



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 0097-18
Applicant's Name:	Martin Hanrahan

PART 2: Decision History

Original Decision:	Breach of Rule 190(1) of the Australian Harness Racing Rules
Original Decision Makers:	N Torpey, J Hackett, S Heidke
Date of Original Decision:	10 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:	7 November 2018

PART 3: Summary of Internal Review Application

The Applicant, Mr Martin Hanrahan, trainer of DIXIE TRIX which presented to race at Redcliffe on 30 August 2018, was charged under Australian Harness Racing Rule 190(1) and subsequently pleaded guilty to the charge at a stewards' inquiry conducted on 10 October 2018 when a pre-race blood sample collected from DIXIE TRIX was found to contain a prohibited substance, namely the total carbon dioxide concentration at a level in excess of the permitted threshold.

Australian Harness Racing Rule 190(1) states:

"A horse shall be presented for a race free of prohibited substances".

The specifics of the charge being that the Applicant, as the trainer of DIXIE TRIX, did present that horse to race at Redcliffe on 30 August 2018 when a pre-race blood sample collected from DIXIE TRIX was found, upon analysis, to contain a prohibited substance, namely the total carbon dioxide concentration at a level in excess of the permitted threshold. The Applicant pleaded guilty to the charge.

When determining penalty, the stewards took into account the Applicant's personal and financial situation, that the Applicant had only just returned from disqualification for a breach of the same rule relating to the same substance and horse, previous penalties for similar breaches and the need for penalties to be of a deterrent nature for the integrity of the industry to remain paramount.

Stewards subsequently disqualified the Applicant for a period of twelve (12) months effective immediately.



The Applicant sought a review of charge and penalty and provided the following submissions in support of his Application:

"I am seeking an Internal Review as I believe there are circumstances in this case that were unjust regarding the specifics of the charge and the severity of the penalty given to me.

Early in my hearing, I made it clear that I accepted my horses level of TCO₂ as a 35.5 mmol/L reading, based on the confirmatory certificate from the Australian Racing Forensic Laboratory, New South Wales. Additionally, based on the fact the sample was sent and received without any notification of concern to the sample.

I also made mention of a paper written by Professor Hibbert in relation why the confirmation analysis is no less accurate than the initial test.

I provided evidence as to what I believed to be the reasoning behind the elevated reading, submitting a paper from Dr Derek Major, which was not examined by the panel. I also stated that I had been in contact with Dr Derek Major in relation to my elevated reading and the cause of the elevated reading from information I provided from my Treatment book and the horses recent dietary concerns.

I advised the panel that Dr Derek Major was at that time available to talk via telephone and explain the science and reasoning behind the elevated level. The panel didn't feel it necessary to do so, therefore the obvious conclusion to me was that the information was accepted by them and taken prima facie, or why else would the panel not have taken this opportunity. Dr Derek Major was on the subcommittee for a paper written for Australian Harness Racing on TCO₂, namely "An Australian Perspective of TCO₂ in Harness Racing", which I offered a copy of to the panel, but again they didn't feel it necessary to take it.

Based on these circumstances, when asked on a plea, I submitted I would be prepared to offer a Guilty plea in lieu of a reduced penalty, which in all fairness the panel did not concede that would occur, but, in other cases, a guilty plea has received consideration and reduction in penalty, which I mistakenly took on good faith.

Upon discussing a plea, Mr Torpey advised me I would be pleading guilty to presentation of a prohibited substance, which as I understood was pleading guilty to presenting my horse with a level of 35.5 mmol/L, based on my earlier submission that I accepted the level of 35.5 mmol/L. It was not stated to me that it was presenting the horse with a level above the permitted threshold, and it wasn't until I read my charge sheet that I became aware this was the case. I would not have pleaded guilty to presenting my horse with a level above the legal threshold when I had already stated I accept the level of 35.5 mmol/L, which is below the legal threshold.

With regard to penalty, I put submissions forward requesting a monetary fine if anything, and/or a reduction to a Trainer B Licence from my current Trainer A Licence. Other cases of this nature have received monetary penalties. Also, there is a recent case where a trainer in Queensland returned a TCO₂ positive and received 6 months disqualification, and while on a stay of proceedings returned a positive to a prohibited substance and shortly after that while still on the same stay of proceedings, returned another TCO₂ positive and received 6 months again for that positive finding. I, however, was disqualified for 12 months, and had specifically asked the panel to consider a monetary fine, as a disqualification for me has a huge impact on my family and will end my training career."



