

Letter to the South African National Trainers Association:

It was with substantial disbelief that I read an article on Sporting Post late on Sunday night. What struck me immediately was a phrase highlighted in bold text which I immediately recognised and knew was used not only out of context, which changed the meaning entirely from the original but it had been completely altered in the SANTA press release. I had read that exact document just days earlier after finding out that a friend's daughter has been sanctioned with MAJOR disciplinary action by the International Federation for Equestrian Sports (FEI) for Zilpaterol positive in her eventing horse, after competing at an FEI 3 Day Event in April 2020. Upon further reading of the press release, I started seeing many more inaccuracies. It's led me to believe that this public and very personal attack on NHA officials is an attempt by the parties with Zilpaterol positives, to dodge their responsibilities as caretakers for their horses. When I read how lenient the sanction was for the van Zyl case, I decided to look into how these feed contamination Zilpaterol positives were being sanctioned around the world. The SANTA "press release" has (deliberately?) omitted pertinent, contextual information which completely changes the original meaning? Is there an ulterior motive behind this?

The South African National Trainers' Association (SANTA) issued this press release late on Sunday 25 July 2021, stating that *"the National Horseracing Authority (NHA) continue to persecute, prosecute, and convict innocent trainers on the basis of an archaic, and believed unconstitutional and unlawful rule based on automatic guilt."* Integrity and the enforcement of an internationally recognised set of rules, above all else, is essential in horse racing. This is to maintain the integrity of the entire industry, Thoroughbred Stud Book and to ensure that the punters are betting on horses that are competing on an equal level. The NHA Rules and procedures are fully in line with the International Federation of Horseracing Authorities' (IFHA) "International Agreement on Breeding, Racing and Wagering" (IABRW). When I place a bet on a race, I want to know that there is not any horse that has an unknown advantage over the others. A drug in a horse's system, whether administered intentionally or not, is one of those advantages. But if the Racing

Authority that has licensed you, has officially warned you of the potential for a positive drug test for a substance that has been found in certain feeds, TWICE and over a period of more than 12 months, even giving trainers advice to have that food tested for the Forbidden Substance, then no claim of “innocence” can be made. It is the full responsibility for a trainer to present a horse to race on raceday, fully compliant with the rules.

This is a world standard and hardly “archaic” seeing as it set out in that IABRW, to which the NHA is a signatory, as follows:

The trainer's responsibilities

7. The trainer shall always be responsible for:

- *feeding, management, protection and security of the horses in his care*
- ***taking all reasonable precautions with the horses in his care to avoid their exposure to prohibited substances contrary to the relevant rules of the Horseracing Authority***
- *keeping informed of the possible consequences of treatment given to his horses*
- *keeping appropriate records of all veterinary procedures and medication treatments.*

I will list some of the important information which was omitted from the SANTA press release:

▶ On 11 November 2019, before any positives were called, the NHA sent out a notice warning all trainers that “The NHA laboratory has observed, in some racehorse specimens emanating countrywide, traces of a substance which may be indicative of Zilpaterol.”

(That notice can be seen here:

<https://www.nhra.co.za/index.php/general-notice/397-cautionary-notice-zilpaterol-2>)

▶ Almost exactly a year later, on 18 November 2020, the NHA issued another notice warning trainers that *“Positive findings of Zilpaterol in racehorses competing in France during October 2020 has highlighted the possibility of contamination of horse feed with this substance, which is prohibited (forbidden) in racing. This feed contamination within Europe was recently shown to originate from contaminated molasses which was sourced from South Africa. It must be noted that significant volumes of molasses are locally fortified with Zilpaterol, for use in cattle feedlots.*

The above considered, there is some possibility that molasses (or feedstuff destined for cattle feedlots) could introduce some Zilpaterol into local horse feed.”

