

## HSUS OPPOSES FLORIDA ACTIONS

In November of 1990, The HSUS filed legal challenges to regulations, issued by Florida's Division of Pari-Mutuel Wagering (DPMW), which allow corticosteroids to be administered to racehorses in spite of a statute expressly forbidding the drugging of horses.

Corticosteroids are powerful drugs that can be used to enhance performance in race horses. They are most commonly used, however, as pain killers. These drugs do not cure injuries but only mask pain, allowing horses to run on pre-existing injuries when they should be convalescing. The result can be physically devastating, since injuries and other conditions of unsoundness are aggravated, sometimes to the point where the horse may shatter a leg during a race.

In 1980 the Florida legislature sought to address these evils by clearly outlawing the racing of an animal with any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-mask ing agent. (A 1982 amendment provides for only two exceptions, furosemide (Lasix) and phenylbutazone (Butazolidin)).

Unknown to the public, in 1983, the DPMW issued an internal memorandum allowing the use of corticosteroids. It was not until the start of the 1990 legislative session that The HSUS learned that the statute was not being enforced.

In June 1990, in an apparent attempt to cure the now-patent illegality of corticosteroid use, the DPMW adopted an emergency rule. The rule was to be in effect for ninety days, during which time the division would establish conditions and



*Horse racing is imbued with a glamour difficult for opponents to strip away when they try to expose drug and other abuses.*

requirements for the administration of corticosteroids. On September 7, 1990, the DPMW adopted a second, similar emergency rule continuing to permit corticosteroid use.

The division's rationale for the rule is that it is being implemented to study existing therapeutic uses of corticosteroids in the horse-racing industry and to determine the quantity and frequency of the administration of such compounds. The statute, however, establishes an objective test for distinguishing a legal from an illegal administration of drugs—turning upon whether a horse tests positive for a proscribed drug immediately before or after a race. The reasons or motives—therapeutic or otherwise—for using the drug are immaterial. (We favor use of corticosteroids for pain relief, the healing of injuries, and other truly therapeutic uses but do not want horses racing with detectable levels of the drugs in their bloodstreams.)

In its challenge to the emergency rule, The HSUS argued that the rule directly violates the Florida antidrug statute,

and, therefore, exceeds the division's rulemaking authority.

The HSUS also argued that the DPMW has violated applicable rule-making procedures, because the purported reason for resorting to the emergency rule was not sufficient. Emergency-rule procedures are only to be implemented if there is "immediate danger" to the public health, safety, or welfare. The only apparent "immediate danger," in a state where an estimated 70 percent of racehorses could not compete without corticosteroids, was to the racing industry.

Our immediate goal is to overturn the emergency rule; the longer-term intent is to gain effective enforcement of the ban on corticosteroids. Testing procedures for corticosteroids need to be put in place, and appropriate disciplinary procedures for those found in violation need to be employed.

The HSUS is being joined in its administrative petition by Marc Paulhus, southeast regional director, who has led The HSUS's efforts to clean up the Florida horse-racing industry for many years; Johanne

Everard, who owns and races thoroughbred horses but opposes use of drugs to affect racing performance artificially; Dr. Edward Noble, a veterinarian who specializes in equine medicine and who administers corticosteroids only in connection with a program of rest and recovery; and Judy Parker, an HSUS member who runs a charitable organization that rescues, rehabilitates, and adopts horses acquired from racetracks.

Wayne McDonough, an attorney in Vero Beach, Florida, is representing The HSUS and its co-petitioners in this case.

While The HSUS was preparing its case against the emergency rule, the DPMW published a substantially identical permanent rule. We promptly filed a separate petition to overturn the permanent rule.

If The HSUS prevails in voiding these regulations, an even greater contest looms as the Florida legislature prepares to convene this winter. Then we expect the racing industry to try to gut the 1980 statute, now that it can no longer rely upon the sanction of administrative rule making to use corticosteroids.

Snapped limbs, other unnecessary injuries, and death to horses will continue until the industry is purged of its drug habit. Unfortunately, thoroughbred horse racing has been imbued with a glamour and prestige that is difficult to strip away and that has been reinforced by morally blind media coverage of events such as the Triple Crown. A sustained public-education campaign exposing drug abuse and other evils endemic to the industry is long overdue. ■

*The Law Notes are written by HSUS General Counsel Roger Kindler and Senior Counsel Murdaugh Stuart Madden.*