

Reuss, Vicki A. (CDC/NIOSH/EID)

From: Chris Scherf [cscherf@tra-online.com]
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Please find attached the submission of the Thoroughbred Racing Associations of North America, Inc., for docket #NIOSH-104.

Thank you.

Chris Scherf
Phone: 410-392-9200, ext. 220
Cell: 302-981-6145
Fax: 410-398-1366
Email: cscherf@tra-online.com

**To: National Institute of Occupational Safety and Health
NIOSH – Docket 104**

Testimony Submitted June 22, 2007 by:
Christopher N. Scherf
Executive Vice President of the Thoroughbred Racing Associations of North
America, Inc.

My name is Christopher Scherf and I am the executive vice president of the Thoroughbred Racing Associations of North America, Inc., a trade association of 41 racetracks in the United States and Canada. Races at the member tracks of the TRA generate approximately 75 percent of the United States' annual pari-mutuel wagering.

The Thoroughbred racing industry often is viewed as a monolithic bastion known as the Sport of Kings. Nothing could be farther from the truth as a huge dichotomy exists among the many participants in this industry. There are racetracks offering \$600,000 daily in purse money and other well-known tracks where the daily average for a 10-race program is less than \$70,000. The national average for daily purses would be approximately \$200,000. The owners, trainers, and jockeys in the richer jurisdictions earn significantly more money than those racing at tracks at the lower end of the spectrum. This de facto major league/minor league system makes it impossible to make sweeping generalizations about the condition and economics of racing in the United States.

Reviewing reports of the May 22 hearing in Crystal City, Va., I have concluded much of the testimony was either anecdotal in nature or lacked scientifically sound methodology in determining cause and effect of various jockey health and safety issues.

A number of important and relevant issues were raised during the hearing and, on behalf of the TRA membership, I would like to make the following observations:

Lead Contamination in the Jockeys' Room

The allegation of lead contamination in racetrack jockeys' quarters was brought to my attention by the attorney for the Jockeys' Guild early this year. Included in his letter were the results of surreptitious testing in a couple dozen of racetracks at the direction of the former head of the Jockeys' Guild, who is under investigation by the FBI for a variety of fraud allegations from members of the Guild.

To date, I cannot vouch for the accuracy of these lab results as the tests were conducted under unknown methodology and custody procedures. It is my

understanding the samples were not collected by professional or experienced testing personnel and the methodology is unexplained to date, as is the custody chain for these samples. During the May 22 meeting, Magna Entertainment Corporation executive Andrew Staniusz testified independent testing by reputable experts in the field indicated two of the Guild's tests indicated a problem where none existed.

While not minimizing the inherent hazard of lead exposure, it is clear any problem in racetrack jockeys' quarters has been grossly overstated.

Furthermore, in response to any possible problem, a majority of TRA-member racing associations already had or will switch to covered- or non-lead weights.

In a related matter regarding the Jockeys' Quarters, photographs presented by the May 22 meeting were in no way indicative of the state and condition of most jockeys' quarters. These facilities are cleaned thoroughly on a daily basis at TRA member racetracks. In addition to adequate bathroom and showering facilities, most TRA tracks provide other amenities for jockeys such as a snack bar and kitchen, a recreation room with games, sleeping and resting quarters, and exercise equipment.

Jockeys' Weight Issues

In order to comply with weight restrictions, many jockeys have resorted to relatively severe measures for weight loss. During the May 22 meeting, a reasonable (but mostly anecdotal) case was made that in extreme instances, jockeys may employ weight reduction tactics to meet "unreasonably" low imposts, which may cause future health problems.

The weight restrictions for jockeys are the most vexing health matter confronting the racing industry in recent years, although it probably has been debated for the past 100 years. Historically, lightweight riders probably became the standard for competitive purposes, but there also is a legitimate concern for the welfare of the horse. The accepted wisdom is the more weight the horse carries, the greater the stress on his muscles and limbs, and the more likely the occurrence of injury.

Although there have been modest (3-4 pound) increases in seven major racing jurisdictions in the past seven years, the debate about the scale of weights has not diminished one iota.

Proponents of higher limits can cite the drastic and unhealthy steps taken by some to continue to ride as jockeys.

The contradictory point of view would be:

1. The increased stress larger jockeys would place on horses and the possible impact on traumatic injury during races could create a different and greater health risk for jockeys. We must balance the welfare of the horse and the jockey.
2. There is an enormous economic incentive to becoming a jockey. For persons desiring to make their living by riding racehorses, the financial reward for a jockey versus a morning exercise rider is enormous. Whereas an exercise rider may receive \$20-\$50 for each horse ridden, the average annual earnings for the jockeys who rode at least six horses a week (accounting for 80 percent of all race starters during 2006) was approximately \$140,000 (less agents' fees). Many of the 1,200 other jockeys make their living primarily as exercise riders aspiring to become successful jockeys. Consequently, if there are individuals whose natural weight should be 130 pounds currently reducing to make a 115-pound riding weight to maintain this economic opportunity, it is inevitable 140-pound exercise riders will resort to drastic weight reduction tactics if the weight limit is raised to 125 pounds or so. A different group of people, but the same problem.

