

NONPROFIT EQUINE DRUG TESTING PROGRAMS

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From the book, THE AMERICAN HORSE INDUSTRY, Avoiding the Pitfalls, authored
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Since my background is extensively comprised of decades of expertise in drugs of abuse both as a drug enforcement agent and law enforcement officer, as well as designing, implementing, and maintaining employee drug and alcohol testing programs in the private sector, I'm often asked enumerable questions from individuals in the equestrian field pertaining to equine drug testing programs introduced by nonprofit horse organizations in the private sector.

The most often asked questions are, "How do I as a horse owner protect myself from a bad drug test?" The second question I'm most often asked is, "Exactly what is a drug test for a horse supposed to prove?"

In order to answer each specific question a thorough understating of how an equine drug testing policy operates should be understood by the reader. Therefore, the following article is the manner and means I would design an equine drug testing program for a nonprofit.

First, the reader should understand a drug testing policy is an all inclusive document carefully crafted to outline not only the intent of the incorporator (nonprofit) but also crafted to be used as a legal defense document in the event of a law suit instituted by a plaintiff attorney due to a challenged drug test result which are common events in my industry. Further, such documents intent is to represent the incorporator (nonprofit) and the participants (membership) in a fair, non-discrimination, non-abusive, and equitable manner for those involved.

Second, nonprofit horse organizations have introduced equine drug testing policies and incorporated same as part of their animal welfare mission statements. Equine drug tests prove or disprove the existence of a prohibited item, substance, or drug metabolite in a horses system while on the nonprofit's show grounds or while competing at an authorized nonprofit equine competition event. The drug test is in line with the nonprofits equine drug testing policy and exercises the nonprofit's right to drug test horses within the parameters of the aforementioned criteria.

In my 42 years experience, I've written employee drug testing policies for the aviation, marine, mining, manufacturing, oil & gas drilling, producing, and refining industries, as well as the construction industry, municipalities, and government agencies which includes, but is not limited to, Fortune 500 companies such as: Exxon Company, USA and its subsidiaries - Exxon Shipping, Exxon Aviation, Exxon

Drilling & Producing, Exxon Refining, Exxon Mining, Exxon Plastics, Exxon Chemicals, Shell Oil, Kerr McGee, ARCO Oil & Gas, Marathon Oil Company, Chevron Oil Company, Campbell Soup, 3M Corporation, Conoco Oil & Gas, Phillips Petroleum, Gulf Oil Company and Pennzoil.

Furthermore, among my list of notable accomplishments include, by example: establishing the first employee drug and alcohol testing laboratory in Louisiana (Certified Lab, Inc – January 1988 partnership), providing consultant services to members of the U.S. Congress and Admiral Malloy – U.S. Navy, and appraising some of the methods used in the private sector to prevent drug and alcohol use in the work place for incorporation with the U.S. Department of Defense, more specifically, the U.S. Military.

For the record, my authored drug and alcohol testing policies are as viable today as when first introduced since the 1980's. The written policies have been tested many times but to date have never been defeated due to the well-formulated construction, adoption, implementation and maintenance of each one. Also, after myriad challenges of drug test results and perhaps millions of samples tested over the past 24 years, I'm not aware of any drug test results being overturned by plaintiff challenge.

Equine Drug Testing Policy Formulation

Therefore, and using the above criteria as a model, the focus on the formulation of an equine drug testing policy, hereafter (policy), shall specifically state the exact purpose of such policy, the specific prohibited drugs tested for to include preliminary and confirmation testing levels, the manner and means (protocol) the samples will be collected, the authorized agents of the nonprofit to collect said samples (third party collector), the types of samples collected (urine, blood, or saliva), how the test samples will be transported, stored and analyzed by laboratory analysis, as well as laboratory certification standards required to conduct said analysis, secure test result reporting criteria and secure drug testing record storage.

Such policy shall also include whose horses are subject to drug testing and what types of tests are authorized by same to include by example: random, probable or for cause, etc., as well as the means random horses are selected, e.g., mathematical algorithm, pulling names out of a hat, etc.