(That notice can be seen here:

<https://www.nhra.co.za/index.php/general-notice/531-follow-up-cautionary-notice-zilpaterol>)

▶ The IFHA classes Zilpaterol as beta-2 agonist, which has anabolic properties. As a beta-2 agonist, Zilpaterol falls within Article 6E of the International Agreement on Breeding, Racing and Wagering (IABRW), **meaning it cannot be administered to a racehorse at any time during its career.**

The NHA Rules are in line with this and are very clear on Forbidden Substances (See Rule and Appendix M):

The following forbidden substances, including other substances with a similar chemical structure or similar biological effect(s), are not to be administered to a horse at any time:

2. Anabolic agents

(a) anabolic androgenic steroids,

(b) other anabolic agents, including but not limited to selective androgen receptor modulators (SARMs),

*(c) **beta-2 agonists, unless the substance is prescribed by a veterinarian as a bronchodilator at the appropriate dose and is reflected in the treatment record of the horse.***

▶ In October 2020, the British Horseracing Authority (BHA) issued similar notices, warning trainers of the contamination of certain feeds with Zilpaterol, which is classified as a **Category A** substance in their rules. BHA Rule K (2) states:

The Responsible Person must ensure that:

no Category A Prohibited Substance is present in their horse's body at any time;

(Those rules can be seen here:

<https://rules.britishhorseracing.com/#!/book/34/chapter/s3457-anti-doping/content?section=s3473-presence-of-prohibited-substance-in-a-horses-body>)

▶ On 6 October 2020, the BHA issued a press release urging trainers to reduce the risk of Zilpaterol positives from “environmental contamination”. The BHA formally offered trainers the opportunity to do “Elective Tests” should they want to determine the presence of Zilpaterol in any horses under their care. These elective drug tests were for the trainers’ account and would be processed by the BHA’s partner analytical laboratory, LGC.

(The BHA notice dated 6 October 2020 can be seen here:

https://www.britishhorseracing.com/press_releases/zilpaterol-feed-contaminati-on-latest-updates-and-advice/)

▶ The BHA offers “Elective Testing” to trainers for the following purposes:

Elective Testing can be utilised by Trainers who wish to establish:

- That medication given for essential veterinary treatment has cleared from a horse's system before a race; and,
- When a Trainer suspects inadvertent medication or contaminated feed stuffs may have been given to a horse or horses.

Elective Testing is done at the Trainer's expense and is carried out in accordance with the Terms and Conditions outlined below, and at the discretion of the BHA. The BHA may, in any case, decline to allow the Elective Testing sample to be analysed, without giving any reasons.

(The BHA guidelines for elective testing, issued in 2018 can be downloaded here:

<https://www.britishhorseracing.com/wp-content/uploads/2018/05/Elective-Testing-2018.pdf>)

▶ On 8 October 2020, the BHA issued a further notice on elective tests for the presence of zilpaterol stating: *“Samples will continue to be processed and prioritised in order of race entry. Analysis may take up to 3 working days, but every effort is being made to return results in time for any races in which the horses are entered.”* This was to allow trainer's to scratch any horses that returned a positive result in an elective test for Zilpaterol.

(The BHA notice dated 8 October 2020 can be seen here:

https://www.britishhorseracing.com/press_releases/zilpaterol-latest-initial-sample-results-and-latest-guidance/)

▶ The BHA penalties for the presence of a “Category A substance - Prohibited at all times” in a horse are as follows:

Assessment of culpability:

Low: No knowledge of administration and reasonable precautions taken. Satisfactory attendance at BHA/NTF Seminars is a required precaution.

Medium: No knowledge of administration but significant failings at the yard or Panel is satisfied of an acceptable explanation for an administration error.

High: Deliberate administration or serious failings in the administration of the yard bordering upon negligence.

