



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

| PART 1: Details of Internal Review | |
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| Internal Review Number: | Internal Review 0037-18 |
| Applicant's Name: | Leigh Wanless |
| PART 2: Decision History | |
| Original Decision: | Breach of Rule 178 of the Australian Rules of Racing |
| Original Decision Makers: | D Aurisch, C Albrecht |
| Date of Original Decision: | 19 April 2018 |
| Internal Review Decision: | Original decision confirmed - Twelve (12) month disqualification |
| Internal Adjudicator: | Mr Kane Ashby, Queensland Racing Integrity Commission |
| Date of Internal Review Decision: | 22 May 2018 |
| PART 3: Summary of Internal Review Application | |
| <p>The Applicant, Mr Leigh Wanless, trainer of MISTA BUSY which presented to race at the Rockhampton Jockey Club on 16 February 2017, was charged under Australian Rule of Racing 178 and was subsequently found guilty of the charge at a stewards' inquiry concluded on 19 April 2018 when a post-race urine sample taken from MISTA BUSY was found to contain a prohibited substance, namely Cobalt in excess of the permissible threshold as prescribed under Australian Rule of Racing 178C(1)(l).</p> <p>Australian Rule of Racing 178 states:</p> <p><i>"Subject to AR178G, when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised."</i></p> <p>The specifics of the charge being that the Applicant, as the trainer of MISTA BUSY, did present that horse to race in the QTIS 3YO Maiden Handicap over 1100 metres at the Rockhampton Jockey Club on 16 February 2017 when a post-race urine sample taken from MISTA BUSY was found, upon analysis, to contain a prohibited substance, namely Cobalt above the permissible threshold as prescribed under the Australian Rules of Racing.</p> <p>The Applicant pleaded not guilty to the charge on the basis that the taking of the urine by the Sample Collection Officer was not in accordance with the proper procedures. The stewards, upon considering all of the evidence, were satisfied the urine sample was collected in accordance with the required procedures and subsequently found the Applicant guilty of the charge.</p> <p>When considering penalty, the stewards took into account the following:</p> | |



- (i) the nature of the substance, being Cobalt, and the potential to compromise the health and welfare of MISTA BUSY;
- (ii) that Australian Rule of Racing 178 places an absolute and strict liability upon trainers to present horses to race free of prohibited substances;
- (iii) the Applicant's previous penalty for a similar breach in 2016;
- (iv) the level of Cobalt in the sample taken from MISTA BUSY;
- (v) the need for a penalty to serve as both a specific deterrent to the Applicant and a general deterrent to the wider industry to illustrate that breaches of this kind will result in the imposition of a significant penalty.

Stewards subsequently disqualified the Applicant's licence for a period of twelve (12) months effective immediately to expire on 19 April 2019.

The Applicant sought a review on charge and penalty on the basis the Applicant contends he is not guilty of the charge and the penalty imposed was too severe. The Applicant further submitted the sampling procedure on taking urine was flawed and was not in accordance with protocol, resulting in the integrity of the samples being compromised and unable to be relied upon.

The outcome sought by the Applicant is a finding of not guilty or a reduction in penalty.

PART 4: Reasons for Internal Review Decision

The Applicant, Mr Leigh Wanless, was the trainer of MISTA BUSY when he presented the horse to race at the Rockhampton Jockey Club on 16 February 2017. A post-race urine sample collected from MISTA BUSY was subsequently analysed by the Racing Science Centre (RSC) and Racing Analytical Services Limited (RASL) which reported the sample was shown to contain Cobalt in excess of the regulatory threshold pursuant to Australian Rule of Racing 178C(1)(I) at 100 micrograms per litre in urine (mcg/L). The aforementioned Accredited Racing Laboratories reported the sample contained Cobalt in excess of 200mcg/L respectively.¹

The Cobalt threshold was reduced from 200mcg/L to 100mcg/L in September 2016 as per Rule 178C(1)(I) of the Australian Rules of Racing.

MISTA BUSY was placed first in the aforementioned race. The betting data on the race noted MISTA BUSY started second favourite at \$3.20.