The Applicant further summarised his submissions in support of his Application as follows:

"I clearly stated I'm taking the level of 35.5 mmol/L to be her level as per recorded from the Australian Racing Forensic Laboratory, New South Wales.

The Panel did not read paper that I submitted which was provided to me by Dr Derek Major.

The Panel rejected the need to speak to Dr Derek Major by telephone which was scientific evidence I was relying upon from his expertise directly pertaining to my case.

The Panel did not submit paper I provided labelled "An Australian Perspective of TC02 in Harness Racing" from which I had cited relevant information from. Dr Derek Major was on the sub-committee from this paper so why was his phone evidence not sought

Mr Torpey explained to me upon my inquiry of a guilty plea, that it would be presentation of a prohibited substance, which to my understanding was pleading guilty to the level of 35.5 mmol/L.

My plea of guilty was based on presentation of a prohibited substance but within the permitted threshold (a fineable offence).

My plea of guilty along with the confusion as to exactly what that entailed, did not offer any reduction of penalty where upon this has been a precedence in other cases.

In regard to penalty, other precedences have received monetary fines, and some cases that have gone before QCAT have received no penalty due to the second (confirmatory) sample being below the permissible threshold, as is mine."

The outcome sought by the Applicant was a change in penalty and an amendment to his plea.

PART 4: Reasons for Internal Review Decision

The Applicant, Mr Martin Hanrahan, was the trainer of DIXIE TRIX when it presented to race at Redcliffe on 30 August 2018. A pre-race blood sample collected from DIXIE TRIX was analysed by the Racing Science Centre and the Australian Racing Forensic Laboratory which reported the sample total carbon dioxide concentration at 37.8mmol/L and 35.5mmol/L respectively. The expanded measurement uncertainty for total plasma carbon dioxide (TCO₂) determinations at the threshold concentration (36.0 mmol/L) is 1.0 mmol/L at greater than 99.99% confidence.¹

Dr Karen Caldwell, Acting Manager of Veterinary Services, Racing Science Centre, provided a veterinary certificate report stating *"The total plasma carbon dioxide concentration is a measure of the amount of carbon dioxide present in the non-cellular or liquid portion of the blood. The total plasma carbon dioxide concentration can be increased by the administration of alkalinising salts such as bicarbonates, citrates, succinates and lactates. The alkalinising salts may be in the form of a drench called a 'milkshake'. The most commonly used alkalinising salt is sodium bicarbonate. Alkalinising salts are also present in some proprietary feed additives although the amounts present are much less than those alleged to be administered in 'milkshakes'. The administration of alkalinising salts prior to racing may enhance or manipulate the racing performance of a horse by delaying the onset of fatigue and improving the endurance of the horse. Large doses of alkalinising salts can also adversely affect the horse's physical condition by causing a metabolic*

¹ Exhibit 4 and 13



alkalosis, colic and diarrhoea. Alkalinising salts such as bicarbonates, citrates, succinates and lactates are unscheduled according to the Standard for the Uniform Scheduling of Medicines and Poisons No. 21 (the Standard).²

DIXIE TRIX started third favourite at \$7.40 and was placed fourth in the respective race.

Subsequent to reviewing the audio of the stewards' inquiry conducted on 10 October 2018, the Applicant's explanation for the analysts' findings essentially relied upon the horse being a non-drinker and therefore dehydrated which contributed to the analysts' findings. The Applicant submitted a paper named 'Acid-Base Homeostasis' and extracts of text messages between the Applicant and owner of DIXIE TRIX particular to the horse not drinking and the subsequent stable inspection conducted by stewards on 5 September 2018.

The stewards of the Queensland Racing Integrity Commission conducted a stable inspection of the Applicant's licensed premises on 5 September 2018 to inform the Applicant of the analysts' findings. The stable inspection report, in part, stated "*Mr Hanrahan when questioned was unable to provide any explanation as to how the mare may have been presented with an elevated level but did mention this was the same mare he had previously had a positive to the same substance. Mr Hanrahan stated she was not a good drinker and he mixed molasses in her water to try and get her to drink more. It was evident upon inspection the mare had molasses water in her stable that was untouched at the time of inspection. The feed and supplements were stored on the back patio and the horses only receive basic feed and minimal supplementation. The horses receive a standard treatment of Hemoplex (15ml), Vitamin C (10ml) and Hippiron (10ml) on a semi regular basis. Mr Hanrahan said the horses do on occasion get a Hartmans drip but this is infrequently. Mr Hanrahan could offer no other explanation as to the high TCO2 level other than that the mare naturally rests at an elevated level and combined with the horse's minimal water intake this could of led to dehydration and an elevated level.*"³ The stable inspection report in part listed Carbalene as a substance present at the stables.

