

Letters

MORE ON 'ZERO'

The Steve Asmussen case (*The Blood-Horse* of July 18, page 2513) is yet another example of the fallacy of "zero tolerance." Zero tolerance is a concept based upon regulators' ignorance of how an analytical chemistry laboratory works.

Detection levels for medications vary at labs based upon the technological sophistication of the equipment and the detection levels as set by the analytical chemist. If detection levels for tests are calibrated to be highly sensitive, detection times are lengthened. If set at moderate levels, detection times are shortened. Indeed, "zero tolerance" is a moving target, with the speed of the target set by the lab administrator.

The great irony in the Asmussen case is that the Texas Racing Commission purports to have adopted Racing Medication and Testing Consortium penalty guidelines. The RMTC penalty guidelines clearly authorize consideration of mitigating circumstances in determining penalty. The RMTC guidelines indicate that mitigating

factors may even result in a finding by a racing commission that no penalty is warranted. Texas cannot adopt the RMTC guidelines and follow a "zero tolerance" philosophy at the same time. They are polar opposites.

By secreting legitimate evidence of quantification of test levels of medication, Texas is withholding potentially exculpatory evidence of contamination. What is really puzzling about Texas' decision to withhold this evidence is the fact the evidence the Texas Racing Commission is hiding has an equal chance of being incriminatory. If the levels represent extremely low trace levels, a reasonable inference can be drawn that there may have been contamination. On the other hand, if the levels are high, this would be evidence of either trainer negligence or worse, an attempt to take an unfair advantage. Knowing which is which can only enhance the credibility of the enforcement process.

As the attorney who successfully represented both Jesse Mendoza and Bob Baffert

in the "morphine cases," I can tell you that "zero tolerance" is a concept lacking scientific standard or legitimate meaning. The chief chemist of Truesdale Laboratories admitted under oath in those cases that he did not take all opiate suspect test samples to confirmation because he "didn't think" they would confirm "at his level of detection" based upon his personal analysis of the initial testing. In further testimony, Truesdale's chemist freely admitted that each of the 13 suspect test samples "more likely than not had morphine in them at some level." So much for "zero tolerance."

By the way, let me correct you on one factual point: Bobby Frankel's two positives were two of the 13 tests, and were part of the morphine "cluster" that affected trainers Mendoza and Baffert in the year 2000. That the positives arose in a "cluster" pattern was itself an indication of contamination as the most likely cause.

The Texas Racing Commission's actions in withholding evidence may violate federal law. Certainly, the commission's action in the Asmussen case is inconsistent with prosecutorial ethics. To paraphrase recent remarks of our President, the Texas Racing Commission has acted stupidly.

Steve Schwartz
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IT'S A MATTER OF TIME

It is surprising to me how surprised some fans were at the success of Churchill Downs' evening racing cards. Seems logical to me that we would make every effort to present our product when the largest possible number of fans are available, either in person or on television.

This is probably not going to be at 1 p.m. on the East Coast. I am assuming the majority of racing fans then are most likely at work. When was the last time, other than Thanksgiving, you saw an NFL game scheduled to kick off at 1 p.m. on a Thursday?

It seems as though if we moved that schedule about three hours back, we would be able to at least pick up a larger viewing (and gambling) group of fans.

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