Penalties:

Low: Entry Point - 2 years disqualification suspended for 24 months & financial penalty of £1,000; Range - Additional Financial Penalty (£750 - £10,000)

Medium: Entry Point - 2 years disqualification* (If suspended – Financial Penalty of £2,000); Range - 1 -10 years disqualification* (£1,000 - £10,000)

High: Entry Point: 2 years disqualification; Range - 2-10 years disqualification

* which can be suspended for 24 months

(These penalties can be seen here:

<https://rules.britishhorseracing.com/#!/book/34/chapter/s3201-table-of-penalties/content?section=s3620-rule-k21-category-a-prohibited-at-all-times>)

▶ The BHA issued further regulatory updates on the Zilpaterol positives and the pre-race elective testing for the substance from 16 October 2020. They were fully aware of the source of the Zilpaterol contamination and gave trainers all the pertinent information required to remove the contaminated products from their stable yards. They issued a formal statement on Zilpaterol,

in the form of a downloadable PDF for concerned parties, explaining the risk and source of possible contamination and reminding trainers that Zilpaterol is classed as a “**Category A substance - Prohibited at all times**”. The statement also said the following:

“In order to address the current issue in an internationally harmonised manner, the IFHA have convened an Expert Panel comprising regulatory veterinarians, analytical chemists and administrators. The Expert Panel report has now been considered by the EHSLC Board.

There is agreement to the following recommendations:

- o All racing jurisdictions should offer Elective Testing for zilpaterol, where contaminated feed is suspected to have been fed*
- o Elective Testing should be performed in the country in which a horse holds an entry (e.g.) if a British horse holds an entry in France, the Elective Test should be performed at LCH.*
- o **Both the IFHA and the EHSLC endorse an approach where no regulatory action is taken against any screening findings for zilpaterol in an Elective Test, where it can be demonstrated that the horse was likely to have been fed contaminated feed.***
- o Harmonisation: racing jurisdictions and their analytical laboratories will work through the IFHA to determine whether reporting limits for zilpaterol, and other key substances which are prohibited at all times, can be harmonised”*

The ONLY cases where the IFHA and EHSLC endorsed an approach where no regulatory action would be taken would be for Zilpaterol positives in pre-race ELECTIVE tests. This endorsement did not apply to Zilpaterol positives found in post-race tests

(The BHA Statement on Zilpaterol dated 16/10/20 can be downloaded here: <https://www.britishhorseracing.com/wp-content/uploads/2020/10/Zilpaterol-background-information.pdf>)

▶ On 16 October 2020 the BHA issued the following notice, further to the above statement:

In order to provide clarity for participants in what remains an evolving situation, the BHA Board has introduced with immediate effect a seven-day moratorium, during which any horse that returns a positive result for Zilpaterol through raceday, out-of-competition or Elective Testing will not be subject to BHA regulatory action, provided the positive sample is consistent with the feed contamination. This is in line with measures adopted previously in relation to Zilpaterol feed contamination by other international racing jurisdictions.

The moratorium will be kept under constant review in line with updated information relating to the contamination, with the timescale amended accordingly.

▶ The BHA provided further updates regarding the sources of contamination and pre-race elective testing for zilpaterol:

UPDATE (23 October): *The British Equestrian Trade Federation (BETA) have issued a statement (22 October) confirming details of feed companies known to have been affected by the contamination, with relevant product and batch details where known.*

(The BETA statement can be seen here:

<https://www.beta-uk.org/pages/news-amp-events/news/beta-update-zilpaterol-contamination-in-equine-feedstuffs..php>)

▶ Because Zilpaterol is a Category A substance in terms of the BHA rules, the BHA issued the following statement on 26 October 2020:

UPDATE (Monday 26 October): *Further to the statement from BETA dated 22 October (see previous update), the BHA Board has agreed a seven-day*

*extension to the existing moratorium relating to zilpaterol. During the moratorium, any horse that returns a positive result for zilpaterol through raceday, out-of-competition or Elective Testing will not be subject to BHA regulatory action, provided the positive sample is consistent with the feed contamination. This is in line with measures adopted previously in relation to zilpaterol feed contamination by other international racing jurisdictions. **This extended moratorium will expire at 23:59 on Sunday 1 November.***

The extended moratorium allows time for contaminated feed supplies to be removed and replaced, and we are not anticipating any further extension. From Monday 2 November, we expect that regulatory protocols will revert to pre-moratorium status.