These issues have been debated endlessly without resolve because there is inadequate scientific data regarding weight as it affects the well-being of either horse or rider. Recognizing the need to address this need for precise information, the TRA has joined several other industry groups in financially supporting a comprehensive study entitled "Athletic Performance in Jockeys: A Baseline Study of Physiological and Nutritional Factors." As long as there are any weight requirements for jockeys, there always will be weight control issues, so the most effective safeguard to jockeys' health is to develop a rational policy to reduce their health and nutrition risks while maintaining optimum physical condition. The study will help to provide the rationale for the adoption of such a policy.

Race Safety Issues

Equine Medication – Dr. Scot Waterman testified to the significant progress made by the Racing Medication & Testing Consortium (RMTC) to establish a national policy regarding the administration of equine medication. The racing industry has spent millions of dollars each year on comprehensive drug testing programs, but millions more have been spent on the creation and implementation of RMTC to assure the safety of equine and human competitors.

Safety Equipment – All jockeys now are mandated by regulations to wear safety vests after many jockeys opposed their initial introduction. (The vest's weight is not counted as part of the jockey's weight.) Similarly, the support of the jockeys is critical to the adoption of standards for safety helmets. Safety reins have been mandated in one state and other racing jurisdictions are

contemplating similar action. The TRA conducted a national seminar for starters in 2006 to discuss best practices and equipment regarding the start of races and the starting gate, statistically the site of more racing accidents than any other part of the race or track.

Emergency Care – Most TRA member have two ambulances, with one following the horses around the track. They are staffed with EMS personnel to provide trauma and life support treatment. Practices and procedures for racing injuries may vary to some extent from track to track based upon on-site emergency personnel and the proximity of hospital and trauma centers, but an established system to handle accidents is in place at every TRA track. Anecdotal assertions at the May 22 meeting notwithstanding, there are roughly 600-700 injury claims filed annually by jockeys each year and they are treated promptly and professionally at the track and established nearby hospitals.

Racing Surfaces – TRA racetracks devote millions of dollars annually and often round-the-clock man-hours of work to ensure the safest racing surfaces possible. For decades, track superintendents have modified and adapted racing surfaces to provide the safest track possible afforded by engineering and science. Their work entails determining the best type of sand and surface materials to be used in the base and cushion; the percentages of base and cushion mix; depth of cushion; amount of material added to track each year; type of drainage system; and, elevations on the turns.

A relatively recent advancement in the science and technology of racing surfaces has been the development of synthetic racing surfaces (e.g. Polytrack, Cushion Track, Tapeta Footings, Pro-Ride Racing Surfaces).

Since 2005, the following tracks have installed artificial racing surfaces for the promotion of safety to both equines and jockeys: Arlington Park (Arlington Heights, Ill.), Del Mar Thoroughbred Club (Del Mar, Calif.), Hollywood Park (Inglewood, Calif.), Keeneland (Lexington, Ky.), Turfway Park (Henderson, Ky.), and Woodbine (Etobicoke, Ont., Can). In California, all track licensees (except fairs) have been required by the California Horse Racing Board to install synthetic racing surfaces in the near future. Santa Anita announced it will install Cushion track for its main racing surface and Golden Gate Fields opted for Tapeta. Presque Isle Downs, a new racetrack in Erie, Pa., will install Tapeta for its inaugural meeting to begin in September 2007.

Artificial surfaces such as Polytrack are equipped with vertical drainage systems that eliminate treacherous sloppy or muddy track conditions. Interpretation of synthetic data results needs historical context, which is lacking because of synthetic tracks' relatively recent implementation. Despite the positive reviews, there have been reports from tracks in harsher winter climates where the synthetic surfaces have been adversely affected by extreme cold.

The cost of installation ranges from \$6-\$10 million. With more than 50 percent of the racetracks currently earning estimated net revenues of less than \$1 million, prudence dictates they wait for additional experience with these surfaces before making such a major expenditure. Other promising new surfaces in the past have deteriorated as they aged and proved impractical.

Conclusion

Live racing in the United States is shrinking as the result of rising expenditures and declining pari-mutuel revenue, but thousands of owners and hundreds of trainers and jockeys continue to labor in this business because of their love of the horses, the excitement, and the opportunity for great financial reward. When rising insurance costs can shut down a number of fair tracks in Montana, the industry seeks cost effective safety measures to simultaneously protect jockeys and their jobs.

There is no question riding horses is a potentially hazardous activity which can result in injury and future health complications. The inherent risk of participating in any type of equine-related activity is abundantly illustrated by the fact most states (44) have modified the "assumption of risk" concept of traditional common tort law by adopting Equine Activity Liability Acts to set parameters on liability relating to equine events. Those laws are not applicable to horse racing, but pertain to so-called less risky equine events. Nonetheless, the need for such laws amply demonstrates any type of horse activity can result in physical injury.

The racing industry has had undertaken a number of changes and comprehensive studies to ensure our activities are as safe as possible for jockeys and horses.

There are hundreds of thousands of Americans who ride horses either for pleasure or opportunity. In the case of most jockeys, who work as independent contractors hired by owners and trainers, both motivations apply.

Racetracks cannot tell individuals whether they have the maturity, skills, or physiology to become jockeys, but the TRA members recognize their obligation to provide the safest possible racing environment for those riders.

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