

The Question Box
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My New School Horse Recently Bucked Me Off - Can It Still Be Used for Beginners?

Question: I have a liability/negligence question. I have a risk reduction plan in place, but am in my start-up year of a boarding and lesson barn. I am a certified riding instructor with three organizations. I recently purchased a 12 year old mare as a beginning lesson horse that had been used previously for this purpose. I had my lawyer draw up a past history form asking questions regarding the horse's previous behaviors. The old owners signed off that this mare had never bucked or done other such unsafe behaviors. I have had her four months and was tuning her up in preparation for my lesson season, when she started bucking one day. I never did manage to ride the bucking fit out of her that day. She got me off four times with two different saddles. I took her back to the old owners and she hasn't bucked since. I have ridden her with exactly the same equipment and she shows no signs of bucking. I live in a state, which has an assumption of risk statute covering for liability of accidents due to the "inherent nature of horses," but this, of course, does not cover negligence. My question is.....am I negligent if I use this mare as a beginner lesson horse? We never found the cause of her episode. I realize that I would be held to the standards of "other horse professionals." The problem is I know no other Certified Instructors that I can contact. The "professionals" that I know have years of experience, and would continue to use the horse, especially since they believe the riders assume the risks of the horse possibly bucking. I am afraid that they are putting too much faith in this statute. I have been teaching informally for seven years. Any cases or examples of what a "prudent professional" would do in this situation would be greatly appreciated. From: P.A. in Wisconsin

Answer: As a risk reduction expert, I appreciate that you seem to be conscientious, ethical and pro-active in your business practices. You seem truly concerned for your students' safety. Your becoming certified with three separate organizations also shows your dedication to your career. You have brought up a number of common key points in your question, which I am going to address in our yearbook because others can learn from this also.

Get Legal Advice

First of all, you must understand that I am not an attorney, so I cannot give legal advice. I suggest that you seek the advice of legal counsel concerning this matter. I suggest getting that advice from an equine law practitioner whom is licensed in your state, or at least from an attorney who understands horses and the equestrian services business.

I can, however, give you some points to consider in deciding what to do with the school horse in question, and that is the intent of my response. I will speak to this issue as an equine insurance specialty agent, a risk reduction expert and also as a rider, trainer, and riding instructor with a lifetime of experience with horses.

Your State's Equine Immunity Law Can Only Provide Limited Protection.

You are correct in saying that many operators would go ahead and continue using such a horse, mistakenly thinking they could stand behind their state's equine immunity law. Frequently, they will even forego buying liability insurance, thinking their statute will protect them in every instance, when unfortunately, the fact remains that anyone can be sued and the law does not generally protect against truly negligent acts. If a lawsuit is filed, even if they are in the right or they prevail in their case, the legal costs can run \$10,000 and upwards.

Addressing the Question

I think you were wise to have the former owner sign off on the past history of the horse. I hope they were telling the truth. The situation of which you speak is a difficult one. We know that all horses can buck. Some have a greater tendency for it than others. Some bloodlines have a greater tendency toward it than others do. Is it an inherent risk of riding a horse? It can be, but keep in mind that you as a professional instructor would be held to a far higher degree of care in providing a school horse for a beginner than if a non-professional were allowing a beginner to ride a horse. Beginners' school horses must be far more foolproof than those used by advanced riders. You would have to be about 98% sure your school horses will not buck in the way you described with a student on their backs. The two-percent leeway in the equation is to allow for the fact that even the best trained, "bomb-proof" horse can and will buck if it is provoked or feels threatened in a certain way. No one can ever guarantee it will not happen, for horses are neither machines, nor can they be programmed like a computer!

I find the incident disturbing from a negligence perspective because you were unable to determine the cause immediately and to ascertain if it was easily preventable. It seems as though you have one very good and experienced 12-year old school horse, with no previous history, that had one bad day out of about 5,000. If, in this one-time incident, the mare had just crow-hopped a few steps across the yard and stopped, I would not be as concerned. The fact is she bucked strongly enough to get rid of you, a professional horsewoman, not once, but four times on that one day. This is alarming from a liability perspective. What was going on in that mare's brain that day? Was it equipment? Did you use a back cinch or a tight bridle or different bit that was too tight or too severe? Did she have a health problem; a sore back, a bruise or an insect bite, a tooth problem or other ailment on that day? If a veterinarian could have examined the horse within 24 hours and documented that a health problem likely caused the behavior, and it was shown to be easily correctable, this information would have been invaluable for determining this mare's future use.