(All these notices can be seen here:

https://www.britishhorseracing.com/press_releases/zilpaterol-notice-product-alert-and-regulatory-update/)

In order for the amnesty to be applicable to any positive tests for Zilpaterol during the moratorium, the person responsible for the horse in question would have to supply reasonable proof, in the form of samples and/ or proof of purchase of the feed stuffs specifically identified as being contaminated with Zilpaterol, that the horse in question had consumed such feed stuffs at or around the time that the positive was found. It could and would not be assumed.

SANTA have claimed in their press release that **“NO REGULATORY ACTION SHOULD BE TAKEN against any screening findings FOR ZILPATEROL where it can be demonstrated that the horse was LIKELY FED CONTAMINATED FEED.”** That is incorrect, as per all the points above, which include references to all the sources used.

Once the moratorium period had ended, any Zilpaterol positives would be prosecuted by the BHA, as per their rules (see above). With all the official information and guidance provided by the BHA with regards to the presence of

Zilpaterol in common feed stuffs, as well as the temporary amnesty during the specified moratorium period, it can be argued that any trainer who fails to heed the warnings could be guilty of a **HIGH** level of culpability (Deliberate administration or serious failings in the administration of the yard bordering upon negligence.) for the presence of a Category A substance in their horses at ANY TIME. That would incur a minimum penalty of “2 years disqualification”, as per the penalty guidelines above.

South African trainers were given TWO notices, a year apart, giving fair warning of possible Zilpaterol contamination in a commercial brand of horse feed. The notices gave recommendations to trainers to ascertain from the feed manufacturers that the feed stuffs were free of Zilpaterol. The notice dated 20 November 2020 stated: ***“Stakeholders were urged to take precautionary steps to monitor that the feed sourced for horses would not have Zilpaterol present.”***

The stakeholders were also urged to ascertain from the feed manufacturers directly to obtain ***“certification from the supplier to not contain this substance, and / or feed of which finished product batches are tested by the supplier not to contain this substance.”***

If trainers still did not take precautionary measures to reduce the risk of Zilpaterol contamination, after being officially notified of the possibility, then they, as the “responsible person” are guilty of not taking all reasonable precautions to reduce the risk of a Zilpaterol positive. There also could be a possibility where a party could administer Zilpaterol to a horse deliberately and then claim that the positive was “inadvertent” to due “environmental contamination” via the feed. When stakeholders have been specifically and directly pre-warned of the contamination, no positive can be called “inadvertent”.

The “NHA Guidelines for Classification of Prohibited Substances” (issued on 20 September 2020) contains the following information:

“Zilpaterol is a chemical substance which is commercially used in South Africa in feed for cattle destined for meat production. It is reported that this substance is harmful to horses and can result in adverse side effects.

Racehorse owners, trainers and breeders are urged to take precautionary steps to monitor the feed which is sourced for their horses and that it is obtained/ produced under conditions which would not result in Zilpaterol being present. It is for this reason that commercial chemical fertilizers are preferable in the growing of feed crops destined for horses.”

In terms of Appendix H of the NHA Rules, Zilpaterol is classed as a FORBIDDEN SUBSTANCE or Class 1 Substance: **“The classification and penalties associated with Class 1 and Class 2 and Forbidden Substances apply equally during out of competition and on race day.”**

Also,

“Class 1: Substances which have no place in horseracing, including illegal or Forbidden Substances.”

In any other circumstances, a Class 1 positive in South Africa would incur a minimum penalty of a R115 000 fine, up to a penalty of “Warning Off”, depending on the severity of the offence and type of substance found present in the sample.

