

COVID19 LEGAL ISSUES FOR THE HORSE COMMUNITY

HORSE PEOPLE, DON'T PANIC:

COVID19 LEGAL ISSUES FOR THE HORSE COMMUNITY



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Horse shows are cancelled. Clinics are postponed. The Olympics have been rescheduled for next year. Your boarders can't come to the barn. Your weekly lessons aren't happening, whether you are a trainer or a student. You may even be unable to visit your horse. COVID19 has changed everyone's lives in unimaginable ways. As with most things in life, there are legal issues associated with this pandemic. What happens if you keep your barn open and someone gets COVID19? What if a barn employee gets sick? Can you let farriers, vets,

massage therapists, and other equine professionals come to your barn during the pandemic? What about traveling trainers? What do you do if you get sick and can't care for the barn or your horse? So many questions need to be answered in this time of uncertainty.

Let's acknowledge first that being involved with horses, whether you have a horse business or have horses on a personal level, is an incredible privilege that we get to enjoy. Many people are dealing with issues right now concerning the health of loved ones, paying rent, keeping jobs, and

keeping businesses from collapsing. This e-book is not meant to diminish any of those concerns. Being a horse professional myself, I know that many horse people share those concerns with the rest of the population. We also have additional concerns about our horses or horse business. This e-book is meant to give you an insight into how some important legal issues concerning COVID19 affect the horse community.

Before I address the legal issues, there are bigger issues involved and those concern the moral issues involved with this pandemic. Whether or not it is legal to open your boarding barn, you have to look into the morality of doing it. What if you stay open and someone gets COVID19 and dies? Or passes it onto an elderly family member who dies? What if remaining open contributes to the infection rate? What if you keep training horses, get seriously injured, and have to pull resources from a hospital and staff already overwhelmed with COVID19 patients? There are very important moral issues that I personally believe should cause us to stay home and to stay safe. That may mean not seeing your horse for a while, not riding for a while, maybe even not working for a while. I know



those are not easy choices. But you need to think about this from within your own system of values before you even begin to think about the legal ramifications of COVID19.

With all of that being said, I will now address the legal issues concerning COVID19 and the horse community.

The answer to most of the questions I posed in the first paragraph is, “It depends.” It’s impossible to cover every scenario that will present itself during this time. It’s also not possible to address every state law or mandate. For one thing, they are changing too quickly, and for another, doing so would require a review of far too voluminous an amount of material. What I can do in this short e-book is give you an idea of issues you need to consider when thinking about your actions during the COVID19 pandemic.

COVID19 and Liability

One of the biggest question on horse people’s minds is one of liability. Every horse professional I know is worried about liability on a good day. During this time, she is worried about liability whether she has a boarding barn and keeps it open or closes it, whether she is a trainer and should keep riding, or whether she is a farrier and should keep traveling from barn to barn. The list goes on because the horse world is made up of many people in a well-oiled machine. Right now, we’re all working our way forward trying to decide which cogs can keep going and how and which ones we need to work around for the greater good of all.

The most likely legal theory for suing for liability during the COVID19 pandemic is the theory of negligence. Generally speaking, there are four components to prove someone has engaged in negligent activity. These are specific legal concepts and not just words that you use in other situations. They are *duty*, a *breach* of that duty, the breach *caused an*

injury, and the injury resulted in *damages*. If the negligence involves a contagion, such as COVID19, then we add in the issue of *notice*. We all know about COVID19 now, so the notice element is pretty easy to fulfill.

In this situation, duty means whether you have a duty to keep your boarders, clients, or other people you interact with in the horse world from contracting COVID19. First, let's consider someone who actively has the disease. That person would have a duty to stay quarantined and not spread it to anyone. For example, if you have received a positive test, you would breach a duty to your students if you continued to teach riding lessons in person. That's a pretty easy scenario.

But, one of the big issues with this virus is that people can be asymptomatic and yet be able to spread the disease. The issue gets harder with this virus if someone does not show symptoms. It is possible for someone to spread the disease and yet have no idea they had it. You could be a barn owner with an employee who has it, doesn't know it, and spreads it. Depending on your jurisdiction, you might be held liable. Why? Well, depending on the state and federal law where you have your business, you might be held responsible for *constructive knowledge* about the disease. An example of constructive knowledge is if you are in a hot spot, and the chance of someone getting it is very high. Or if you know that your trainer has just returned from a horse buying trip in Italy. The chances that the person has the virus, even if asymptomatic, are pretty high. An argument might be made that because you knew the chances were high, you had constructive knowledge and a duty to protect others.