During the initial stewards' inquiry conducted on 3 August 2017, evidence was provided by the Applicant and licensed stable-hand Mr James Wanless (the Applicant's son). Telephonic evidence was provided by Dr Karen Caldwell (Acting Manager of Veterinary Services RSC), Samantha Nelis (Acting Manager of Analytical Services RSC) and Mr Paul Zahra (Scientific Manager RASL). The inquiry was subsequently adjourned and concluded on 19 April 2018.

During the initial inquiry the Applicant provided a statutory declaration dated 26 June 2017 that was read into evidence. The statutory declaration, in part, stated:

¹ Exhibit 5 and 13



"6. During the period the horse was in work I fed the following diet:

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| <i>60g of salt</i> | <i>30g each feed morning and night</i> |
| <i>2 dippers oaten chaff</i> | <i>each feed morning and night</i> |
| <i>2.5kg High E mix</i> | <i>each feed morning and night</i> |
| <i>1 biscuit Lucerne hay</i> | <i>each feed morning and night</i> |
| <i>30g bi-carb</i> | <i>each feed morning and night</i> |
| <i>50m1 cider vinegar (mixed in feed)</i> | <i>each feed morning and night</i> |
| <i>50m1 coconut oil (mixed in feed)</i> | <i>each feed morning and night</i> |

*7. The horse was also supplemented with Folic B12 and Hemoplex administered intravenously by my son James at various intervals, details of which are provided by him."*²

Mr James Wanless provided two statutory declarations dated 1 June and 26 June 2017 which were further read into evidence. The statutory declaration dated 26 June 2017, in part, stated:

"3. During the time the horse (MISTA BUSY) was in work prior to the race, I supplemented the horse's feeding regime with Folic B12 and Hemoplex by giving the horse 10m1 of each mixed in one 20m1 syringe intravenously.

4. I gave the horse the supplements referred to in paragraph 3 on the following dates:

2 January 2017

9 January 2017

16 January 2017

23 January 2017

30 January 2017

6 February 2017

13 February 2017

*5. The horse was not given any other supplements."*³

Mr James Wanless statutory declaration dated 1 June 2017, in part, stated:

9. I have been a stable hand for approximately years either in the harness or thoroughbred codes of racing and I am familiar with the procedures when urine samples are requested from horses. I would say that I have probably been involved in the process about 200 times over the years.

10. I have been shown a copy of the Standard Operating Procedures published by the Queensland Racing Integrity Commission in respect to the collection of urine samples.

² Exhibit 18

³ Exhibit 16



11. *I did not witness when the pan was cleaned prior to the first collection on the day.*
12. *I refer to 7.5.3 on page 8 of 20 of the Standard Operating Procedures under the heading "Collecting Urine Samples". I recall the sample collection officer was wearing gloves. I cannot recall whether the sample collection officer shook the bottle containing the control solution. She may well have.*
13. *I witnessed the sample collection officer emptying the control solution into the urine collection bowl and rinsing the bowl with that solution.*
14. *I witnessed the sample collection officer pouring all of the control solution from the bowl back into the original bottle and putting the cap back on it.*
15. *I cannot comment on whether the sample collection officer ensured that all bottles were secure from interference while the urine was being collected!*
16. *I witnessed the sample collection officer collecting the urine sample from the horse.*
17. *The sample collection officer did not pour the control solution from the original bottle into the second bottle and then cap it and shake it. The sample collection officer did not pour the control solution then from the second bottle into the third bottle and cap it.*
18. *The control solution was poured from its original bottle into the bowl and back into the bottle at the beginning of the procedure.*
19. *The control solution was not used to rinse the second bottle.*
20. *The urine was poured direct from the pan into the second bottle and the third bottle.*
21. *I have seen this procedure at least 200 times during my time in the industry.*⁴

