



INTERNAL REVIEW DECISION

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

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0098-18
Applicant's Name:	Kelly Doughty
PART 2: Decision History	
Original Decision:	Breach of Rule 178 of the Australian Rules of Racing
Original Decision Makers:	I Brown, D Aurisch, B Connell
Date of Original Decision:	22 October 2018
Internal Review Decision:	Original decision of charge and penalty confirmed - Twelve (12) month disqualification
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	16 November 2018
PART 3: Summary of Internal Review Application	
<p>The Applicant, Ms Kelly Doughty, trainer of BLUE BOOK which presented to race at Doomben on 11 November 2017, was charged under Australian Rule of Racing 175(h)(ii) and Australian Rule of Racing 178 when a urine sample taken from BLUE BOOK 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 175(h)(ii) states:</p> <p><i>The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:</i></p> <p><i>Any person who administers, or causes to be administered, to a horse any prohibited substance -</i></p> <p><i>(ii) which is detected in any sample taken from such horse prior to or following the running of any race.</i></p> <p>The specifics of the charge being that the Applicant, as the trainer of the thoroughbred BLUE BOOK, did administer or cause to be administered a prohibited substance, namely Cobalt above the permitted threshold, as detected in the urine sample taken from Blue Book at Doomben on 11 November 2017.</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>	



The specifics of the charge being that the Applicant, as the trainer of the thoroughbred BLUE BOOK, did present that horse to race at Doomben on 11 November 2017 when a sample taken from it, upon analysis, was found to contain a prohibited substance, namely Cobalt in excess of the prescribed threshold.

The Applicant entered a plea of not guilty to both charges and made submissions that the presence of inorganic compared to organic compounds of Cobalt should be determined as the presence of organic compounds would not constitute a prohibited substance. The Applicant further submitted that the urine specific gravity (USG) of the urine sample should be determined, particularly in cases involving animals in a state of dehydration, as it is possible that the results of analysis could be adversely effected by the level of USG.

Stewards were unable to identify any specific evidence in support of the charge pursuant to Australian Rule of Racing 175(h)(ii) and subsequently found the Applicant not guilty of that charge.

However, Stewards were of the view that any requirement to differentiate between organic and inorganic compounds was irrelevant as once the level exceeded the threshold then the presence of Cobalt was determined to be a prohibited substance under Australian Rule of Racing 178C(1)(l). The Stewards also relied on evidence from Dr Karen Caldwell of the Racing Science Centre that if any sample exceeded the threshold of 100mcg/L containing mainly organic compounds of Cobalt, then it was indicative of significant over-supplementation of the animal and/or administration within the timeframes preventing treatment of horses prior to racing. Furthermore, Stewards relied upon the Racing Science Centre's statistical data of samples containing Cobalt levels, which states that 14,296 samples taken from racing animals, in various states of hydration and supplementation, between May 2015 and February 2018 revealed a mean of only 8.52mcg/L to rebut the submission relating to Urine Specific Gravity. Stewards subsequently found the Applicant guilty of the charge pursuant to Australian Rule of Racing 178.

When determining penalty, the Stewards took into account the Applicant's personal circumstances, including the Applicant's training history being in excess of twenty (20) years as a licensed trainer. Stewards also considered the Applicant's previous breach under the same rule in 2012 and relevant penalty precedents. Stewards were also mindful of the detrimental effect such breaches have on the integrity of the industry and the requirement for any penalty to serve as an adequate deterrent to ensure racing is conducted free of prohibited substances.

The Applicant was subsequently disqualified for twelve (12) months effective immediately and to expire on 22 October 2019. The Applicant was advised of the impositions of a disqualified person under Australian Rule of Racing 182 and advised of certain conditions that would be imposed to prevent any perception that she would be party to the training operation of her husband, Mr Gary Doughty, whilst serving her disqualification.

Whilst the disqualification was effective immediately, the Stewards allowed the Applicant a period of seven (7) days to make alternative arrangements for the horses currently under her care during which she would be allowed to feed, water and walk those horses.

The Applicant sought a review on charge and penalty and contends she is not guilty of the charge and that the penalty imposed was excessive.

The Applicant provided the following submissions in support of her Application:



"1. Upon the evidence provided by Ross Tinniswood at the inquiry the Internal Reviewer would not be satisfied that the Applicant has breached AR178.

2. In accordance with the statement of the strapper, Luke Milligan, Blue Book was severely dehydrated. No Urine Specific Gravity Test was undertaken and it is reasonable to assert that if a USG Test was undertaken and an adjustment made then the reading may have been below the threshold of 100 micrograms per litre.

3. No prohibited substance has been detected. The substance that has been detected is vitamin B12 which is not a prohibited substance. Testing is available to differentiate between B12 and inorganic Cobalt however the samples taken from Blue Book have not been tested for this despite the request from the Applicant for this to occur.

4. The penalty in Kavanagh v Racing Victoria Limited (No2) (Review and Regulation) [2018] VCAT 291 is judicial precedent that a monetary penalty is the appropriate penalty, especially having regard to the fact in that case the readings were higher than the Applicant's.

The outcome sought by the Applicant is that the decision of the stewards to find the Applicant guilty and to disqualify the Applicant for twelve (12) months be set aside.

PART 4: Reasons for Internal Review Decision

The Applicant, Ms Kelly Doughty, was the trainer of BLUE BOOK which presented to race at Doomben on Saturday 11 November 2017. A post-race urine sample collected from BLUE BOOK was subsequently analysed by the Racing Science Centre and Racing Analytical Services Limited 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. The aforementioned NATA Accredited Official Racing Laboratories reported BLUE BOOK's sample contained Cobalt at 200mcg/L and 185mcg/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.

Cobalt is deemed a prohibited substance under Australian Rule of Racing 178C(1)(I) when levels exceed 100 micrograms per litre in urine. Dr Karen Caldwell, Acting Manager of Veterinary Services at the Racing Science Centre, provided a Veterinary Certificate stating cobalt is a naturally occurring inorganic trace element and also exists in the structure of vitamin B12. Cobalt can stimulate erythropoiesis (the formation of red blood cells) and as a result may enhance aerobic performance. Cobalt can be toxic if administered in large doses. Cobalt for human therapeutic use, except as dicobalt edetate in preparations for the treatment of cyanide poisoning, is classed as a Schedule 4 substance (Prescription Only Medicine or Prescription animal Remedy) according to the Standard for the Uniform Scheduling of Medicines and Poisons No.15 (the Standard). Cobalt is otherwise unscheduled under the Standard. Cobalt is however present in the combination with various other compounds in a number of formulations, some of which contain substances which are scheduled under the Standard.²

BLUE BOOK was placed first in the respective race. The betting data on the subject race demonstrated BLUE BOOK started at \$11.00.

