worst, the attempt to scapegoat the medication for rashes of breakdowns at certain Thoroughbred racetracks is damnable. Consider that if Lasix was the "problem," double-digit breakdowns within short time windows should be simultaneously occurring at all venues within the large number of jurisdictions that maintain a race day Lasix protocol, and not just the premier California oval, the proprietor of which was overly eager to demonize therapeutic medication in an attempt to draw attention away from other probable causes for the anomalously-presented catastrophic incidents.

2. On the issue of Lasix prohibitions in two-year-old horses, the SOA does not believe that two year olds should be treated with Lasix. If a two-year-old horse exhibits bleeding on endoscopic examination, it is highly likely that the horse has not matured sufficiently to withstand the pressure exerted in race competition and should therefore be allowed more time to develop.

Hopefully, the entire harness industry will someday structure stakes to be offered no earlier than age three, rather than permit the chasing of money with immature horses at the expense of ruining these horses at the very inception of their careers.

As far as prohibiting race day Lasix in all Thoroughbred Graded Stakes races, while the SOA does not represent Thoroughbred horsemen, depriving horses of the use of this therapeutic medication so important in the preservation of lung function and extending the useful life of racehorses, borders on inhumane treatment. The wellbeing of the horse is best served by the continued use of Lasix on race day when stress exerted is the most severe. In countries that ban race day administration of Lasix, training on it up until race day is permitted, and it is acknowledged that it is because of the therapeutic benefit in counteracting the effects of the lesser stress exerted in training as opposed to that found in racing.

3. The SOA vehemently disagrees with reducing the race day dose of Lasix to 2.50 ccs. Current regulations allow for as much as 10ccs to be administered on race day. If that is determined to be necessary, then why should that option be taken out of the veterinarian's armamentarium?

In sum, the Commission should not trap itself in the delusion that what "looks good" is good necessarily for the horse. Instead of kowtowing to those extremist fringe groups that will not be satisfied until horses are permitted to roam free, marry and be afforded the right to vote, the industry needs to educate an otherwise disinterested public that no one cares for horses better than racehorse industry participants, atypical incidents and newsworthy spikes notwithstanding. Decades ago, New York was one of the last jurisdictions to recognize both the need for and value of race day Lasix. It should be the last jurisdiction that considers any dramatic amendments to a consistently working, well thought out regulatory protocol.

The SOA stands ready to expound on its opinions and answer any questions that the Commission may have. Thank you for the opportunity to address these important topics.

Very truly yours,

Joseph A. Faraldo



**JOSEPH J. LAMBERT**  
Executive Vice President, Chief Administrative Officer;  
Corporate Secretary & General Counsel

**The New York Racing Association**  
[REDACTED]

[www.nyra.com](http://www.nyra.com)  
[REDACTED]

Mr. Robert Williams  
Acting Executive Director  
New York Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, New York  
12301-7500

June 7, 2019

Dear Mr. Williams,

In response to your letter of May 16, 2019 regarding the potential amendment of rules that govern the use of Furosemide (Lasix) in horses on race day at New York Racing Association tracks NYRA responds accordingly:

- 1) NYRA understands that under the current rules NYRA may offer non-Lasix races. NYRA supports this rule. The current rule provides NYRA the flexibility to participate in the recently formed coalition of tracks but at the same time allows for the use of Lasix if the coalition partners in other states are unable to fulfill their commitments.
- 2) NYRA requests and supports a rule change that would allow horses to compete in a stake race (without Lasix) and when/if a horse drops back down to a non-stakes race, the horse would be allowed to go back onto Lasix without penalty unless a horse visibly bleeds from the nostrils in the stake race. A visible bleed would place the horse on the vet's list and penalty time would be served. This rule change would not be in effect for two-year-old racing as under the coalition goals no two-year-old races will be run with the use of Lasix.
- 3) NYRA along with our coalition partners support, beginning in January 2020, that no two-year-old races will be run with the use of Lasix at NYRA tracks. Also, that starting in 2021 no stakes races should be run with the use of Lasix at NYRA tracks.
- 4) NYRA is not asking for any reduction or limitation of the dosage size of Lasix for all races outside of two-year-old races and all stakes races. NYRA supports the current rule



of 3cc to 10cc usage. To our knowledge the coalition of racetracks is also not asking for a reduction in dosage size of Lasix.

