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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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July 28, 2008

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Mr. Robert M. Beck, Jr.
Chairman
Kentucky Horse Racing Authority
4063 Ironworks Parkway, Building B
Lexington, KY 40511

Dear Mr. Beck:

The Kentucky Horse Racing Authority (KHRA) recently suspended trainer Richard Dutrow for 15 days on account of a Class B medication violation. Some have disputed the appropriateness of this penalty, given the nature of the violation and Mr. Dutrow's history of past offense. This matter raises serious concerns about the effectiveness of the sport's current regulatory system.

Mr. Dutrow has been found in violation of medication rules and regulations on numerous occasions, and in a variety of racing jurisdictions. In fact, his recent violation for excessive levels of clenbuterol in the 8-year-old gelding, Salute the Count, that finished second in the Grade 3 Ageon Turf Sprint at Churchill Downs on May 2, is not his first violation involving this particular drug. In April of 2004, the New York State Racing and Wagering Board fined Mr. Dutrow \$1,000 and suspended him for one month for illegal levels of clenbuterol in Starship Smokester, a 4-year-old filly that won the 2nd race at Aqueduct Racetrack on January 11, 2004.

Clenbuterol is a bronchial dilator that has both therapeutic and performance-enhancing qualities, as it expands lung capacity to help a horse breathe. The drug also has steroidal properties that can help build lean muscle mass. The Association of Racing Commissioners International (ARCI) delineates clenbuterol as a Class 3 substance, and KHRA gives it a Class B designation based on ARCI's classification. The drug is banned as a race-day medication, and most racing jurisdictions require a significant withdrawal period between the time when the drug is administered and the time of the race. In Kentucky, a horse cannot be administered clenbuterol within 72 hours of a race.

According to news reports, the level of clenbuterol found in Salute the Count was twice the allowable level under Kentucky medication rules.

Under Kentucky Authority Regulations, specifically 810 KAR 1:028, the penalty for a first offense of a Class B violation is “suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the Authority...” A second offense calls for suspension or revocation from one to six months, and a third offense warrants a suspension or revocation from two months to one year. All of these penalties are subject to mitigating penalties, which include fines and forfeiture of purse money. Furthermore, under Section 3, the regulations state, “Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the Authority in assessing penalties.”

While this penalty scheme mirrors the penalty recommendations under the Model Rule of the Racing Medication and Testing Consortium, it is worth noting that the ARCI’s Model Rule recommends a suspension of 60 days to 6 months, loss of purse, and up to \$1,500 fine for a Class 3 violation.

The Subcommittee on Commerce, Trade and Consumer Protection of the Committee on Energy and Commerce, House of Representatives, has primary jurisdiction over commercial practices in sports and gambling, including the Interstate Horseracing Act (IHA). On June 19, the Subcommittee held a hearing entitled “Breeding, Drugs, and Breakdowns: The State of Thoroughbred Horseracing and the Welfare of the Thoroughbred Racehorse.” During that hearing, members of the Subcommittee heard unanimous testimony to the effect that the sport lacks adequate uniform rules and regulations on drugs and medications across all 38 racing jurisdictions. Witnesses testified that the prevalence of performance-enhancing drugs and medications is one of the biggest problems currently facing Thoroughbred horseracing, and many asserted that the current penalty structure is insufficient to deter would-be violators.

To assist the Subcommittee in better understanding these matters, we request your response to the following questions:

- 1) What factors were considered in formulating the penalty imposed on Mr. Dutrow? Did KHRA take into account Mr. Dutrow’s previous violations in other racing jurisdictions as authorized in Section 3 of 810 KAR 1:028, or did the Authority treat this Class B violation as a first time offense in the state of Kentucky?
- 2) What weight was given to the amount of clenbuterol found in the violating horse? According to the New York Times, chief steward John Veitch said that in his four years on the job, he had never seen such levels of the drug in a racehorse.
- 3) Do you believe that the KHRA’s rules and penalty system (as modeled after RMTC’s Model Rule) pose a sufficient deterrence to trainers? Why not adopt the more stringent rules recommended by the ARCI? Would the penalty structures in other sports leagues, such as the National Football League or Major League Baseball, be appropriate for horse racing?

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Please provide your written response by no later than August 1, 2008, to room 2125 of the Rayburn House Office Building, Washington, DC, 20515. Please fax your response to (202) 226-5577, to the attention of Ms. Valerie Baron. Please send an electronic version of your entire response to Ms. Baron at valerie.baron@mail.house.gov.

Thank you for your prompt attention to this matter. If you have any questions regarding this request, please contact Christian Tamotsu Fjeld with the Committee staff at (202) 225-2927.

Sincerely,



Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade,
and Consumer Protection