¹ Exhibit 4 and 12

² Exhibit 5



During the initial stewards' inquiry conducted on 27 February 2018, evidence was provided by the Applicant, the Applicant's legal representative Mr Matthew Tutt and pathologist Mr Ross Tinniswood.

The Applicant, in evidence, stated that all horses in the stable inclusive of BLUE BOOK received the same feed which consisted of single crushed oats, Hygain Track Torque, wheaten chaff, lucerne chaff and lucerne hay twice a day.³

The stewards of the Queensland Racing Integrity Commission conducted a stable inspection at the Applicant's licensed premises on 19 December 2017 for the purposes of informing the Applicant of the analysts' findings in the aforementioned urine sample. The stable inspection report, in part, stated the Applicant's treatment records were *"Not at stables - Trainer absent."* The Applicant's treatment records were subsequently provided to stewards at a later date.

For clarity, Australian Rule of Racing 178F(1) places a requirement on trainers to maintain and record treatments and medications to each horse in their care by midnight on the day on which the administration was administered. Sub-section 4 of the aforementioned rules states *"When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required by sub-rule (1)."* The reviewer acknowledges the importance of a) the responsibility of the trainer to maintain and produce treatment records on request and b) the examination of live time records of treatments during an unannounced stable inspection.

The Applicant's treatment records demonstrate the last recorded treatment to BLUE BOOK prior to recording the subject Cobalt levels of 200mcg/L and 185mcg/L respectively was three (3) days prior to the subject race, namely 20ml of Tripart administered intravenously by the Applicant. The treatment records further demonstrate the last recorded treatment to BLUE BOOK prior to recording Cobalt levels at 8.4mcg/L and 10.8mcg/L respectively at Doomben on 25 November 2017 and 9 December 2017 was two (2) days prior to the respective races, namely a drip administered intravenously by the Applicant.⁴

The Applicant was questioned *"Have you used the same regime every time?"* to which the Applicant replied *"For his second win and third win he actually got a pre-race drip, which was on the Thursday morning. So an extra day later than on the previous first win. And in that particular drip he actually had more vitamins put into that, which is very strange."* The Applicant was further questioned *"So the same vitamins were used on that occasion in the lead up to subsequent wins?"* to which the Applicant replied *"He actually had more vitamins - more vitamins going into his second and third wins."*

The inquiry heard the aforementioned drip was a Darrow's drip which the Applicant added Tripart, Coforta, Aminolite and Vitamin C to the drip.⁵ There was no evidence provided or documented in the Applicant's treatment records to determine the volume of additional substances added to the drip.

During the stewards' inquiry, Mr Tutt questioned Mr Tinniswood as to the method of analysis applied by racing laboratories in the testing of Cobalt. Mr Tutt questioned *"What can you tell us about any shortcomings from your scientific - forensic, scientific and diagnostic pathology background? What can you tell us if there are any shortcomings with respect to how cobalt might be tested at a laboratory?"* to which Mr Tinniswood replied *"I understand that the methodology is called - it's a mass - mass spectrometry method, which is currently state - of - the - art."*

³ Transcript of Stewards' Inquiry dated 27 February 2018, page 5 and 6

⁴ Exhibit 20

⁵ Transcript of Stewards' Inquiry dated 27 February 2018, page 7, 8 and 9



The process regrettably was developed - I was actually involved in the acquisition of one of these instruments prior to the drug racing lab getting theirs. I brought - put one into Queensland Health, so I know a fair bit about the machine. The problem is that its intent is to detect trace substances - usually trace metals in - down to a very, very fine - low-level. The problem it creates in this circumstance is that in racehorse testing circumstances it's that the front end inductively coupled plasma stage - which is what occurs with the specimen prior to the actual spectrometry stage - it's a (inaudible) form of matter, believe it or not. You know - you would be familiar with what they call solids and liquids and gases. We all learn that at school. Its form state is what is required to generate so the actual spectrometry can occur. It is achieved by putting a sample of specimen - let's assume in this case it's urine - into what can be best described in lay terms as a furnace. It occurs in an argon atmosphere, which super heats using electromagnetic radiation and other factors, which I won't bore you with. It super heats the specimen way past the liquid gaseous phase into what is known as a superheated plasma. The temperature of that is the temperature of the sun - about 5000 degrees kelvin. In that environment molecules cannot exist. You reduce the specimen to the atomic and ionic form only, and so if you were to put a specimen of water into the device you would finish up with atoms of hydrogen and atoms of oxygen. You will not have water in there. Now, those atoms or - and their ironides are part of a process called a shot across an electromagnetic spectrum. The heavy ones will fall in a certain place. So, for example, a very heavy metal will because of its size - its atomic weight - will be dragged down by the magnet to a particular predictable spot along a - you can imagine a spectrum is like a ruler. The heavy ones will fall early, the lighter ones will for later. So hydrogen, which only has one atom and one electron, will zoom down the end until it finally - it's like shooting an arrow, but the heavier the arrow the shorter it falls. Now, the problem of - then the laboratory will with their chemistry knowledge, and with appropriate controls and standards in the system, will be able to identify where cobalt is, and the volume of cobalt - sorry, right word - the concentration of cobalt in the specimen by the height of the peak. You finish up with - like an ECG, a curve where you have peaks all the way along, and you can tell by calibrating the assay that the cobalt is a certain spot. What the lab does then is it calculates the concentration and reports it, and that's the end of it. That's the cobalt readings for that specimen. The problem is the - there is no indication and no other - normally for this process, no other atoms are sought or (inaudible) and therefore all they find is the cobalt. The problem this creates I think for using this technology - (inaudible) halfway there. You don't know where the cobalt came from." Mr Tinniswood added "You can't say with any certainty the source of the cobalt unless you test the specimen further for other substances. Now, the most obvious example - which is a likely occurrence I think in most racing swabs - is vitamin B12, which is used universally around the Australian training industry. Now, if the horse has raced and it has got B12 in it - even just a small amount -you take the horse to the swabbing stall and you collect some urine. You put the urine in your jars. As I understand it's (inaudible) at that point, and they go down a chain of evidence line as per (inaudible) investigations would occur, and they are opened in the laboratory. The laboratory - what's in those bottles at this stage is Vitamin B12. No cobalt need to be there. The cobalt itself is sitting bound like a rat in a cage in a molecule, which is Vitamin B12. Effectively a legal substance. I know there is debate about how many days before you can give it, but it's effectively to be found there, and it's a legal substance. It does not induce performance. The - that vitamin B12 molecule, plus everything else in the urine - the creatinine, any red cells in it - will into that furnace - that chamber - and it will be reduced to individual atoms. So no matter where it came from, cobalt will be produced. The problem with this is you get a cobalt result but you still haven't found out where it came from. The simple solution to this is to test blood, but also to test - and I will get to that in a second. The simple solution is to test the urine for Vitamin B12, and that technology I know for a fact is already available in the Queensland lab, and I also know that they don't use it for that purpose.