During the resumed inquiry conducted on 19 April 2018, Mr Paul O'Sullivan, legal representative for the Applicant, stated "Mr Wanless understands the effect of presentation is a strict liability offence and what flows from that. What appears to have been placed in issue in these proceedings is the integrity or otherwise of the sampling procedure, and that should not surprise you, and what we have is a statutory declaration by James Wanless which calls into question whether the protocol has been properly followed. Obviously if it has not there are some consequences that may flow from that. Now, it appears that what has transpired is the stewards have been in receipt of the stat dec of James Wanless. I think it was sworn 1 June 2017, from memory. Then what the stewards have done is arranged for the preparation of an affidavit by Summers, who was the sampling officer, and clearly those two documents are in conflict. Now, it is important that it be placed on record that on more than one occasion I requested of you, Mr Chairman, that's Summers be available to have questions asked of her because a role that the stewards must discharge in coming to a decision to the requisite standard, which is the Brigginsshaw standard, is whether they can be comfortably satisfied. Now, in the absence of Ms Summers being available to be asked questions of by Mr Wanless or myself or by James Wanless, then the stewards cannot form a conclusion as to her credit, and I'm taking - I take it she is not here today?"⁵

⁴ Exhibit 17

⁵ Transcript of Stewards' Inquiry dated 19 April 2018, page 13



The chairman of the inquiry replied “No, she is not present”, to which Mr O’Sullivan further questioned “Is she available by way of telephone? Is there a reason she is not here or available by way of telephone?” to which the chairman replied “She said the evidence that she has provided thus far is her recollection of what occurred.” Mr O’Sullivan went on to question “But surely Mr Wanless is entitled to ask questions. It’s her recollection” to which the chairman replied “She signed an affidavit.” Mr O’Sullivan then stated “I understand that, but she is entitled to be - Mr Wanless is entitled to test the deponent of that affidavit as to its truth and accuracy. Clearly what we have is 2 conflicting versions - so the inquiry - or the tribunal, being the stewards - has to prefer one version over the other version, and they have to - and they have to have that preference to the requisite standard.”⁶

Mr O’Sullivan added “So I’m not wasting everybody’s time. She won’t be available for an Internal Review should the decision be an adverse one to Mr Wanless. Do you anticipate her turning up to QCAT in due course? Because her affidavit would not be admissible in the absence of her attendance. So if she is unlikely to - if she is unlikely to front at QCAT in due course, then the affidavit won’t be admissible. You will be left with the evidence of James Wanless, who, on my instructions, will attend and give evidence in accordance with his stat dec, sworn 1 June. I just don’t want this to be a waste of time. Is there a reason you can proffer to Mr Wanless - he is entitled to a reason as to why one, she is not here today; two, not available by way of telephone?” to which the chairman replied “Well, she is not employed by the Commission any further. She has got other duties, and to be frank with you, she has provided more than what most sample collection officials provide in evidence.” Mr O’Sullivan questioned “Well, can I say this to you: Mr Wanless would like - Mr Wanless would like to explore as part of this inquiry who prepared the affidavit. Who was the author of the affidavit? Was it simply placed in front of Ms Summers with a request that she read it and sign it? They are the matters which Mr Wanless is entitled to explore as part of this inquiry. He can’t explore in the absence of Ms Summers” to which the Chairman replied “I have told you via email in the past we don’t intend to take any verbal evidence from Ms Summers.”⁷

The inquiry heard Ms Jacqui Summers, the sample collection officer on the subject day, completed the aforementioned affidavit. Ms Summers was aware the reason she was asked to provide an affidavit was due to her procedure in the subject matter being called into question. Ms Summers was provided with an affidavit that was prepared in a previous matter and informed the stewards that she would consult her notes and make the relevant changes as far as her recollection is concerned.

Ms Summers’ affidavit affirmed 9 September 2017, in part, stated:

“1. Since October 2016 I have been employed by the Queensland Racing Integrity Commission on a casual basis as a Sample Collection Official across the greyhound and thoroughbred code of racing.

11. In accordance with 7.5.1 of The Standard operating procedures— Collections of samples and things, 2016 (Protocol A), Identification of animals to be sampled, and, 7.5.2 of The Standard operating procedures - Collections of samples and things, 2016 (Protocol A), Preparation and sealing procedure for all Protocol A sample collections:

(a) I checked the identity of the animal by reference to a list of brands and marking’s supplied by stewards.