Once a duty is established, then a breach of that duty must be shown. Let's say that your trainer just returned from a hot spot in Italy. You don't ask the trainer to self-quarantine for 14 days but let her get right back to work at your barn, which still has other people coming to it, such as owners and boarders, and essential workers such as farriers, vets, and

hay dealers. The next thing you know, some of those people get sick, requiring hospital stays, and one even dies. Are you liable? The argument that might hold you liable is that you had a duty to those people because your trainer came back from a COVID19 hot spot. You breached that duty by letting her go back to work immediately and not self-quarantining for 14 days.



After the breach has been shown, then a *causal link* between the breach and the injury has to be proven. This can be the toughest thing to show when it comes to injury from contagion. Let's look at our trainer scenario again. Your trainer is sick after coming back from Italy. Let's say an owner comes to see his horse, and he gets sick. If he sues you for negligence, he is going to have to prove that he got the virus at your facility. Questions then arise concerning where else he had been during that time. If he was home alone, and never went anywhere except your facility during a two-week period, not even stopping at the gas station, then he would have a strong argument he got it at your facility. But what if he had stopped to



get gas one day? Or he had gone to the grocery store? Those simple stops might be used at trial to disprove a causal connection between your facility and his illness.

The last issue to address is *damages*. That factor is usually not very hard to show because someone who gets the virus may be hospitalized or not able to work from home. Those types of damages have a monetary value on them that can be calculated and asked for in a lawsuit.

I haven't seen any legal cases yet in the horse world concerning COVID19. However, there are already COVID19 legal cases popping up, such as the family of a Walmart employee who died after contracting the disease. The family is now suing Walmart.

What is the bottom line then? At this point, in mid-April as I write this, we have a global pandemic that is widespread in the US. We have learned that people with the virus can be asymptomatic. We are now being instructed to wear face masks because the virus can be spread in the air. We also are seeing that social distancing and self-isolation appear to be working in places like San Francisco and New York, while places without such practices, such as Sioux Falls, South Dakota, which is currently the hot spot of the country, are having an alarming rise in cases.

The legally prudent course of action right now is to shut down horse shows, clinics, lessons, training, boarding, and non-essential equine activities. It's not a popular opinion but under current legal standards, there is a possibility that not doing so will open you up to legal ramifications if anyone comes to your facility or interacts with you in an equine business and gets sick. Certainly, there should be no in-person shows or clinics right now. Even sales auctions are moving online. These types of activities involve multiple people, and the chance of infection goes up. That one fact alone could play into whether you knew you had a duty to protect the people at the event.

What are essential equine activities? Obviously, horses need to be fed and watered. If they have stalls, those need to be cleaned. Horses have medical problems that need to be tended to, however, the prudent thing would be to deal only with high-priority medical issues. Does your horse actually need a Coggins test right now or can that wait? A call about colic would probably be deemed an emergency. As for farrier services, can your horse be put on a longer schedule without causing any lameness issues? At a boarding barn, can you work with self-boarders and take over the responsibilities yourself right now so that they do not come to the barn? Limiting the number of people at the barn is essential right now.

Horse Care

Another big issue that has arisen because of COVID19 is who will take care of your horse if you are incapacitated or die because of the virus. No one likes to think of these things, but they are real possibilities. I have already seen the Facebook posts starting about animals who need a home because the owner died of COVID19. It is better to be prepared and not need the preparation than the other way around.

The first thing to do is to have someone ready to take care of your horse if you are so sick that you cannot do so. The best legal instrument for this is a horse trust. I know that people have simply talked to friends about this scenario, but what if that friend gets sick? What if you are on a ventilator for weeks, and your friend doesn't have the money to take care of your horse? Each state has different requirements but in its general form, a horse trust allows you to name someone to take care of your horse. You can often name a succession of people so that if the first person can't do it, you have someone else lined up who can. In addition, some states require a third party to be listed in the document, and that person makes sure that the horse is being taken care of properly. Such a feature gives you a built-in safety measure that the horse is being taken care of the way you intended. You need to fund the trust, which means you put in money to take care of your horse. This way, the person you name can do the care you need without using any of her own money. This can be especially important if you are incapacitated for a long time. You can usually be as specific as you want in your horse trust. For example, you can list your horse's favorite treats and what kind of blanket to put on.