During the stable inspection, a blood sample was taken from DIXIE TRIX which, upon analysis conducted by the Racing Science Centre, reported a TCO2 screening concentration at 33.1mmol/L.⁴

The Applicant's treatment records note the only treatment received in the week prior to the subject race was on 28 August 2018 (two days prior to the race) stating: *Hartmans Drip IL IV, Hemoplex 15ml IV and Vitamin C 10ml IV.*⁵ The reviewer notes the aforementioned treatment records fail to record the name of the horse receiving such treatment.

DIXIE TRIX's race day sample history demonstrates the horse was sampled twenty-seven (27) times in which ten (10) relate to TCO2 analysis. The TCO2 levels (with the exception of the reported levels in the subject review at 37.8mmol/L and 35.5mmol/L) range between 29.8mmol/L to 34.7mmol/L, of which a pre-race sample obtained on 25 July 2018 (five days prior to the subject race when trained by the Applicant) returned a TCO2 level of 31.8mmol/L. The reviewer finds the reported TCO2 levels in the subject review at (37.8mmol/L and 35.5mmol/L) are in complete contrast to the reported TCO2 level obtained five days earlier on 25 July 2018 at 31.8mmol/L.

The Applicant's complete internal review submissions are outlined in Part 3 of this decision.

² Exhibit 5

³ Exhibit 14 to 14(iii)

⁴ Exhibit 15 and 16

⁵ Exhibit 14(iv)



The Applicant submitted *“I am seeking an Internal Review as I believe there are circumstances in this case that were unjust regarding the specifics of the charge and the severity of the penalty given to me. Early in my hearing, I made it clear that I accepted my horse’s level of TCO2 as a 35.5 mmol/L reading, based on the confirmatory certificate from the Australian Racing Forensic Laboratory, New South Wales. Additionally, based on the fact the sample was sent and received without any notification of concern to the sample.”*

For clarity, Australian Harness Racing Rule 191(1) ‘Evidentiary certificates’ reads:

- (1) A certificate from a person or drug testing laboratory approved by the controlling body which certifies the presence of a prohibited substance in or on a horse at, or approximately at, a particular time, or in blood, urine, saliva, or other matter or sample or specimen tested, or that a prohibited substance had at some time been administered to a horse is prima facie evidence of the matters certified.*
- (2) If another person or drug testing laboratory approved by the controlling body analyses a portion of the sample or specimen referred to in sub rule (1) and certifies the presence of a prohibited substance in the sample or specimen that certification together with the certification referred to in sub rule (1) is conclusive evidence of the presence of a prohibited substance.*
- (3) A certificate furnished under this rule which relates to blood, urine, saliva, or other matter or sample or specimen taken from a horse at a meeting shall be prima facie evidence if sub rule (1) only applies, and conclusive evidence if both sub rules (1) and (2) apply, that the horse was presented for a race not free of prohibited substances.*
- (4) A certificate furnished under this rule which relates to blood, urine, saliva, or other matter or sample or specimen taken from a horse shall be prima facie evidence if sub rule (1) only applies, and conclusive evidence if both sub rules (1) and (2) apply, that the prohibited substance was present in or on the horse at the time the blood, urine, saliva, or other matter or sample or specimen was taken from the horse.*
- (5) Sub rules (1) and (2) do not preclude the presence of a prohibited substance in or on a horse, or in blood, urine, saliva, or other matter or sample or specimen, or the fact that a prohibited substance had at some time been administered to a horse, being established in other ways.*
- (6) Sub rule (3) does not preclude the fact that a horse was presented for a race not free of prohibited substances being established in other ways.*
- (7) Notwithstanding the provisions of this rule, certificates do not possess evidentiary value nor establish an offence, where it is proved that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of a certificate, was materially flawed.*

The reviewer, having regard for the aforementioned rule and particularly parts (1), (3) and (6), finds that irrespective of the confirmatory findings by the Australian Racing Forensic Laboratory reporting a total carbon dioxide concentration below the regulatory threshold at 35.5mmol/L, a certificate furnished under this rule which relates to blood, urine, saliva, or other matter or sample or specimen taken from a horse at a meeting shall be prima facie evidence if sub rule



(1) only applies, and conclusive evidence if both sub rules (1) and (2) apply, that the horse was presented for a race not free of prohibited substances. The reviewer is satisfied the Applicant was clearly informed of the aforementioned rule during the stewards' inquiry and, in particular, the prima facie evidence on the certificate of analysis conducted by the Racing Science Centre that reported a total carbon dioxide concentration at 37.8mmol/L.