The policy shall also state same is being instituted and available for every horse engaged in equine competition at the nonprofit's competition events and that being a member of the nonprofit stipulates implied consent of horse owner(s) to abide by the policy while a member of such nonprofit.

Additionally, the policy should also stipulate horse owner(s) participation is strictly voluntary, i.e., refusal is an option, but a requirement of membership with the nonprofit. Therefore, any member who refuses or fails to provide a drug testing sample from his or her horse(s) when requested is subject to forfeiture of any

and/or all earnings won by such horse during a specific event, as well as disciplinary up to and including exclusion of membership with the nonprofit.

Furthermore, the policy should stipulate any and/or all disciplinary action a member is subject to for failure to comply with the policy of the nonprofit in the event of a positive or failed drug test result of his or her horse.

The comprehensive drug testing policy should also have provisions for blind proficiency sample testing, where samples containing known metabolites of the drugs tested for are sent to the laboratory for analysis to check on the proficiency and accuracy of same. In the event a false positive or false negative is indicated by such laboratory during submission of a blind proficiency sample, the nonprofit has the option of discontinuing business with this laboratory or request a forensic audit of its sample handling and analysis procedures (past and present).

The next criteria of an all-inclusive equine drug test policy is to delineate the manner and means of reporting positive and negative equine drug test results which incorporates the utilization of a medical review officer or an individual with required expertise in the field of drug testing to insure the integrity of the equine drug test to include, but not limited to, sample collection protocol, sample storage and transport, as well as laboratory analysis and (chain of custody) all concur prior to the reporting of same to the nonprofit and the horse owner (both positive and negative drug test results).

This individual shall also confirm all positive drug test results as being **verified positive** prior to reporting of same. The medical review officer is an independent liaison between the nonprofit and the horse owner(s). His or her specific job is to certify "positive drug samples – so they're not presumed".

The final criteria of a comprehensive policy are to insure the policy informs the participants of either having a single sample collection or a split sample collection. For clarification, a single sample collection indicates a single test sample will be collected from the horse. The laboratory will use this single sample for all testing requirements to include horse owner(s) challenges (when required).

A split sample collection indicates a single test sample will be collected from the horse and divided equally into two separate parts and labeled Test Sample A and Test Sample B. Sample A will be analyzed. Sample B will not be opened but stored.

This is the most common method used to collect samples from federally regulated workers in a mandated drug and alcohol testing program under 49, CFR, Part 40 compliance regulations. This affords the horse owner(s) the option of forwarding Test Sample B, which has not been opened, to an alternate but equally qualified laboratory for comparative analysis in the event of a positive drug test result challenge. In the event of a challenge, no disciplinary action should be imposed until test sample (B) is confirmed positive or negative by the alternate testing laboratory.

Sample Collection Protocol

Each drug testing laboratory provides a sample collection kit which generally consists of chain of custody forms, sterile collection containers and evidence tape with bar code attached containing a unique set of numbers uniquely identifying each sample(s), an evidence bag for insertion and sealing of the sample(s) and a shipping container with sealing tape which contains the identical bar code number.

Prior to the sample collection, the collector (authorized agent for the nonprofit) and horse owner(s) or legally authorized agent of same (nominee/middleman) complete the chain of custody and nonprofit collection authorization form.

The sample is collected by the nonprofit's authorized agent. If a single collection, only one sterile vial is used. If a split, one sterile collection vial is used and divided equally into another sterile collection vial. **In an abundance of caution, the reader should be aware not to use a separate sample collection for each vial but an equal split of one collection.**

There have been instances in the private sector where one sample was collected and completed and the donor on an afterthought decided to have a split. Instead of the collector dividing the initial sample into two equal samples another sample was collected minutes later and there was a conflict of test results resulting in a positive and a negative. Even though the laboratory identified small quantities of the same drug metabolite in the individual's system in the second sample (on challenge) it was below the confirmation threshold; therefore, two conflicting test results (positive and negative) results in a negative test result.