⁶ Transcript of Stewards’ Inquiry dated 19 April 2018, page 13 and 14

⁷ Transcript of Stewards’ Inquiry dated 19 April 2018, page 14 and 15



- (b) I showed Mr James Wanless, who identified himself as the person in charge of 'Mista Busy', the plastic bag containing the sampling equipment was intact;*
- (c) I put on the supplied gloves and wore those gloves whilst rinsing the equipment with the control solution and, collecting and splitting the sample;*
- (d) I cut the plastic bag open just below the heat seal in view of the person in charge of Mista Busy', and then placed the plastic bag on the bench inside the swab room.*
- (e) I checked that the numbers on the three-pocket security pouch, Security Document and the three tamper evident seals are the same unique number;*
- (f) I removed the control solution and collection pan from the bag inside the secure swab room*
- (g) I ensured all equipment that would come into contact with the urine sample was rinsed with the control solution supplied;*
- (h) I shook the bottle containing the control solution vigorously;*
- (i) I poured all of the control solution into the urine collection bowl and rinsed the bowl thoroughly, in full view of the person in charge of `Mista Busy'; I then poured the control solution back into the supplied bottle that it had been poured from, and again shook the bottle vigorously,*
- (k) I placed the bottle containing the control solution in my pocket and opened the swab stall for the animal and Mr James Wanless to enter.*
- (l) I collected the urine sample. The reasons I collect the sample and then divide the control between bottles two and three is because generally the horse is ready to provide the sample immediately;*
- (m) I poured all of the control solution that had been used to rinse the collection bowl from the first plastic bottle (that had been in my pocket during the sample collection) into the second bottle, capped it and shook it vigorously;*
- (n) I poured all of the control solution from the second bottle into the third bottle, capped it and shook it vigorously. This bottle now contained the control sample;*
- (o) I ensured all bottles were secure from unauthorised interference while the urine sample was being collected;*
- (p) After the urine sample was collected, I separated the sample into the two empty rinsed bottles and capped the bottles;*
- (q) All of the urine collected was submitted;*
- (r) I removed and disposed of the gloves in an appropriate and hygienic manner;*
- (s) I placed one tamper evident seal over the cap of each bottle. I ensured the seal went over the cap and down both sides of the bottle to seal the cap to the bottle.*
- (t) I complete the required details on the central pocket of the three-pocket security pouch.*
- (u) I placed the sealed bottles containing the control solution and urine into the pockets of the three-pocket security pouch.*



- (v) I secured the opening of each pocket of the three-pocket security pouch.
- (w) I placed the sealed three-pocket security pouch inside the plastic bag that the sample bottles and associated equipment were delivered in.
- (x) I asked James Wanless who was the person in charge of the licensed animal to sign the Security Document to acknowledge that he witnessed the collection and packaging of the sample.
- (y) Once the Security Document was completed the duplicate copy was handed to James Wanless the person in charge of the licensed animal, who witnessed the collection and packaging of the urine sample.
- (z) I kept the samples and associated documents in a safe and secure place until they were personally delivered to an Authorised Representative of the Control Body or an integrity officer.
12. With all samples which I collect, I ask the person in charge of the licensed animal to print their name at point 11 and sign at point 12 of the 'Sample Security Document for Taking a Sample for Analysis' if they are happy with the collection procedure.
13. At no time did James Wanless raise any concerns with the taking and sealing of the sample from the thoroughbred 'Mista Busy'.
14. The sealed urine sample collected was placed within a fudge in the swab room to ensure the integrity of the sample. This has always been the process.
15. If any discrepancies occur between an individual sample collection and that of my above procedure, it is noted in my race book for that day. No such note was made for this sample, therefore the sample was collected as per the above procedure in accordance with The Standard operating procedures - Collections of samples and things, 2016 (Protocol A).
16. All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit."⁸