The Applicant submitted *"I provided evidence as to what I believed to be the reasoning behind the elevated reading, submitting a paper from Dr Derek Major, which was not examined by the panel. I also stated that I had been in contact with Dr Derek Major in relation to my elevated reading and the cause of the elevated reading from information I provided from my Treatment book and the horses recent dietary concerns."*

The reviewer acknowledges it has been debated in many tribunal hearings since the inception of the regulatory threshold for total carbon dioxide concentration as to what impact, if any, transportation, dehydration/withholding of water and stress/excitement have on TCO₂ levels.

In *Internal Review Decision 0098-17*,⁶ Dr Karen Caldwell stated *"Certainly, we hear anecdotally of horses that are stressed for whatever reason, particularly on course at a given time, so, travel, excitement, all sorts of factors. And while those things can produce variations in the TCO₂ level, they're not of a magnitude that is realistically explicable or explains the sorts of elevations that we see when we get towards the threshold levels. So, yeah, there can potentially be any effect, but it's unlikely to be of a significant magnitude."*

Dr Caldwell added *"A normal horse's TCO₂ level to sit somewhere around 28 to 32 millimoles per litre and on the basis of a whole lot of studies that were done, a threshold was set, and that's based on statistics. So where you talk about statistical data, there's no absolutes, there's only probabilities. But the probability is that a normal horse as part of a population that were examined, which included standardbreds and thoroughbreds, will have a normal level between 28 and 32. Now, that can obviously be elevated by the administration of alkalinising agents, be they bicarbonates, citrates, acetates, or lactates - there's a whole lot of them. We do know that, again through a number of studies that have been done, that regardless of what you give, whether it's bicarbonates or citrates, and even if you give significant amounts of those substances, but levels will return to normal within 24 hours, and the reason for that is that the horse's system is trying to equilibrate constantly. There's an ideal level - acid-based level - at which the body likes to function, if you like, and it works constantly to return itself to that sort of level. So levels will - after an administration, levels will return to normal within 24 hours, regardless really of what's been given."*

Dr Caldwell further explained the plus or minus 1 millimole in the testing of TCO₂, stating *"So traditionally that's applied in the trainer's favour as against the threshold under the rules. So while the threshold is 36, we typically call a presentation charge 37 or over. But the reality is that at a level of 36, a level that's 1 millimole either way, the probability is equal. So, if a sample has a reading of 36, that could be an actual reading of 37, it could equally be an actual reading of 35. But the most likely reading in any sample is the number that's actually reported."*⁷

⁶ Internal Review Decision 0098-17 - Donald Smith v Queensland Racing Integrity Commission dated 28 December 2017

⁷ Internal Review Decision 0098-17 - Donald Smith v Queensland Racing Integrity Commission dated 28 December 2017



The reviewer acknowledges the Queensland Civil and Administration Tribunal's decision of *Smith v Queensland All Codes Racing Industry Board*.⁸ In *Smith*, expert evidence was provided by Dr John Vine and Dr Derrick Major, and despite debating certain parts of the evidence in such matter, both Dr Vine and Dr Major agreed that the reported TCO₂ levels in *Smith* (at 36.0mmol/L and 35.5mmol/L) were sufficiently high to demonstrate that alkaline agents were probably ingested by the horse on race day.

Australian Harness Racing Rule 196C(1) prohibits the use of alkalinising agents on the day of the race, and at any time within one (1) clear day of the commencement of the race.

For clarity, AHRR 196C provides:

- (1) *A person must not administer an alkalinising agent in any manner to a horse which is engaged to run in a race:*
 - (a) *at any time on the day of the scheduled race and prior to the start of the race;*
 - (b) *at any time within one (1) clear day of the commencement of the race.*
- (2) *Any person who:*
 - (a) *administers an alkalinising agent;*
 - (b) *attempts to administer an alkalinising agent;*
 - (c) *causes an alkalinising agent to be administered; and/or*
 - (d) *is a party to the administration of, or an attempt to administer, an alkalinising agent contrary to sub-rule (1) is guilty of an offence.*
- (3) *Where the Stewards are satisfied that a horse has, or is likely to have been, administered any alkalinising agent contrary to sub-rule (1), the Stewards may prevent the horse from starting in any relevant race*
- (4) *For the purposes of this Rule:*

one clear day means the twenty four (24) hour period from 12.01 a.m. to 12 midnight.