(The NHA Guidelines for Classification of Prohibited Substances can be downloaded here:

<https://www.nhra.co.za/pubs/docs/guidelines%20on%20prohibited%20substances/NHA%20Classification%20Penalties%20September%202020.pdf>)

As pointed out by SANTA, The National Horseracing Authority of Southern Africa is a signatory to Article 6 of the International Agreement on Breeding, Racing and Wagering (IABRW) as published by the International Federation of Horseracing Authorities (IFHA).

It states:

6 *Therapeutic use of substances specified in Point five (5) above may only be exceptionally applied in the following circumstances:*

6.1 *When the Racing Authority has decided to offer the facility for such exceptional use for therapeutic purposes and where no other reasonable therapeutic alternative exists.*

6.2 *The specified prohibited substance being exceptionally used therapeutically must be prescribed by a veterinarian for the sole purpose of treating an existing illness or injury, and the details of the diagnosis, substance and administration protocol must be recorded and supplied by the trainer to the Racing Authority. If the horse is not under the direct control of a trainer at any time in its career from the commencement of training to final retirement from racing, the owner is responsible for this notification to the Racing Authority. This system must be supervised by the Racing Authority's veterinarian(s).*

6.3 *A horse shall be ineligible to race until a minimum of six (6) months has elapsed after the administration of any of the substances specified in Point five (5) above, and the Racing Authority must test to ensure that a horse treated therapeutically with any of these substances is free from the presence of such substances before racing.*

The relevant information in “Point five (5) above” is the following:

5.2 Anabolic agents

(a) anabolic androgenic steroids

(b) other anabolic agents, including but not limited to selective androgen receptor modulators (SARMs)

*(c) **beta-2 agonists**, unless the substance is prescribed by a veterinarian as a bronchodilator at the appropriate dose*

(The full list of Articles and signatories to each Article in the IABRW can be seen here: <https://ifhaonline.org/default.asp?section=IABRWTest&area=0>)

If the NHA had followed the guidelines set out in the IABRW with regards to penalties for horses that returned a positive drug test for Zilpaterol, a beta-2 agonist, then the horses should actually have incurred a 6 month suspension from racing under the jurisdiction of the NHA or any other horseracing authorities that had signed Article 6 of the IABRW. The NHA warned trainers in November 2020 and November 2021 of the possibility that the feed they were using could be contaminated with Zilpaterol. As per Article 6 of the IABRW: ***The trainer shall always be responsible for: taking all reasonable precautions with the horses in his care to avoid their exposure to prohibited substances contrary to the relevant rules of the Horseracing Authority***

With that in mind, the penalty of a just a warning that Gavin van Zyl incurred for the two Zilpaterol positives in horses in his care, is fair and appropriate. As per the NHA press release regarding the inquiry for this case: *“Both horses have had subsequent specimens analysed by The National Horseracing Authority Laboratory which have not disclosed the presence of Zilpaterol. As a result, the bans imposed on RAISEAHALLELUJAH and DANCING FEATHER have been lifted.”*

In fact, Gavin an Zyl was given the benefit of the doubt when the NHA **did not ask for proof that the horses in question had been given feed from the batches identified as being contaminated with Zilpaterol, as would have been the case if the case was being investigated by the BHA.**

Instead the NHA took the following action: *“The evidence in this matter was carefully considered, which included the fact that a number of specimens taken in KwaZulu-Natal recently, have disclosed the presence of Zilpaterol upon analysis and that these specimens were taken during a certain period. This suggested that the presence of Zilpaterol could be as a result of contamination and as such, the Board imposed a penalty of a warning.”*

(That press release can be seen here:

<https://www.nhra.co.za/index.php/inquiries/644-inquiry-trainer-mr-gavin-van-zyl>)