Mr O'Sullivan objected to the inquiry proceeding without Ms Summers being present stating "I have got to object to the inquiry on instructions being finalised in the absence of Ms Summers." Subsequent to an adjournment to consider the objection, the chairman stated "We have considered your submission to set this matter aside until Ms Summers can be questioned by Mr Wanless. The affidavit of Ms Summers only forms part of the evidence that we will consider. The other more crucial parts are the swab card that was signed on the day by Mr James Wanless, the absence of any issue raised at that meeting or subsequent to being advised of this finding, and we are satisfied that Ms Summers has had the relevant training, and also that her procedures haven't been called into question previously. So what weight we place on her affidavit is a matter ultimately for us when we determine guilt or otherwise."⁹

⁸ Exhibit 20

⁹ Transcript of Stewards' Inquiry dated 19 April 2018, page 16 and 17



Mr James Wanless provided evidence led by Mr O'Sullivan and stated *"I agree with everything except for the two bottles didn't get - the bottle that has that control solution in it, it got - she shook that, put it in the pan and does that thing and then poured it back. The other two bottles they were just open. They didn't have - she didn't put control solution in those two bottles. The first thing that went into the bottles was urine."* Mr O'Sullivan questioned *"So I think it is referred to as bottles two and three - they were not subject to the control solution - is that what you are saying?"* to which Mr Wanless replied *"Yes."* Mr O'Sullivan further questioned *"And I think that is consistent with what you say in paragraph 17 of your stat dec where you say: 'The sample collection officer did not pour the control solution from the original bottle into the second bottle and cap it and shake it. The sample collection officer did not pour the control solution then from the second bottle into the third bottle and cap it.'" "Is that correct?"* to which Mr Wanless replied *"Yes."*¹⁰

The inquiry heard the sampling collection procedures had been published for many years prior to the commencement of the Queensland Racing Integrity Commission. The procedures are now deemed a standard operating procedure and are not required to be published. The inquiry further heard the sampling collection procedure is of the same flavor as the previous published procedures. The reviewer notes in *Currie v QRIC*¹¹ that Queensland Racing's 'Collection of Sample and Things' SOP version 4.1 was superseded on 1 July 2016. This version was replaced with the 'Collection of Sample and Things' SOP Version 1. The current version, in part, states:

"The purpose of this procedure is to describe the preferred process for collection of samples from registered/licensed racing animals and for the taking of other things for analysis."

There is no direct evidence before the reviewer to determine that the collection process was not in total compliance with the preferred process outlined within the SOP.

The Applicant's submissions in defence of the charge state *"I am not guilty of the offence. The penalty imposed was too severe. The sampling procedure on taking urine was flawed and not in accordance with protocol. The integrity of the samples was therefore compromised and cannot be relied upon. The Applicant relies on the exhibits tendered in the proceedings. The Applicant notes that Summers did not appear at inquiry. The outcome the Applicant was seeking stated "A finding of not guilty or a reduction in penalty."*¹²

The reviewer sought advice from Dr Karen Caldwell, Acting Manager RSC, specifically related to the training and experience of Ms Summers as a sample collection officer. Dr Caldwell stated *"Jacqui completed the training on 4 November 2016 - I was the one to train Jacqui and she was certainly trained to rinse all bottles with the control solution - this would have been taught both in the theory session and demonstrated in the practical observation session at a race meeting. Newly trained SCOs are then rostered on to "shadow" a more experienced SCO for at least the first meeting. SCOs are advised to develop a routine, consistently perform the process in accordance with that routine and keep a record of any circumstances which result in variance from the usual process. Having been trained in 2016, Jacqui was quite experienced at the time of collecting this sample."*

¹⁰ Transcript of Stewards' Inquiry dated 19 April 2018, page 20

¹¹ Internal Review Decision 0056-16 and Internal Review Decision 0003-17

¹² Application for an Internal Review dated 19 April 2018



The reviewer accepts Mr James Wanless is an experienced stable employee and particularly familiar with the sampling collection procedures. Mr Wanless' statutory declaration dated 1 June 2017 stated "*I would say that I have probably been involved in the process about 200 times over the years.*" The reviewer accepts Mr Wanless signed the 'Sample Security Document For Taking A Sample For Analysis' and acknowledges he witnessed the whole collection process of collecting MISTA BUSY's post-race urine sample 407524, placing it in one or more containers and sealing the containers at the Rockhampton Jockey Club on 16 February 2017. Mr Wanless did not, at any relevant time, raise any concern that the collection process was not in total compliance with the preferred process outlined within the SOP. The reviewer accepts that Ms Summers, the sample collection officer for the subject sample, further counter-signed the 'Sample Security Document For Taking A Sample For Analysis' acknowledging the correct process was followed.