The reviewer, in considering the evidence and aforementioned factors and particularly the expert evidence of Dr Vine and Dr Major in the decision of *Smith*, finds the probability of a horse recording a TCO₂ level in the vicinity of 36.0mmol/L is that such horse received some form of alkalinising agents close to race time. The reviewer accepts the evidence of Dr Caldwell in *Internal Review Decision 0098-17* stating “*Regardless of what you give, whether it's bicarbonates or citrates, and even if you give significant amounts of those substances, but levels will return to normal within 24 hours, and the reason for that is that the horse's system is trying to equilibrate constantly.*”

The reviewer is satisfied that the last known record of treatment to DIXIE TRIX was on 28 August 2018 (two days prior to the subject race) and having taken into account the aforementioned factors in particular DIXIE TRIX's reported TCO₂ level (five days earlier on 25 July 2018) recorded a level at 31.8mmol/L, the reviewer finds such reported level is in complete contrast to the TCO₂ levels reported in the subject review at 37.8mmol/L and 35.5mmol/L respectively.

⁸ *Smith v Queensland All Codes Racing Industry Board* [2016] QCAT 458



Therefore, the reviewer is not satisfied the explanation provided by the Applicant is the sole reason for the analysts' findings. The reviewer accepts the certificate of analysis issued by the Racing Science Centre reporting a total carbon dioxide concentration at 37.8mmol/L is prima facie evidence that the Applicant presented DIXIE TRIX to race at Redcliffe on 30 August 2018 when not free of prohibited substances and accordingly is completely satisfied to the requisite standard the charge is proven.

The Applicant has been a licensed trainer for approximately ten (10) years. The Applicant's disciplinary history during such period notes a prior offence pursuant to Australian Harness Racing Rule 190(1) in June 2017, which incurred a period of a six (6) month disqualification. The reviewer notes the aforementioned prior offence related to DIXIE TRIX returning a total carbon dioxide concentration in excess of the regulatory threshold.

The Applicant's submissions particular to penalty in part state *"My plea of guilty was based on presentation of a prohibited substance but within the permitted threshold (a fineable offence). My plea of guilty along with the confusion as to exactly what that entailed, did not offer any reduction of penalty where upon this has been a precedence in other cases. In regard to penalty, other precedences have received monetary fines, and some cases that have gone before QCAT have received no penalty due to the second (confirmatory) sample being below the permissible threshold, as is mine."*

The precedent penalties for an offence pursuant to the aforementioned rule and particular to TCO₂ have incurred penalties up to two (2) years' disqualification. The reviewer acknowledges in previous matters particular to an offence of administering an alkalinising agent at any time within one (1) clear day of the commencement of the race pursuant to Australian Harness Racing Rule 196C(1)(b) a monetary penalty has been imposed.

Notwithstanding, the reviewer accepts each case is treated on its merits and set of circumstances and acknowledges any penalty imposed not only needs to be fair and evidence based, but further serve as a deterrent to any likeminded persons. Alkalinising agents when evidenced by total carbon dioxide present at a concentration in excess of 36.0mmol/L in plasma is regarded as a performance enhancing substance, which provides participants with an unfair advantage against their peers that play within the framework of the rules. The use of alkalinising agents, including bicarbonates and related substances, is nothing new to the racing industry and historical expert analytical data suggests you can only exceed the threshold by administering large amounts of alkalinising agents within hours of race time. Such actions are a clear attempt to cheat and gain an unfair advantage.

In considering the evidence and aforementioned factors particular to penalty, consideration was provided to the Applicant's submissions, personal circumstances, reported total carbon dioxide concentration level at 37.8mmol/L, guilty plea (albeit to the elevated level in the confirmatory certificate of analysis reported by ARFL at 35.5mmol/L), the totality of penalty precedents and the Applicant's prior disciplinary history (noting a recent six (6) month disqualification for a prior TCO₂ positive). The reviewer, in considering the aforementioned factors, finds the original penalty imposed is consistent with a second time offender and taking into account the Applicant recently returned from a six (6) month period of disqualification for a total carbon dioxide concentration positive sample 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