Did the mare feel threatened or was she in pain or under stress due to a problem in understanding a different riding style she was not used to? Some well schooled horses will react strangely when being ridden by an aggressive new rider, or when ridden in circles that are too tight for their comfort level. It is important to look into this more closely if you want to consider using this mare as a school horse or for any other purpose

in the future. You would need to be confident that you could ride the horse without further incident and that beginners can also. I am not sure this will be possible at this point, because the window of opportunity to determine cause is well past.

Something else to consider is that the first lessons a horse learns are those which are most strongly set in their behavior. Some horses that were started under saddle by a "bucking out" breaking method can revert back to those lessons quite easily when they feel threatened. It would be good for you to find out how the horse was started - if by a bucking-out method or a non-bucking-out method. If it was by the bucking out method, and you cannot come up with any other easily correctable reason why the horse bucked that day, then I would not use this horse again for beginner or intermediate lessons.

From a Negligence Perspective, Consider This:

Let's say the mare bucked off a beginner during a future lesson, the beginner was injured and filed a lawsuit against you stating the horse you provided was not safe for her to ride because of its history. Let's assume that in this case the beginner did not contribute at all to making the horse buck and did not disobey a command or rule you gave her. To make matters worse, let's say the beginner was a 10 year-old child who would have very limited responsibility for her actions. Considering these circumstances, when asked these questions under oath, how would you answer them and how would your answer be viewed by a jury? The questions are: Did the school horse have a previous history of bucking a rider off? When did this occur? How many times? On how many occasions? How experienced was the rider(s) the school horse bucked off? Why did it happen? Did you know or should you have known that this school horse had a propensity to buck a beginner off during a riding lesson? In this case, the historical bucking incident happened to you, the instructor, so it puts you in a bad spot, does it not?

The Common Industry Standard - Myth or Fact

There certainly is a common industry standard for handling horses. This common industry standard will frequently be somewhat different depending upon the part of the country, whether in the city or in the country, and also upon the available level of one's resources to maintain certain standards. However, operators are mistaken to think they will be judged against the common industry standard for their level of service. Chances are, if the case went to trial, you would not be judged by a jury of your peers or equals, that is, other professionals who teach riding instruction at your servicing level, even though that is the way many think it is supposed to work. You will be judged by a jury of individuals who know almost nothing about horses except for what they see on TV or in the movies. The jurors will get their education in the court room from witnesses and the attorneys for both sides. Chances are good that the opposing side will have one or two "professional" expert witnesses, who are often working against the common standard of their own industry, and who are getting paid very well to help develop a case against you. In hindsight and in a perfect world, we all know that we could have done one or two more things to keep an accident from occurring if we had "divine" advance knowledge of what was going to happen and when. The experts will bring out all those things you

could have done differently, should have thought of, and taken action on, sometimes in a split second, to avoid an accident. The experts will say you were negligent and they will sound very convincing.

The jury will look at the fact that the mare bucked you, the professional, off not once, but four times in one day. They will question how you could assume or assure it would never happen again to a less experienced beginner student. If you had a very sound and correctable reason for this incident occurring and that the cause was totally different from the incident in question, then they might view it a bit more favorably. A good example might be this: In the original bucking incident your veterinarian determined the horse had a non-obvious bruise on its back. You allowed the bruise to heal by not riding the horse for two weeks. Then, upon riding the horse again, she did not buck and you repetitiously tested her on this and documented her reactions over a long period of time. This incident would then be compared to the incident for which you were later being sued wherein the horse bucked due to a totally different reason, such as a sudden bee sting on the croup.

Also, you should understand that injured beginners and their lawyers don't usually understand the differences between bucking, crow hopping, bolting, stumbling, jumping sideways or whatever various movements a horse might make. No matter what happened, the novice almost always claims the horse either bucked them off or bolted, even when the rider just lost balance and fell off when the horse stepped sideways. (After all, almost every one has seen a bucking bronco in a rodeo or the "run-away" horse on TV!) The problem is that your attorney, you, and your expert witness may have a difficult time explaining the differences to jurors who are unfamiliar with horses.