The reviewer acknowledges a report that was submitted by Professor Paul Mills in a recent Internal Review Decision that stated "*What cannot be overstated is that horses do not require additional cobalt. There is sufficient cobalt in the feed and from most pastures, so there is no medical or nutritional requirements for additional cobalt in the healthy horse. It can therefore only be assumed that additional cobalt was administered to affect performance. Brynn Hibbert's final report from Australian horses did statistical analysis and found probability of a regular horse exceeding 200 pg/L - 1 in 8 million, while exceeding 100 pg/L is - 1 in 100 000. Importantly, on-going surveillance by the RSC from 6751 equine urine samples between 26th June 2015 and 8th March 2017 showed that the mean (average) concentration of cobalt in these samples was 9.2 pg/L. Note that this included pre-race and post-race samples. To summarise, we have a LOT of horses that were tested on race day, both pre- and post-race, with average urinary cobalt concentrations of < 10 pg/L, so horses exceeding the current threshold could only have done so if cobalt was administered close to or on race day.*"¹³

The reviewer notes that in recent review decisions involving Cobalt the RSC collated a spreadsheet of data following its analysis of testing Cobalt in equine race day urine samples. The data demonstrates 13,485.00 samples, including outliers, were tested between 26 May 2015 and 17 January 2018 which showed a mean of 8.57mcg/L and a median of 4.69mcg/L. This data is inclusive of all the variables associated to the horse, including dehydration and weather conditions, and further indicates horses being fed registered commercial supplements containing Cobalt in accordance with manufacturers guidelines are highly unlikely to exceed the Cobalt threshold. This is further supported by the thoroughbred and harness racing codes' decision to amend the Cobalt threshold from 200mcg/L to 100mcg/L in September and November 2016 respectively.

Racing Queensland issued a notice to industry participants in September 2013 advising it is accepted Cobalt is a substance detectable in most, if not all, horses due to dietary intake. Cobalt, in a variety of forms including Cobalt Chloride, is present in a variety of pre-mixed feeds and supplements, however if used according to the manufacturers guidelines, it will not typically elevate to a level which could be deemed a breach of the Australian Rules of Racing. A further industry notice was issued in October 2016 advising of the aforementioned reduction in the Cobalt threshold and further warned trainers, amongst others warnings, to only administer nutritional supplements that are manufactured and marketed by reputable companies and avoid the use of inadequately labelled and unregistered products.

¹³ Internal Review Decision 0026-18



Trainers were advised they should consult with their veterinarian to ensure that their feeding and supplementation practices are sufficient to meet the nutritional requirements of horses under their care and that their supplementation practices, particularly with products containing Cobalt and/or vitamin B12, are not excessive in light of those requirements.

The reviewer finds ignorance to the fact that supplements containing Cobalt and Vitamin B12 administered close to race time may elevate Cobalt to unacceptable levels under the Australian Rules of Racing is not a form of defence, especially in light of the many published cases in recent years and industry notices pre-warning participants of such dangers. The Applicant is responsible to familiarise himself with the active constituents of all supplements administered to horses in his care, in particular products that contain Cobalt and Vitamin B12, to ensure horses are presented to race free of prohibited substances.

The reviewer accepts the Australian Rules of Racing place a strict obligation and responsibility on trainers, in this instance the Applicant, to present their horses to race free of any prohibited substances.

Australian Rule of Racing 178C(1) states:

"The following prohibited substances when present at or below the concentrations respectively set out are excepted from the provisions of AR178B and AR178H"

Sub-section (I) states:

"Cobalt at a mass concentration of 100 micrograms per litre in urine or 25 micrograms per litre in plasma."