So you have got this ironic situation where you get this cobalt result but you can't really with any confidence - apart from the fact that the ARB rule says - because you don't know where it came from. So that's the first thing I wanted to put across. The Vitamin B12 - and there could be other things to note. It could be - I wouldn't even guess - something that was in the feed or whatever. And I'm not using that as an excuse in this case, but what I'm trying to say is that the specimen itself is degraded in the laboratory to produce a cobalt result that is, from a scientific point of view, meaningless. To get an enhanced effect - a doping effect - from cobalt, it has to be in what they call an inorganic phase, and this is defined by WADA - an organic phase which stimulates erythropoiesis outside the body's normal (inaudible) process. So if you give cobalt you will get a cobalt result. You will get an increase in erythropoiesis - which is red cells - more oxygen, greater endurance and so on. The problem in using that sort of thing, as you probably all know, is the more you give the more red cells you get. The blood actually thickens and (inaudible) including death. So that's the true cobalt doping circumstance. Vitamin B is a relatively self-regulated chemical, which is a molecule which enters the body, and in a healthy animal which has no anaemia, the body will immediately reject it and it will continue (inaudible) the urine (inaudible) IV (inaudible) come out in the faeces. The body is not metabolising, not interested in it. It gets rid of it. If an animal or person - and the biology - the physiology is very similar - if the person or animal is anaemic - in other words, lacking in blood cells - the Vitamin B12 will be absorbed and it will act therefore later as a coenzyme in a (inaudible) regulated erythropoiesis process, and its effect on performance is virtually zero because you wouldn't race an anaemic ill horse anyway."

Mr Tutt questioned "So if I can just put this proposition to you to try and get to the heart of it is that if you gave a horse Vitamin B12 or Vitamin B substances - and let's just assume that that is part of the horse's normal feeding regime - and it might be that those types of substances are contained in horse feeds and the like. If you are giving that to a horse and that horse is tested for cobalt, your position, if I understand correctly, is that that cobalt reading is overemphasised or provides a false reading to cobalt because of the Vitamin B12 which might also be accompanied in the sample?" to which Mr Tinniswood replied "Yes. If the intent of the rule is to prevent horse doping - which is what WADA says - and they are the ultimate referee in all this sort of stuff. They allow athletes to take vitamin B12. It is not a prohibited substance, but cobalt salts are - the inorganic cobalt." Mr Tutt further questioned "So if I am getting the gist of your evidence correct is to say that potentially a trainer provides Vitamin B12 to a horse then that is going to result in a cobalt reading?" to which Mr Tinniswood replied "No, not necessarily, and in fact on this occasion - oh, it will depending on how long after the event you test the horse. If I understand the ARB (inaudible) 4 hour rule - I mean - I mean after the administration of a supplement. So, in most animals, the material will be excreted so it won't cause the problem that I'm suggesting has occurred here. What makes me think of that is because this appears to be an outlier, and in biology you can never be a hundred percent certain that everyone will behave this way. Something - I'm proposing that something occurred that caused this horse to hold some of the B12 in its body rather than..." The chairman of the inquiry questioned "What could potentially do that?" to which Mr Tinniswood replied "We are all cells and metabolism and what have you. We are not a piece of paper with black and white lines all over it, and you can get outliers and false positives any time of the day, any time of the night virtually. In laboratory practice we have a routine of getting another sample if the - not another test, but another sample - if you have an outlier because it's just the nature of biology. But what I do think is strong evidence here that you have got a problem - and when I say that the application of the testing is about the testing of urine in the dehydrated racehorse, and the problem here - which I was going to lead on to - the problem here is that you would all be aware that the - during exercise the core body temperature of the horse can rise - certainly