In fact it is the EXACT penalty that Roger Varian incurred when two of his fillies, Angel Power and Queen Denaerys tested positive for Zilpaterol after they both won listed races in France. Roger Varian and the 5 French trainers responsible for the total of 12 post race Zilpaterol positives found in France during October 2020, were cleared of any wrong-doing by the French racing authorities. The horses that tested positive in these cases were all disqualified from their respective races and all stake monies had to be returned. This was only after officials from France Galop had established without a doubt that all the horses that testes positive had in fact been fed the Zilpaterol contaminated GAIN feed. There were also another 2 out of competition Zilpaterol positives in France, at that time. *“As it was considered as an exceptional circumstances case (force majeure case), the Stewards of France Galop decided to disqualified the horses concerned but not to suspend them and not penalise the trainer.”*

▶ I emailed Dr Schalk de Kock at the NHA laboratory to ask him to clear a few questions I had. He was most obliging. I found out the following information:

“The NHA is not well-aware of what the feed commonality of these positives. The NHA did not investigate which feed was used in the relevant stable yards.

The NHA has not seen (or received) any proof that the claimed and correct feed samples were in fact collected with a sound chain of custody and the NHA has not seen (was not ever presented with or shown) any analysis results which were apparently obtained from these at the independent laboratory FDA Laboratories.

There is no real prior evidence provided to the NHA that the feed was in fact confirmed to contain Zilpaterol.

Note that roughage such as teff and eragrostis etc can also be a possible source of feed contamination / feed prohibited substances. This possibility could introduce additional sources and feed suppliers.

That was in response to this claim made in the SANTA press release: “Despite the fact that the NHA is well aware that this is feed contamination emanating from the same feed company – our independent tests of sample feed conducted at FDA laboratories has confirmed this...”

▶ Dr de Kock also said: *“The NHA is a member of the ARF (Asian Racing Federation) and therefore, since about 2010 the NHA has not been allowed to be part of the European group, by name the European Horseracing Scientific Liaison Committee (EHSLC). Note that prior to 2011, I was chair of the European AORC and I was VERY MUCH involved with the EHSLC. Currently as a non-member of the EHSLC the NHA has no insights on what the EHSLC communicates the European labs (they can be very secretive) Additionally, the IFHA (while reportedly being in endorsement during the 2020 occurrence of confirmed Zilpaterol contamination) has in fact not officially or formally*

notified member racing laboratories of any formal policy regarding Zilpaterol and its elective testing.”

That was in response to the following statement in the SANTA press release *“What is therefore so shockingly inappropriate, downright disgraceful and smacks of extreme double standards and hypocrisy, is that following these international cluster events involving Zilpaterol, and in and during October 2020, the said IFHA, in conjunction with the European Horseracing Scientific Liaison Committee (EHSLC), where the NHA has its laboratory director, Schalk de Kock, as a representative,”*

The entire SANTA press release is riddled with inaccuracies, disingenuous misinformation and cherry-picked phrases from beginning to end - I have only addressed a few of them and it's taken 8 pages. I cannot imagine that a national association which represents the trainers would be happy with such a poor representation of their integrity, as per this press release. Horseracing is already widely perceived as “cruel and exploitive” by the general public, who are increasingly less willing to get involved or invest, either as owners or punters.

What message is the racing industry sending out to that same public, with the trainers publicly attacking the regulatory body for applying the rules they are legally mandated to, as per the conditions of the of the gambling licences and as signatories to the IFHA's International Agreement on Breeding, Racing and Wagering?

Furthermore, what message is being sent out that the trainers, who are supposed to be the custodians of the horses in their care and are supposed to have the best interests of the animal and not the outcome of races and associated commercial benefits, at heart. Zilpaterol would not ever be prescribed by a veterinarian for a horse, however here we have the presence of this substance in multiple horses. The horse doesn't have a voice and yet we all state constantly that the industry has their “best interests at heart all of the time.

Is it not time for trainers who are the so-called professionals and horse care givers to walk the walk and not try and talk the talk to extricate themselves from this shameful display of what is essentially animal abuse? Yes, let us call it what it is, animal abuse!

Yours faithfully,

Ashleigh Hughes