With this particular situation, I doubt that NAHA could consider re-use of this school horse for beginners or intermediates. However, NAHA does have a process through which some horses can be cleared for re-use once they have been involved in an accident. We look at the nature of the incident in question. If the horse has a tendency toward stumbling, bolting, bucking, or running away with novices on its back, we will have the operator discontinue public-use service of the horse. However, if it is a good horse that has been used for several years without incident and one isolated incident occurs, we may have the horse taken out of public-use service, but allow "proofing" of the horse to be done so it can be considered for re-use. We ask the management to set up a series of tests for the horse and we want the horse to be put through no less than 50 hours of retraining and testing in the "trigger" environment. We also ask that they keep careful records on the testing and retraining process and that these records are kept on file. If, after that, the horse has proven itself to be as safe as any other good and dependable school horse, we may allow it to resume its duties. In addition, we would want the horse to be checked over by a veterinarian for soundness and health just after the incident and again just before it resumes its duties. This written record should also be safely kept on file.

After the testing, we want to be sure the professional horse owner/instructor, the stable management, and the veterinarian feels very confident about the safety of this horse as a school horse or novice horse. The questions you would then have to ask yourself are: How certain am I that the horse will not take a sudden and unwarranted notion to buck a

beginner off in a lesson? To what degree do I feel confident with this: 50% sure; 80% sure; 98% sure? Being 80% sure is not good enough to avoid negligence in a beginning rider incident.

What Can One Do With a Horse Having a History?

I am sensitive to a side issue, which can be agonizing for stable owners. It has to do with ethics and also with loyalty to a school horse or rental horse that has been a dependable and beloved friend and breadwinner for the stable. What does one do with a horse that has been involved in a serious incident and must be taken out of service permanently because of its incident history? Many operators agonize over what to do with such a horse. Should they sell it at auction, put it down, retire it to pasture, or what? There are often more options than one might think.

Ethics and the threat of liability would warrant that the horse not be sold or given away without disclosing the incident or bad behavior to the prospective buyer or owner. Ethics also would require if the horse were sent out for training, that the trainer be informed about the problem up front, so he or she can determine if they want to try to rehabilitate the horse. When I was training horses, I had several clients who brought problem horses to me and did not disclose this, hoping I would discover it on my own and correct it. I usually discovered it the hard way! One such horse nearly killed me! This horse's violent and vicious bucking behavior was so rigidly imprinted and the trigger so undetectable that it should have been a rodeo bronc.

Depending upon the seriousness of the behavior problem and how well it is imprinted, these horses can often be rehabilitated and used by a private owner, advanced students, or ridden by expert staff members. Sometimes, a change of environment can do wonders for a horse that has developed a bad habit that is triggered by something, someone, or another horse in its environment. Three such situations come to mind:

- An eight-year old mare, named "Ebony," was a charm to ride once she was caught, but she was viciously stall and paddock sour. It turned out she really disliked the man who fed and turned her out every day, and her dislike of him made her extremely unhappy all the time. When the man stopped going into the stable, the mare became the sweetest horse in the barn, and it only took 90 days for the transformation to take place.

- Another horse was an accomplished Lippizaner at the Spanish Riding School who, at around ten years of age, began doing croupades (vertical jumps on the hinds legs) toward the doorway every time he passed it when performing in the quadrille. He couldn't be rehabilitated for that exhibition work in the riding school, so he was sold to my riding instructor who bought him, knowing of his problem. The "Lippy" was moved to a new location and used as a school horse in an arena for advanced riders. The horse never showed similar behavior again.

- "Madame" was a beautiful eight year-old thoroughbred mare I rode in England. She had been used as a school horse for about five years. She had come to a place in her life where she detested dressage work in an indoor arena setting. She had to be pushed hard

at every step. She switched her tail, had an unhappy expression, and did all her work reluctantly. However, when the mare was used for outside lessons, she instantly transformed into a different animal. She was eager, spirited and obedient. Whether trekking, jumping, or being ridden on a cross-country course, she was a very happy horse. Continuing to use "Madame" as a school horse for dressage was a disservice to her and perhaps to some unlucky future student who would be riding her when her bad behavior took a turn for the worst.

The point is that, more often than not, these horses can have a viable future though maybe not as a novice horse or doing the exact same work they have done in the past.