in muscle - can rise from about 37 degrees up to about 42 degrees, and it happens very, very quickly. This is due to the transfer of energy from - latent energy - which is the fuel in the muscle not being used - it switches between kinetic energy, and, as you know, Einstein said energy is neither created nor destroyed. So in the process of going from that latent energy to kinetic energy - which is what works the muscle - the energy is generated at heat. So this happens very, very quickly. Now, when this happens, the body will recognise due to a number of sensors throughout the body, and in this case it is a thing called an osmo receptor. It will recognise in the blood stream that the horse is in need of water, and the reason for that is the horse sweats like humans. There are only 2 animals on the planet that uses this cooling method. One is a human being, and one is the horse, and the physiology of both are identical in this respect. What happens is that to cool the animal, blood in the peripheral vessels near the skin will lose water and also will lose sodium and also lose chlorine. So if you ever tasted your own sweat, you will find it tastes a little bit salty. That's the purpose of that (inaudible) of water - to cool the animal because the body demands it. The problem with that is now you have less blood volume because the water is on the skin and not coming back. What happens therefore is these osmo receptors cause the brain to deliver a hormone called ADH - which is anti diuretic hormone. ADH races to the kidney and causes the cells in the renal tubules of the (inaudible) to open, so that water can be reabsorbed. What happens in kidney function is blood passes constantly through the kidney irrespective of your state of hydration or - or unless you have got a state of disease, it will flow normally into the kidney and much of the - not much, but some of the blood will filter out its water for the purpose of creating urine, and also what will filter out the metabolites that are present in the urine, and that's why the kidneys (inaudible). So this is constantly from the kidney into the bladder and then out - out through the urinary tract. Now, what happens, ADH in a dehydrated horse - because the plasma - the blood - is out of whack. It's not (inaudible) because it lacks water. The ADH will cause the renal tubules to become more porous and water is reabsorbed. It never makes it to the bladder. The (inaudible) chlorine and sodium and potassium also go back in. What we do as humans when we exercise we have a glass of Staminade. The horse can't do that, so they are taking back the water and the sodium and the chloride and the potassium - which is vital - essential electrolytes - and what you finish up with is much, much less urine. Other metabolites are not affected ADH. So if you did have Vitamin B12 or cobalt in the body that would filter through and would finish up when you ask the horse (inaudible). It also (inaudible) a different composition of urine than you would normally have. The net effect is it will be concentrating more than it normally is. A simple way to think of it: say you take a teabag and put it in a full cup of water - hot water. You will get tannins and other material which leach out of the teabag and you will get a cup of tea. If you put the same teabag into half a cup of water you will get a different cup of tea, and this is the principal of the function of ADH. The mistake that gets made is that the tests for cobalt are taken on a urine sample that is concentrated and it does not represent the normal concentration of the material in the urine. What they do in pathology is no one does physical quantitative testing. In humans, the pathology laboratory will not use stat specimens of urine for their tests. They use a 24-hour collection. The reason you use a 24 hour collection is that it collects urine at all stages of your biological site in one day. For example, when you get up in the morning and you haven't been for a pee during the evening, your urine will contain a lot of metabolites because you had dinner. Two hours after you have voided some and you have had a couple of drinks of water, your urine will be totally different to that morning urine in terms of what is in it. After that you go for an exercise run and dehydrate and your urine looks yet again to be a different composition with different concentrations of metabolites. The way you get around it in normal pathology is that you collect 24 hours of the day. The irony in all this is that it is impractical and horse racing. You can't - you would have to stand at the (inaudible) for a day and then hope



it stays there (inaudible). The simple solution is to collect blood post-race because the body has automatically corrected the blood volume, and the content of the blood is not affected by the cycle that your body might go through in 24 hours. Now, the problem that we - I'm suggesting in interpretation of this - what was the reading? I think it was 200. What I'm questioning here is the accuracy of the result. Precision is fine. If you could imagine on a dartboard I throw 10 darts at a dartboard and I hit the 20 every time. That's great precision, but I'm trying to hit the circle in the middle. That's where the accuracy comes in. What I'm suggesting is the testing is a great, it's precise, but it didn't achieve the accuracy of what was intended under the Rule of Racing. Let me just go on a little bit further with this. One of the problems that this 24-hour collection creates therefore is that for racing and this is stuff that I would have thought was fundamental physiology. You try (inaudible). You just need to collect blood and test the blood and all of these problems go away. The problem that you are left with right now is - not specifically you, but under the rule - is that 200 value - or the 185 value - is a meaningless value because you don't know where the bottom is." Mr Tinniswood added "This is excluding the fact that I think the 200 reading is invalid for the reasons I have already described, but if - let me give you an example. If you've got a horse that has purely been treated with Vitamin B12, and for biological reasons it's an outlier and had some B12 - cobalt detected in the specimen. What you need to do is to test the specimen additionally for Vitamin B12, which is an easy do. If you finish up with a quantity of B12, which on atomic weights and percentages can show that the likely source of the cobalt was B12, then you would probably struggle to prosecute because it looks like B12. If the cobalt reading is very, very high - say up into the 10,000s - and you test for B12 and there is no B12 there, you can with reasonable assurance say that that is a doping circumstance. You can't - you can't exclude the possibility that the trainer is giving both. So you would need to through an algorithm process determine what the likely source of the cobalt is, and none of this has been done. What I'm trying to say is the testing is incomplete, and I would argue in terms of law you can't - you can't prosecute on evidence - and this is from my forensic experience - you can't prosecute on evidence unless there is certainty, and that's what doesn't exist now. So that is basically the purpose of my evidence today. I was just going to make a remark though that the NATA in me also wonders whether the specimen - and I'm not accusing and I'm not even necessarily (inaudible) - but I'd love to (inaudible) talk about this because I had a chat with him yesterday - but I think the issues of laboratory manuals, the competency of the operator, training manuals, audits of that process, just like the lab hasn't worked (inaudible) I understand it (inaudible) the collection process. That's what happens in pathology under (inaudible) is the collecting process is also accredited, and that basically is a documentary type of (inaudible) and that (inaudible) chemist in these things was the - I don't know. I honestly don't know. Was the volume of urine collected, recorded and was the specific gravity of the urine recorded, because only clues will assist stewards in coming to a determination of what is going on here."⁶

The chairman of the inquiry questioned "Could also be the case that the horse was administered either (a) cobalt directly or a Vitamin B12 or some kind of injection within the one clear day rule which has resulted in the - in the findings of the analysis?" to which Mr Tinniswood replied "(inaudible) is totally possible because you found cobalt. I argue that the value is uninterpretable but I have no doubt because of the precision of the testing (inaudible) the precision of the testing means that the reference laboratory and the Queensland laboratory got it right in terms of the cobalt in the sample. What I and stressing is you have got no evidence (inaudible). There is no evidence that what you're proposing has occurred. You can't tell. Just because you have found some cobalt in the urine in a specimen that was presumably

⁶ Transcript of Stewards' Inquiry dated 27 February 2018, page11 to 21



*from a dehydrated horse, and therefore the urine was concentrated, we have - without specific gravity or other measures we can't determine with certainty what the true value is, and hence it could be below the threshold. But you don't know. You can't go with 200 because it could be anything. It won't be any higher because the urine is concentrated. If the horse had of been - if the horse had of been given a hell of a lot of water pre-and post-race then you would find that it's possible it could have been higher because the urine might be less concentrated. But in this case here it was - it's concentrated urine, so you can't interpret the result. One thing is to do the test and the other is to interpret what it is, of how it got there. That's via evidence, but what caused it to be there, and there's - and it's all circumstantial as far as I can see. Don't get me wrong, I'm not anti-stewarding. I intend to write to the ARB later this year to suggest that they correct rule to define - just like they do in the Olympics - to define the type of cobalt. It's the performance inducing cobalt, which fundamentally is the inorganic form, and then a testing regime needs to follow, which will determine possible sources of inorganic cobalt. For example, if the horse is given cobalt chloride, you would want to test through the ICPMS method for cobalt irons and chlorine irons. They don't even do that. They just report the cobalt. It's easy to identify organic - the source of organic cobalt (inaudible), except it should be done on blood. That's the other thing, and I'm going to write to the ARB and suggest they reconsider the rule be better worded to prevent this sort of thing from happening, because the way the rule is worded it assumes that the methodology detects inorganic cobalt and again it doesn't. You don't know where it came from."*⁷