As the largest thoroughbred industry representatives in New York State we appreciate the opportunity to provide input with regards to the topic of Lasix. We support the coalition of racetracks stance and we also appreciate the guidance provided by the New York State Gaming Commission. As this process moves forward we urge a rule change as noted in paragraph (2). In addition, we would like to work with the New York State Equine Medical Director and the Gaming Commission staff to set up educational resources for trainers to assure horses that run without Lasix are brought up to each race in a safe and humane fashion.

Regards,

A handwritten signature in cursive script that reads "J. Lambert". The signature is written in black ink and is positioned above the printed name.

Joseph J. Lambert

*EVP, CAO and General Counsel*

Mrs. Kristen Buckley,

June 15, 2019

We were contacted for an opinion regarding possible changes to the Furosemide (Lasix) rules in the state of New York. The topic was discussed this week at the most recent board meeting of the Southern Tier Harness Horsemen Association here at Tioga Downs. The take-away message seems to be clear ... no one wants to see Lasix eliminated completely from our allowable medication protocols.

There seemed to be a consensus that eliminating Lasix in the racing 2yo population could be considered. Based on the rules in New York, a horse must first exhibit bleeding to be placed on Lasix. Each and every time a horse bleeds, there is lung scarring that occurs, there is an underlying element of systemic inflammation and there is a possibility of more serious consequences such as anemia, infection and permanent changes to the lung field. In order to place a 2yo on Lasix, it must first bleed, then be diagnosed and then be treated. Most often in these young horses there is an underlying systemic/infectious cause for the bleeding (unlike older horses that go faster speeds, have higher pulmonary pressures and have more wear and tear on their lungs that predisposes them to EIPH) which should be addressed first before placing them on Lasix. A 2yo simply does not have the predisposing factors mentioned above that warrant the use of Lasix. Instead, they should be fully evaluated for systemic disease, infection and overall fitness and raceability. And if required, they should be given time to rest, recover and heal rather than be placed on Lasix.

As far as offering Lasix free races, there was overall agreement that we do not support this proposal. As mentioned above, a horse is placed on Lasix only following an episode of EIPH. It would be absurd to remove this preventative medication from a horse that is known to bleed and obviously requires it. It opens the door for horses to potentially become injured (EIPH and lung scarring is a serious and unrecoverable injury. Ask anyone with COPD or emphysema), potentially become sick and potentially compromise their nervous, immune and musculoskeletal systems as well. Eliminating Lasix from a horse that has proven it requires the medication opens the door to seriously harming the wellbeing and welfare of the animal. It simply does not make sense.

Another suggestion was lowering the permissible dose of Lasix to 2.5cc. We were unsure if this meant making the lowest permissible dose 2.5cc (currently stands at 3cc) or if it meant the only dose available would be 2.5cc. Since we did not understand the proposed amendment, we could not discuss.

The take away message we would like to share is this:

Lasix is a PREVENTATIVE medication. It is NOT performance enhancing. This means it does not make slow horses go fast and it does not make weak horses strong. It does not alter the natural ability of the horse and its use does not result in catastrophic breakdowns or systemic ailments.

Instead, it prevents EIPH in those horses that are prone to do so. It is similar to the grease on a cooking pan. The grease is used to prevent food from sticking when cooking. If the heat applied during the cooking period is too high, the food will burn. If the heat is too low, the food will remain raw. But it is not the grease's fault, it is the heat. The grease simply prevents the food from sticking to the pan during the process. Similarly, Lasix prevents the horse from bleeding. The track conditions, the equipment used, the conformation of the horse and the fitness achieved all play a role in how far, how fast and how successful the horse is. Lasix is only responsible for preventing EIPH in a horse that is prone to bleeding, so why would we ever eliminate it?

There are a lot of factors involving 1000lb horses moving in groups at high speed that simply can not be controlled. Why on Earth would we want to eliminate one of the factors that we can control? Especially since this preventative medication is beneficial to the overall health and welfare of the horse. In short, we simply can not support or endorse the movement to eliminate race day Lasix from our allowable medication protocol.

Respectfully,

The STHHA Board of Directors and 250+ active members.

Any questions or concerns can be directed toward:  
Michelle MacDougall, STHHA Director