Essentially, the Applicant's sole defence to the charge was the sample collection procedure was not in total compliance with the preferred process outlined with in the SOP. Mr James Wanless stated *"The sample collection officer did not pour the control solution from the original bottle into the second bottle and cap it and shake it. The sample collection officer did not pour the control solution then from the second bottle into the third bottle and cap it."* The reviewer acknowledges Mr Wanless failed to raise any concerns at the relevant time or subsequent to being advised of the irregularity that the collection process was not in total compliance with the preferred process outlined with in the SOP. The reviewer acknowledges that the statutory declarations of Mr James Wanless and Ms Summers are in conflict with each other, particularly related to the control solution procedure. The inquiry heard Ms Summers was a qualified sample collection officer having performed the relevant training. Ms Summers has held such position on a casual basis since October 2016. The reviewer acknowledges the samples' 'chain of custody' is a documented process that is accounted for from the time of sample collection, inclusive of the collection process in accordance with the 'Sample Security Document For Taking A Sample For Analysis' through to the Certificate of Analysis being issued by the aforementioned Official Accredited Racing Laboratories. The reviewer finds the sample the subject of this review was the only sample from the race meeting that was not free of prohibited substances.

In considering the evidence and taking into account the aforementioned factors, the reviewer is satisfied in the absence of any direct or corroborating evidence that the collection process was in total compliance with the preferred process outlined with in the SOP. The reviewer is therefore satisfied there is no direct evidence to determine the integrity of the sample was compromised to any extent that would adversely affect the integrity or analysis of the sample.



The Applicant provided no plausible explanation for the analysts' findings. The Applicant's statutory declaration outlined MISTA BUSY's normal feeding regime stating "*The horse was also 'supplemented with Folic B12 and Hemoplex administered intravenously by my son James at various intervals, details of which are provided by him.'*" Mr James Wanless' statutory declaration dated 26 June 2017 stated "*I supplemented the horse's feeding regime with Folic B12 and Hemoplex by giving the horse 10m1 of each mixed in one 20m1 syringe intravenously.*" According to Mr James Wanless' statutory declaration the last known administration of products containing Cobalt, namely Folic B12 and Hemoplex, was administered to MISTA BUSY on 13 February 2017, three (3) days prior to the race the subject of review. The reviewer finds, considering the level of Cobalt detected was in excess of 200mcg/L and based on the scientific and veterinary evidence, it would be reasonable to conclude that such explanation provided was not the sole reason for the analysts' findings. The reviewer therefore accepts the Applicant presented MISTA BUSY for racing when a prohibited substance was present and accordingly finds the charge proven.

The Applicant has held a thoroughbred trainers licence for approximately eleven (11) years. The Applicant's disciplinary history in that period demonstrates one (1) prior offence under an 'administration' offence pursuant to Rule 175(h)(ii) in which the Applicant was issued with a \$3,000.00 penalty. The inquiry heard training was not the Applicant's sole source of income.

Cobalt precedents for a 'presentation' offence within the Queensland racing industry previously incurred a minimum penalty of a twelve (12) month disqualification. Notwithstanding, in some recent matters penalties of a nine (9) months disqualification have been imposed, taking into account the relevant circumstances of individual cases and that of Queensland Civil Administration Tribunal decisions, with specific consideration to a guilty plea and unblemished disciplinary history on extended training careers.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, personal circumstances, not-guilty plea, totality of penalty precedents, disciplinary history and particularly the level of Cobalt detected in the subject sample being in excess of 200mcg/L. The reviewer finds Cobalt is a prohibited substance that provides participants with an unlevelled playing field and such matters have a detrimental effect on the integrity of the thoroughbred racing industry. A penalty not only needs to be fair and evidence based, it must also serve as a deterrent to any likeminded persons and, considering all factors relevant to penalty, in particular the Applicant's prior disciplinary history and level of Cobalt detected, the reviewer is not satisfied a reduction in penalty is proven in the circumstances and therefore confirms the original decision on charge and penalty.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:



Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au