The Racing Science Centre's current population study now includes 14,396 samples analysed, which demonstrates the average race day Cobalt level is at 8.52mcg/L. This data is inclusive of all the variables associated with the horse, including dehydration, weather conditions, and further indicates horses being fed registered commercial supplements containing Cobalt in accordance with manufacturers' guidelines and importantly the Rules of Racing 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.

Mr Tinniswood questioned whether such data (population study) was peer reviewed or published in any literature. Mr Daniel Aurisch, the Deputy Chairman of Stewards, Thoroughbred in evidence stated "*There is certainly - there certainly has been peer reviewed tests done throughout the world. There is certain documentation. I think the Ho Report and the Kinch Report as well suggest - gives an indication of highly concentrated vitamins administered within a short period of time and how long it takes to excrete out of the horse's system.*" Mr Tinniswood added "*Yes. I have no doubt most vitamin B12 leaves the body within 48 hours. You take a Berocca or you take a B12 vitamin supplement and I guarantee you the next morning you will be pissing orange, and that's why: because you didn't need it and the body gets rid of it. It doesn't metabolise it. Most - you will stop pissing orange after about a day or 2 days. That's okay. That's normal. But, as we said earlier, in biology there are always outliers, and in this case here I would suggest you can't discard that claim, nor can you prove it.*"⁸

The stewards' inquiry was subsequently adjourned to obtain evidence from Dr Caldwell particular to Mr Tinniswood's evidence.

⁷ Transcript of Stewards' Inquiry dated 27 February 2018, page 26 and 27

⁸ Transcript of Stewards' Inquiry dated 27 February 2018, page 28 and 29



During the resumed stewards' inquiry conducted on 2 July 2018, further evidence was provided by the Applicant, Mr Tinniswood and Dr Karen Caldwell. Mr Tinniswood submitted an unsigned and undated statement that essentially was reflective of his evidence provided at the initial stewards' inquiry conducted on 27 February 2018, which primarily focused on the alleged flawed testing algorithms of Cobalt, the source of Cobalt, be it inorganic or organic form, and the effects of dehydration. Mr Tinniswood referred to two papers by Hillyer (2018) and Wenzell (2018) particularly relating to the method of analysis in the testing of Cobalt.⁹

The Applicant submitted an undated statement of Mr Luke Milligan, a stable employee for the Applicant, which strapped BLUE BOOK on the subject day. Mr Milligan's statement, in part, read *"When I arrived at the track BLUE BOOK was very hot and was sweating and a little stressed. After he won - he drank approximately 2 buckets of water after hosing him down twice prior to his swab. His urine was very thick and dark (more like egg yolk) which I commented to the trainer Kelly Doughty about this, because this was very unusual to see one of her horses with this type of urine."*¹⁰

The chairman of the inquiry provided a summary of Mr Tinniswood's evidence for Dr Caldwell's benefit stating *"Mr Tinniswood led evidence about the effect of the urine specific gravity in samples, specifically when they are being analysed to measure the level of cobalt and the relative thresholds that have been imposed under the Rules of Racing. That lead on to the effect of dehydration and the state of horses being dehydrated when racing and the samples have been taken from those animals in those states. That is effectively the evidence that was led back on 27 February. Today it has been more about the differentiation of inorganic v organic levels of cobalt, with a significant reliance on Vitamin B12 in the organic form. I think Mr Tinniswood knows that there are other possibilities outside of Vitamin B12, but it being the most relied upon within the racing industry. There was also some issues about the NATA accreditation and how the threshold or the methods of analysis in sampling when the threshold was established."*

Dr Caldwell replied *"I will attempt to cover everything that you have raised. Look, that's all specific gravity, or urine specific gravity. I'm sure everyone in the room is familiar with it. It has been raised as something that should be accounted for in individual samples, and making an assessment back to the threshold that was set on the basis of the specific gravity of an individual sample. The simple response to that is that an enormous range of urine specific gravities was taken into account when the threshold was established, and as you are all aware, that threshold establishment involved thousands of samples from horses who presented to race. So there were horses that had travelled and horses that had had water withheld. There was a large population of horses presented to race, and therefore a large variation in what was captured in terms of race day practices prior to race. It covers all of those things that (inaudible) from Queensland's point of view. We were concerned to provide samples for the threshold study that took account of horses across the great area that we have in Queensland, from up north where it is very hot to down south where they don't travel very much. A lot of - enormous numbers that resulted in that statistically sensible threshold, and for that reason it is not appropriate to retrospectively and apply another factor that has already been taken account of in establishing the threshold."*

The chairman of the inquiry questioned *"Anything further that you would like to add on the dehydration point that was made"* to which Dr Caldwell replied *"Well, I mean - only that - yes, of course you will see individual differences between"*

⁹ Exhibit 21

¹⁰ Exhibit 22



horses. We are very well aware of that, and, again, that's the reason for such a breadth of sample that have been reconfirmed time and time again, not only in Australia but internationally, and of course that data was worked by one of Australia's eminent biometricians in Brynn Hibbert. Again, look, it's related to this greater issue that we're - we're talking about the relevance of urine concentration more broadly. I think the threshold is fit for the purpose for which it is put in place, and that is to regulate the misuse of cobalt in horses. What we expect to see of a normal horse based on that sort of population study is far in excess of that, and I think it suits the purpose. Dr Caldwell added "The rule that we operate under, the rule accepts cobalt as a prohibited substance when it's above a certain level. The rule makes no distinction between the cobalt that is derived from Vitamin B12 or the cobalt that is derived from any other source. So that's what we are dealing with the rule, and the follow-on from that is that the cobalt in B12 is just as prohibited as the cobalt that comes from any other substance. What a trainer's responsibility is to ensure that their supplementation practices are sufficient to meet the horse's needs but are not unreasonable in light of that threshold that exists. So you need to look at that exact fact when you are looking at what sort of supplements you provide to horses, and we have put numerous notices out over the years recommending that trainers make that assessment and if they are not in a position to do so themselves that they consult with their the veterinarian."¹¹

