



Watching the Wheels

by **Mike Tanner**, USTA Executive Vice President and CEO

No Harm, No Foul

A proven common-sense solution to a regulatory conundrum

Here's a quiz for you.

A trainer enters a horse who competes in a race and then tests positive for a pharmacologically insignificant amount of metformin, a widely prescribed medication for those with diabetes. A commercial airline pilot steers a Boeing 757 on a nonstop route from New York to Los Angeles and is randomly drug-tested immediately thereafter. The results show trace amounts of methamphetamine in the pilot's system.

Who gets penalized, the trainer or the pilot?

If you said the pilot, you're wrong. If you said the trainer, you probably know where I'm going with this.

It's all about contamination positives and no-effect thresholds, which, in a nutshell, can be explained thusly: If a drug is inadvertently, not deliberately, introduced into the bloodstream but has no pharmacological impact or performative effect on the human or equine, there's no penalty. In this day and age, when cutting-edge drug testing capabilities metaphorically can detect a grain of sand in an Olympic-sized swimming pool, that only makes sense. Unfortunately, while the Federal Aviation Administration (FAA) understands this, racing regulators, both at the national and state levels, have been slow to get on the gate.

The FAA only tests for five types of drugs, other than alcohol. These substances were recommended for testing by the National Institute of Drug Abuse (NIDA) and have come to be known as the "NIDA 5." Methamphetamine is permissible in a pilot's bloodstream up to the amount of 500 nanograms per milliliter (ng/mL). Why? Because that amount is pharmacologically irrelevant and almost certainly does not indicate that the pilot is a methamphetamine user, suggesting instead that that exposure was accidental and of a minute, microscopic quantity.

No-effect thresholds, like the one in play here, are lab-

oratory detection levels below which no individual would be punished for innocent and pharmacologically irrelevant concentrations of foreign substances that have no impact on health or performance.

In other words: no harm, no foul.

Ah, but if pilots were held to the standards imposed upon horses and horsepeople, there would be scores of aviators suspended and a national outcry questioning air travel safety in the United States. Industry confidence would be low, and careers and reputations would be needlessly tarnished and even ruined.

Sound far-fetched? It's happening right now in horse racing, most recently and quite visibly on the Thoroughbred side of the game, where the Horseracing Integrity and Safety Authority (HISA) in September suspended trainer Jorge Duarte Jr. for a trace positive for methamphetamine incurred by one of his charges in Delaware. The published evidence overwhelmingly indicates this is nothing more than a contamination positive, but it doesn't seem to matter. Duarte is just the latest honest horseperson caught up in a game governed by a set of medication rules that make it virtually impossible for him to win.

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It's not fair, but it is fixable. Over the summer, the National Horsemen's Benevolent and Protective Association (HBPA) filed a petition for rulemaking under HISA, requesting that the Federal Trade Commission (FTC) create no-effect thresholds. The FTC approved publication of a new oversight rule pertaining to the non-budget aspects of HISA's operations, and, according to its press releases, strives "to protect and educate consumers."

As more than 80% of the substances tested for by the authority are not covered by no-effect thresholds, one hopes that the FTC considers horsepeople to be worthy of protection.

In support of the HBPA's efforts and on behalf of the USTA, I wrote a letter to Lina Khan, chair of the FTC, in early August. In it, I made the following point:

Environmental contamination occurs when trace amounts of substances that have not been administered to a racehorse are detected via the cutting-edge testing equipment and protocols employed by racing regulators. In such instances, the levels identified are so small as to have no pharmacological effect upon the performance or health of the horse and to bely any introduction to the horse by the animal's trainer

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or groom. In an analogous environmental contamination, findings cited in 1997 by the U.S. Ninth Circuit Court of Appeals indicated that approximately 75% of all dollar bills in circulation were tainted by cocaine or another illicit drug. Similarly, random, innocuous contact has resulted in minute levels of contamination for dozens, if not hundreds, of horses, with many of these tests coming back positive for trace amounts of medications prescribed for human use. Despite knowing this, (the Authority) has frequently plowed ahead, issuing draconian, career-altering suspensions and fines to horsemen who have done nothing wrong. Sadly, optics—the need to appear “tough on crime”—has eclipsed both science and common sense in these instances.

Respected longtime Thoroughbred trainer George “Rusty” Arnold, himself a victim of a contamination positive penalty in which he admitted to a violation he did not commit in order to continue his career, explained the impossible task horsepeople have in attempting to prevent accidental contamination:

“Horses are grazing animals. They eat dirt. They love to lick smelly wet spots in stalls. They eat manure. They lick the wall of ship-in stalls. It is unreasonable to think we can control this.”

We anxiously await word about what, if anything, the FTC will decide about no-effect thresholds. Where the agency lands on this matter could have significant ramifications for harness racing down the road, depending on whether HISA survives its constitutional challenges.

That last part, however, is a story for another day.

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The views contained in this column are those of the author alone, and do not necessarily represent the opinions or views of the USTA. To comment on this column, email us at readerforum@ustrotting.com.