The reason being a drug metabolite can appear in the system in one section at a certain level and in the same system at another level. Therefore, only test the one sample that has been divided into two equal parts in the event of a split sample collection. This variation in metabolized drug levels also includes equine systems.

Once the sample has been collected and inserted in the sterile containers, the evidence seal is completed with the date, time, name of horse and any identifying numbers, location collected, event, test cause stipulated, and initialed by the authorized agent (collector for the nonprofit) along with the initials of the horse owner(s) or the legally authorized agent of same witnessing the sample collection.

The evidence seal is applied to the sample vials from front to back and over the top and never wrapped around the sample vial. The evidence seal contains the bar code and the unique set of sample indentifying numbers imbedded in same. No drug test samples shall be allowed collected, except under the aforementioned criteria.

The remaining portions of the chain of custody is completed in triplicate with one copy being retained by the collector, one copy is provided to the laboratory along

with the name of the shipper and one copy remains with the horse owner(s) or authorized agent thereof.

Once the sample collection is completed, the sealed vials containing the drug test sample(s) or (evidence) and the chain of custody is placed in and sealed in the shipping container with the shipping seal which contains the initials of the collector and the horse owner(s) or authorized agent thereof (witness) and the I.D. numbers.

The drug test sample remains in the custody and control of the collector (only) until it is relinquished to the shipper. Once the shipper receives the sealed evidence box containing the samples, a shipping receipt is attached to and remains a permanent copy of the collector's chain of custody.

When the evidence box is delivered to the drug testing laboratory, the shipping box containing the box seal with the bar code with the unique identifying number is scanned into the system and the laboratory analysis is performed. Any preliminary positive results for a prohibited item or substance found in the drug test sample is forwarded for confirmation analysis by GC/MS (Gas Chromatography Mass Spectrometry).

At the conclusion of the confirmation test, a laboratory test result reports (positives and negatives) are generated and provided to the medical review officer along with the completed chain of custody and a copy of the shipping receipt. The medical review officer will verify the integrity of the chain of custody of the sample collection, sample shipping and laboratory analysis on all positive test results.

In the event of a challenge of any test results, the horse owner(s) shall contact the medical review officer and request same in writing. The horse owner(s) have the option of either having a portion of the sample in a single vial collection sent to another laboratory for comparative analysis or have sample B in a split sent to another laboratory for comparative analysis. The problem comes into play when a single collection sample doesn't have enough remaining test sample for a comparative test at another testing laboratory of equal certification for whatever reason. All incurred costs relative to a comparative analysis is paid for by the horse owner(s). **When in doubt, consult with an expert in the field of drug testing.**

BEWARE OF THE PITFALLS – The major concern associated with equine drug testing policies is when the use of the word **presumed** is used to describe authenticity in drug testing collection and laboratory testing protocols. In the private sector, employee drug testing programs are regulated by State and Federal Drug Testing guidelines and protocols and either the protocols for sample collection, transport, analysis, reporting and storage are authentic and verified or their not (never presumed).

Also, another phrase (responsible parties) references horse owner(s) and trainers (collectively – assembled into or viewed as a whole) which implies disciplinary action will be dealt out to both as well as any care takers for a positive equine drug

test result no matter who introduced the prohibited item(s) or substances(s) into the horse.

Another pitfall to be aware of is a nonprofit's equine drug testing policies that implement severe monetary fines and punishment to the responsible parties for a positive or failed equine drug test. So be aware of these pitfalls and make precautions to protect yourself as a horse owner.

The simple way for a horse owner to protect his or herself while involved in drug testing is to thoroughly understand the protocols involved in the drug testing industry and make sure the protocols are followed from the collection, to the transport, to the laboratory testing and an old adage applies, "Dot your I and cross your T".

The second way to avoid the pitfall is to abide by the rules of the nonprofit's drug testing policy; however, the horse owner(s) may or may not be aware of all drugs a trainer may be providing to a horse without the horse owner(s) knowledge or consent. Therefore, I recommend that a written contract exist by and between the horse owner(s) and trainer to strictly address the administering of drugs to his or her horse by such trainer.