Mr Tinniswood added "I understand that completely because that's the way the rule is written and that's the way the authorities have chosen - and I stress the word chosen - to interpret the rule. The rule says no cobalt. I think given that it is starting to appear - and there will be more of them - that Vitamin B12 plays a significant part in this. The rule was written for the band substance cobalt. You should be aware that when the horse races with Vitamin B12 in it the - when the horse urinates a swab - called it a swab, and I can't quite get used that because to me a swab is cotton wool on the end of the stick. But for the purposes of this conversation we will call it the swab. When that swab is taken - in other words, the horse pees and the urine is put in a jar - what leaves the collection point at that stage is - let's assume it's a Vitamin B12 issue. What leaves the horse, what goes to the lab is Vitamin B12. Vitamin B12 is an inorganic - is an organic compound containing multiple elements. It's not the cobalt salt. When you put it to the front half of the inductively coupled plasma part of the assay, you release every atom of cobalt that is present in the specimen. In other words, you degrade the specimen so that you can analyse it. You will then receive from your mass spectrometry a spike in the region where cobalt would normally come, and with proper controls you can quite confidently report the results you do. Not contested. But what is not done is you don't put the components that were degraded at the front end in any form back into what it actually was." The chairman of the inquiry replied "Whether it is cobalt salt or whether it is Vitamin B12 that goes into that sample - into that pan that goes into the swab that was taken for analysis - if - if when analysed it's over the threshold, it doesn't matter whether the source of that is from Vitamin B12 or was from cobalt salt" to which Mr Tinniswood replied "And I argue that's a flawed interpretation. At the beginning of my talk today, this instrument is not designed to service your diagnostic question. Your diagnostic question is: has this horse been doped with cobalt? You don't want to know if it has been doped with Vitamin B12. It's not the question. Right?" to which Dr Caldwell replied "I disagree with that wholeheartedly, and I myself have sat on inquiries where (inaudible) been described doses of B12 that have been given very close to racing which can in fact put an animal over the threshold. We are not talking - we want to regulate the use of cobalt for many reasons, and the use of the term doping is misleading also, because we are concerned about cobalt and its use, not in terms of performance enhancement alone, as everyone would be well aware, and we are concerned with the overuse of cobalt, and cobalt can be misused via the misuse of Vitamin B12.

¹¹ Transcript of Stewards' Inquiry dated 2 July 2018, page 70, 71 and 76



It's not sufficient to explain away that it was in B12 and therefore it is not a regulatory concern; it is absolutely a regulatory concern. If it is given in B12 at levels sufficient to approach the threshold because there is absolutely no nutritional requirement to supplement a horse with anything like that amount of Vitamin B12." Mr Tinniswood disagreed with such statement stating "Dr Caldwell, we will have to disagree - accept to disagree then. Vitamin B12 is a cobalt-containing compound which is not broken down in the body unless the body chooses to use it in a regulated process to form red blood cells. Cobalt is an unregulated substance which mimics erythropoietin, and the more you put in the more red cells you get. They are 2 totally -totally different scenarios. Now, I personally believe the industry is wrong in letting people use vitamin supplements because they serve absolutely no purpose. As you have just said, the horse doesn't need it and people shouldn't be putting it in, but the reality is they do and I think the rule itself when you read it in the context of where it is bundled in with a whole stack of other prohibited substances, it clearly by inference means cobalt. Nothing more than cobalt, and the reason it's there is for a prohibitive - it's prohibited because cobalt used as an inorganic salt will become a go-fast and produce higher athletic sustainability. Vitamin B12 has no effect on the race horse in terms of that."¹²

The reviewer accepts the hypothesis that whether a horse is administered Cobalt chloride or a substance containing Cobalt (Vitamin B12) on the day of the race or within 'One Clear Day' of the scheduled race, and upon analysis the sample contains Cobalt in excess of the regulatory threshold, such occurrence is deemed a serious breach of the Rules of Racing and a clear attempt to cheat to gain an unfair advantage irrespective of the substances administered.

For clarity, Australian Rule of Racing 178AB states:

(1) A person must not, without the permission of the Stewards, inject a horse, cause a horse to be injected or attempt to inject a horse, which is engaged to run in any race:

(a) at any time on the day of the scheduled race, prior to the start of such event; and

(b) at any time during the One Clear Day prior to 12.01am on the day of the scheduled race.

(2) Where there has been a breach of AR 178AB(1), or the Stewards reasonably suspect that there has been a breach of AR178AB(1), the Stewards may order the withdrawal of the horse from the relevant race.

(3) Where there has been a contravention of AR 178AB(1), the horse may be disqualified from the relevant race in which it competed.

(4) Any person who breaches, or is a party to a breach of, AR 178AB(1), commits an offence and may be penalised.

(5) For the purpose of this rule:

(a) injection includes, but is not limited to, the insertion of a hypodermic needle into a horse;

(b) it is not necessary to establish whether any substance was injected, or the nature of any substance injected.

The inquiry heard remnants of the subject urine sample is stored at the Racing Science Centre. The inquiry further heard an order specific to harness racing was made by a Queensland Civil and Administrative Tribunal member that a portion of the sample in that matter be provided for retesting.¹³

¹² Transcript of Stewards' Inquiry dated 2 July 2018, page 76, 77 and 78

¹³ Transcript of Stewards' Inquiry dated 2 July 2018, page 79



The inquiry was subsequently adjourned to consider the extensive volume of evidence and consider the particular reasons for the above order in the aforementioned Queensland Civil and Administrative Tribunal harness racing matter and whether the subject sample be retested.