Your horse should also be a part of your estate planning. At this time, horses are still considered property under the law in every state. That means if you don't provide specific instructions concerning your horse, your trustee or executor may treat your horse like they do other property, such as a car. You can have a horse trust for this purpose, providing for care until the horse's end of life. A horse trust is effective immediately upon incapacitation or death, so it's important to make sure you do it this way and not in a will. A will must be probated, which means it has to go through the court system. Doing so creates a lag time when your horse may not be properly taken care of, and there may not be funds accessible for his care.

You should also make sure your boarding barn and vet have an authorization form so that if there is an emergency, your vet is able to properly treat your horse. The last thing you want to have happen is that your horse isn't treated during a time when you yourself need medical help. You can check to see if your vet has a form they prefer to use or you can have an equine attorney draft one for you. Make sure you include how much money you are willing to spend for treatment and also any specifics, such as not wanting colic surgery or other interventions.



Virtual Lessons and Training

Another area that needs to be addressed is virtual lessons and training. When you are teaching or training in person, you are able to physically work with the client and see if they are engaging in something dangerous or not following the instruction you have given them. That's not the case with virtual coaching unless you are watching the lesson in real time. You are giving instruction via email or more likely video conferencing and then hoping the person follows your instruction the way you intended. A way to protect yourself is to include language in your liability form, or addendum, that acknowledges the fact that you are coaching in this

manner, that you are unable to personally supervise the client as you normally would in person, that they and their horse are in healthy shape to do the work you suggest, and that you are not responsible for miscommunication that may take place or any riding or handling of the horse that you did not explicitly describe.



The client should agree to assume the risks inherent in this kind of teaching. Keep in mind, you may still be held liable for injuries if you are negligent in any way. Consult with an equine attorney in your jurisdiction to make sure you are adequately covered and also talk with your insurer to make sure your policy covers you under these circumstances.

Enforcing Contracts

With the economic downturn, some people are trying to enforce contracts for payment only to find that the person who signed the contract simply can't pay. There are several options if you are in this situation. First and foremost, see if you can work with the person. While we need money to keep our businesses afloat and to pay bills, we are all in this situation together. See if the person can do a payment plan or pay a smaller amount right now. You may need to stop providing the service, such as teaching or training, until the person can provide you with some kind of payment.

The last resort is to go to court. Right now, most courts are only hearing emergency matters. While being paid may seem like an emergency to you, it is not to the court system. You may have to file a small claims action or hire an attorney but be aware that litigation is on hold right now, so that is certainly not a quick way to get your money. Some folks have asked me why even have a contract if it can be so hard to enforce it. My answer is that we shouldn't create a contract with the end goal being a lawsuit. We should create contracts so that we are all on the same page and even include different avenues if either party can't fulfill their part of the agreement. We have the control with a contract to put in provisions that make it work for all parties. Contracts should be seen as agreements that benefit everyone, not something that will eventually land the parties in court.

Coming Together

This is a time for the entire horse community to pull together and support each other. I know of hay suppliers who are offering deals, and people putting together hay banks, all to make sure that horses get fed. I know of trainers and clinicians lowering prices and going virtual so horse people can still learn during this time. I know of virtual shows being held online so people can still interact with others doing something they love. It's a tough time, to be sure. No one is saying this is easy. But horse people are some of the toughest and also some of the most compassionate people around. Let's bring that toughness and compassion to bear for our horses and our fellow horse people during this time of crisis. We will get through this together. Stay safe, stay healthy, stay compassionate.



Be sure to share this free e-book with anyone you know in the U.S. horse community who might need this information.



About Joanne L. Belasco, Esq.

Attorney Joanne L. Belasco graduated from Suffolk University School of Law in 1993, and from Boston College *magna cum laude* with a BA in Psychology in 1990. She has been a member of the Massachusetts bar since 1993. Her legal experience includes litigation work as a staff attorney for the Boston Police Department's Office of the Legal Advisor. Since 1998, she has been involved with the nonprofit Tapestry Institute, which helps people reconnect to nature through programs based within Indigenous worldview. She is currently its co-president and runs its Horse-Human Relationship Program. She has been involved with horses for more than 40 years. Her professional horse work includes barn management, giving riding lessons to all ages, training horses, gentling Mustangs, conducting clinics for fearful riders, rehabbing rescue horses, and producing a DVD for fearful riders.

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