I enact such a contract with all of my clients which specifically states no drugs will be administered to his or her horse without the express knowledge and consent of such owner and under the direction of a licensed veterinarian. To expound on this criteria, I once trained a reined cow horse for a client. The horse was a great mare that possessed outstanding athleticism and speed. She had quick-as-a-deer reflexes. The client and horse ended up in 8th Place in the AQHA National Limited Rider program in amateur cow horse.

Once I released the mare, the client contacted a Louisiana cutting horse trainer and asked him to show the mare in Jr. Cutting events. Both of us attended the first cutting show to watch the horse exhibit. When we arrived, we observed the mare standing in a corner with her ears flat out. I approached the trainer and inquired about the mare's physical condition. I learned directly from the trainer he had administered ACE (acepromazine) to the mare to slow her down because he was afraid of her speed. The drug was administered by the trainer without the knowledge or consent of the owner. Subsequently, the owner fired the trainer and picked up the horse.

To retaliate, the trainer instituted a smear campaign on the mare, identifying her as a crazy horse, to justify his unauthorized administering of ACE because he was afraid of the mare's speed. For the record, I won money on her at an NRHA event, cutting and cow horse money, the owner's record is stated above and the mare was sent to a trainer in California where she was in the top ten year end in the Limited Open Reined Cow Horse Division as a money and buckle earner in Reined Cow Horse with the National Stock Horse Association. Not bad for a crazy horse!

The ominous (bad) part of this scenario is if the horse would have been drug tested at this event, the horse owner would have been subject to the nonprofit's drug testing policy for having a horse on show grounds and entered in a class with a prohibited drug in her system without her knowledge or consent. The after effects could have been dire to the owner and all because of an unscrupulous cutting horse trainer.

However, the amazing aspect of this scenario is that everyone who showed the horse won on her including the 65-year-old owner but the cutting horse trainer and judge couldn't get her out the starting gate without drugging her.

Another scenario involves another reined cow horse mare I bridle trained where the owner either won or placed in every show he showed her in. At one show, and after a class, we were approached by a veterinarian from LSU who stated he was required to take a drug test sample from the mare. However, the veterinarian was not aware the mare, who just completed and won the non-pro reining class, was also entered up in the next event or non-pro cow horse class.

The veterinarian insisted on the drug sample. Finally, I informed the vet, "We're not concerned with the drug test sample but you're going to have to wait until the next class is over due to the fact that if you puncture that horse's vein for the test sample and the vein blows out during the next class due to the strenuous exercises of the cow horse class, this could possibly kill the horse," and the vet concurred. The moral of the story is, "Prudence is sometimes the best approach." So if your horse is in multiple classes, and a drug test sample is required after the first class, just simply ask the collector to wait for the safety of the horse.

However, the most amazing events transpired after that. After a few weeks passed, the client called and inquired about the drug test results due to the fact he had never received one. I called the nonprofit and was informed they didn't provide drug test results and no news was good news. I was further informed the only drug tests issued by the nonprofit were positive drug tests.

At this point I voiced my opinions on the subject which simply stated, "If the nonprofit is requiring drug tests of horses and the horse owners are paying for these tests, shouldn't the nonprofit at least issue a drug test result to prove the laboratory test was even performed?" Good question, with no answer to this day.

Furthermore, I also informed the nonprofit that courts have affirmed when a corporation is requiring drug and alcohol tests of its employees, the corporation bears the burden of the cost - not the employee. Then why shouldn't the same protocol be applicable to the horse industry? Quite simply speaking, a drug test is a drug test. If you require it you should pay for it. Again, I've received no answer to this day.

In a final note, I would like to state that I am not an advocate of using drugs on horses to either train or show them except maintenance drugs such as Adequan for joint lubrication. I'm strictly a ZERO TOLERANCE proponent of the use of any type

of sports enhancing drugs, period. If an animal requires drugs to show the animal should be retired. After all, where's the level playing field when a horse not on sports enhancing drugs has to show against a horse under the influence of sports enhancing drugs? Good question?

"Until Next Time, Keep Em Between The Bridles"!

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(Dept of Justice Certificate)