The Queensland Racing Integrity Commission stewards subsequently informed the Applicant's legal representative Mr Anthony Miller, Principal Lawyer of Sockhill Lawyers in writing on 25 July 2018 that "*The Stewards have formed the view that it is immaterial whether Cobalt is present in the said sample in its organic form as compared to an inorganic form. Furthermore, the presence of Cobalt above the excepted threshold by way of organic compounds is only achieved by over supplementation, requiring significantly more than the recommended daily dosage. Therefore, we hereby decline your clients request to have the said sample sent for further analysis.*"¹⁴

Mr Miller subsequently responded to the Queensland Racing Integrity Commission's correspondence on 3 August 2018, in part stating "*1. In accordance with the statement of the strapper, Luke Milligan, Blue Book was severely dehydrated. No Urine Specific Gravity Test was undertaken and it is reasonable to assert that if a USG Test was undertaken and an adjustment made then the reading may have been below the threshold of 100 micrograms per litre 2. Rule 178 provides that a penalty may be imposed where a trainer brings to a racecourse a horse in which a prohibited substance is detected. It is our client's submission that no prohibited substance has been detected. The substance that has been detected is Vitamin B12 which is not a prohibited substance. Testing is available to differentiate between B12 and inorganic Cobalt however the samples taken from Blue Book have not been tested despite the request from our client to do so. It is our client's contention that the extent of testing performed and the interpretation of results obtained do not support the charge that Blue Book was brought to the racecourse with a prohibited substance in his system. Whilst the assay performed might show that the cobalt molecule has been detected in the urine, we are certain that the origin of tis B12a and that had the level of inorganic cobalt been determined, the level would have been under the threshold limit of 100 micrograms per litre. It is our client's view that the assay as currently employed should be used as a screening test, and that all positives should then be further tested to determine the level of inorganic cobalt. Furthermore, it is our client's belief that in order to support a charge that a horse has been presented with a prohibited substance in its system the test sample should be collected pre-race rather than post-race. We trust that based upon these submission you will deem that our client will not be found guilty of the charge under rule 178 of the Australian Rules of Racing.*"¹⁵

The Applicant's complete submissions in defence of the charge are outlined in Part 3 of this decision.

The Applicant's submissions essentially challenge the analysis and method applied by the aforementioned Nata Official Racing Laboratories in the testing of Cobalt, the source of Cobalt, be it inorganic or organic form and the effects of dehydration.

The 'Official Racing Laboratory' is defined under the Australian Rules of Racing as an analytical racing laboratory accredited by the National Association of Testing Authorities NATA or by a similar authority in an overseas country, and is approved by the Australian Racing Board. The purpose of the Official Racing Laboratory is to analyse samples and things for prohibited substances in accordance with the relevant Rules of Racing.

¹⁴ Letter from QRIC to Miller Sockhill Lawyers dated 25 July 2018

¹⁵ Letter from Miller Sockhill Lawyers to QRIC dated 3 August 2018



The NATA Accredited Official Racing Laboratories, namely Racing Science Centre (RSC) and Racing Analytical Services Limited (RASL) reported the subject 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. The aforementioned laboratories reported BLUE BOOK sample contained Cobalt at 200mcg/L and 185mcg/L respectively.¹⁶ 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. Australian Rule of Racing 178C(1)(I) specifically references Cobalt as a prohibited substances when levels exceed 100 micrograms per litre in urine. The rule does not differentiate between organic and inorganic Cobalt. In essence irrespective of whether Cobalt chloride or a substance containing Cobalt is responsible for the analysts' findings, the trainer (in this case the Applicant) is guilty of a presentation offence or depending on the evidence an administration offence.

The effects of Cobalt levels in a dehydrated horse and the measurement of urine specific gravity has been widely debated in many tribunals. The reviewer acknowledges Professor Paul Mills' evidence in Internal Review Decision 0026-18 particular to dehydration and USG measurements in which he stated *"It is correct that urine concentration may have some effect of the concentration of substances in the urine. This is why a threshold was established, which was initially 200 pg/L and is currently 100 pg/L. The Ho et al (2014) was the first to establish a threshold and recommended 75 pg/L, based on 7462 horses post-race (so likely to be even further dehydrated). 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 (currently 14396) equine urine samples between 26th June 2015 and 8th March 2017 (currently between May 2015 and February 2018) showed that the mean (average) concentration of cobalt in these samples was 9.2 pg/L (currently 8.52mcg/L). Note that this included pre-race and post-race samples. To summarise, we have a LOT of horses that were tested on raceday, 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 raceday. USG is known to be unreliable in the horse due to the high and variable turbidity in the samples. This turbidity is due to sediment (protein and other), which affects standard methods to measure USG, such as refractometry. As such, there is no NATA accredited method to measure USG in the horse. The calculations that Prof Chapman is therefore attempting is based on unreliable assessment of USG AND an assumption of what the USG may have been in these horses. This is not scientifically valid. However, if we actually do use the scientifically-valid evidence available to us from samples collected in Australian horses on race day, including the RSC surveillance and Prof Hibbert's study, we find a mean cobalt concentration of 9.2 pg/L and an - 1 in 100 000 chance of exceeding a threshold of 100 pg/L."*¹⁷

The reviewer accepts it is not a practice of any NATA Official Racing Laboratory to measure urine specific gravity nor is it a requirement under the Australian Rules of Racing.

The Racing Science Centre's current population study now includes 14,396 samples analysed, which demonstrates the average race day Cobalt level at 8.52mcg/L. This data is inclusive of all the variables associated with the horse, including dehydration, weather conditions, and further indicates horses being fed registered commercial supplements

¹⁶ Exhibit 4 and 12

¹⁷ Internal Review Decision 0026-18



containing Cobalt in accordance with manufacturers' guidelines and importantly the Rules of Racing 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.

BLUE BOOK's sample history demonstrates three (3) post-race urine samples inclusive of the sample the subject of review. The other two (2) samples subsequent to winning at Doomben on 25 November 2017 and 9 December 2017 returned Cobalt levels at 8.4mcg/L and 10.8mcg/L respectively. The reviewer finds the aforementioned Cobalt levels noteworthy and reflective of the average race day Cobalt level, and importantly are in distinct contrast to the sample the subject of review returning Cobalt levels at 200mcg/L and 185mcg/L 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. 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 herself with the active constituents of all supplements administered to horses in her care, in particular products that contain Cobalt and Vitamin B12, to ensure horses are presented to race free of prohibited substances.

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

Australian Rule of Racing 178C(1) in part reads:

"The following prohibited substances when present at or below the concentrations respectively set out are excepted from the provisions of AR.178B and AR.178H"

Sub-section (l) states:

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

The subject samples chain of custody is a documented procedure and accounted for throughout the process from the time of sample collection to the analyst's findings by the aforementioned two Nata Accredited Racing Laboratories.¹⁸ The reviewer finds no evidence to determine that the integrity of the sample collection procedures or analysis of the sample was compromised to any extent that would adversely affect the integrity or analysis of the sample.

¹⁸ Exhibit 1 to 12



The reviewer acknowledges it could be reasonably argued that the Applicant face the more serious charge of administration considering the totality of evidence and the significant discrepancy in BLUE BOOK's three (3) Cobalt levels at 200mcg/L and 185mcg/L, being the subject of this review, and 8.4mcg/L and 10.8mcg/L. This is based upon the evidence that the last known recorded treatment to BLUE BOOK was three (3) days prior to the subject race, namely 20ml of Tripart administered intravenously by the Applicant. Mr Tinniswood assisting the Applicant in evidence when questioned by Mr Tutt stating *"So if I am getting the gist of your evidence correct is to say that potentially a trainer provides Vitamin B12 to a horse then that is going to result in a cobalt reading?"* replied *"No, not necessarily, and in fact on this occasion - oh, it will depending on how long after the event you test the horse. If I understand the ARB (inaudible) 4 hour rule - I mean - I mean after the administration of a supplement. So, in most animals, the material will be excreted so it won't cause the problem that I'm suggesting has occurred here"* Mr Tinniswood in evidence further stated *"I have no doubt most vitamin B12 leaves the body within 48 hours."*

This is particularly noteworthy considering the Applicant's treatment records demonstrate the last recorded treatment to BLUE BOOK prior to recording the subject Cobalt levels of 200mcg/L and 185mcg/L respectively was three (3) days prior to the subject race, namely 20ml of Tripart administered intravenously by the Applicant. The Applicant further stated in evidence *"For his second win and third win (at Doomben on 25 November 2017 and 9 December 2017) he actually got a prerace drip, which was on the Thursday morning (approximately 48 hours pre-race). So an extra day later than on the previous first win (the sample the subject of review at approximately 72 hours pre-race). And in that particular drip he actually had more vitamins put into that, which is very strange."* The Applicant was questioned *"So the same vitamins were used on that occasion in the lead up to subsequent wins -"* to which the Applicant replied *"He actually had more vitamins – more vitamins going into his second and third wins."*

The reviewer accepts it is not uncommon in positive sample inquiries that the reason for the prohibited substance being detected in the sample is rarely established, and therefore the certificates of analysis issued by Nata Accredited Official Racing Laboratories and any circumstantial evidence is a vital component of the decision making process.

In considering the extensive volume of evidence and aforementioned factors, the reviewer is not satisfied the explanation provided by the Applicant is plausible or the sole reason for the analyst's findings. The reviewer accepts the certificates of analysis issued by the aforementioned NATA Accredited Official Racing Laboratories reported BLUE BOOK post-race urine sample contained Cobalt at 200mcg/L and 185mcg/L respectively at Doomben on 11 November 2017. The reviewer therefore accepts the Applicant presented BLUE BOOK for racing when a prohibited substance was present and accordingly finds the charges proven.

Mr Miller provided submissions on penalty that, in part, state *"The penalty imposed on the Applicant was excessive"* and *"The penalty in Kavanagh v Racing Victoria Limited (NO2) (Review and Regulations) [2018] VACT 291 is the judicial precedent that a monetary penalty is the appropriate penalty."* Mr Miller provided further submissions to stewards dated 27 September 2018 which referred to the decision in *Scott v Queensland Racing Integrity Commission (No2) (2018) QCAT 301*. The reviewer acknowledges the aforementioned Victorian Civil Administration Tribunal and Queensland Civil Administration Tribunal decisions and notes the importance that each case is determined on its merits and set of circumstances.

The reviewer finds the Victorian Civil Administration Tribunal decision in *Kavanagh and O'Brien v Racing Victoria Limited (NO2) (Review and Regulations) [2018] VCAT 291* dated 17 March 2017 'summary of reasons' in part state



“The tribunal is satisfied that Dr Tom Brennan, the veterinarian of both of the trainers, administered or directed the administration to each horse of a substance in a bottle labelled ‘vitamin complex’ in pre-race drips. The substance contained a high concentration of cobalt chloride. Dr Brennan has been found guilty and disqualified. The Tribunal is not satisfied to the requisite standard that either Kavanagh or O’Brien caused Dr Brennan to administer the substance in the vitamin complex bottle, or that they were aware that it was being administered to their horses. The Tribunal is not satisfied to the requisite standard that either trainer was informed by Dr Brennan or suspected that he intended to administer an unproven and untested substance to their horses. Nor is the Tribunal satisfied that Kavanagh or O’Brien failed to make sufficient enquiries of Dr Brennan as to the substances that were to be administered to their respective horses, or were negligent in relying on veterinarians to administer pre-race drips to their horses.”

The reviewer finds no such findings or evidence comparable in the subject review that would serve as a mitigating factor particular to penalty. The reviewer acknowledges the Queensland Civil Administration Tribunal decision in *Scott v Queensland Racing Integrity Commission (No2) [2018] QCAT 301* and finds such decision is the subject of further appeal by the Queensland Racing Integrity Commission and therefore is unable to comment.

The reviewer finds any reasonable assessment of the totality of penalty precedents particular to Cobalt would accept a period of disqualification is clearly evident. The reviewer therefore rejects Mr Miller’s submissions that a monetary penalty is the appropriate penalty.

The Applicant has been a licensed trainer for in excess of twenty (20) years. The Applicant’s disciplinary history during such period notes a prior offence pursuant to Australian Rule of Racing 178 in September 2012. The precedents for a ‘presentation’ offence involving Cobalt 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) month 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, not-guilty plea, disciplinary history, totality of penalty precedents and the level of Cobalt detected in the sample the subject of review at 200mcg/L and 185mcg/L. The reviewer finds Cobalt (in any form) is deemed 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. The reviewer, in considering the totality of evidence is not satisfied a reduction in penalty is proven and accordingly 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