



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 0104-18
Applicant's Name:	William Xanthopoulos

PART 2: Decision History

Original Decision:	Breach of Rule 175(a) of the Australian Rules of Racing
Original Decision Makers:	I Brown, C Albrecht, G Lane
Date of Original Decision:	5 November 2018
Internal Review Decision:	Original decision of charge and penalty confirmed - Six (6) month disqualification
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	12 December 2018

PART 3: Summary of Internal Review Application

The Applicant, Mr William Xanthopoulos, a licensed stablehand employed by Mr Leslie Kelly and part owner of SHE'S A YOUEFFOH which was engaged to race at the Gold Coast Turf Club on 3 October 2018, was found guilty of a charge pursuant to Australian Rule of Racing 175(a).

Australian Rule of Racing 175(a) states:

"The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing."

The specifics of the charge being that the Applicant advised the Queensland Racing Integrity Commission's Integrity Investigations Team officials on the morning of 3 October 2018 that he did intend administering a substance, namely Gastrazone, to SHE'S A YOUEFFOH when SHE'S A YOUEFFOH was engaged to race that same day. The intention to administer that substance on raceday prior to that horse being engaged to race was, in the opinion of the Stewards, an improper action in connection with racing. The Applicant entered a plea of not guilty to the charge.

The Applicant, in pleading not guilty, submitted that it was at no stage his intention to administer Gastrazone to SHE'S A YOUEFFOH without first seeking the permission of Mr Kelly, who was due to arrive at the stables a short time after the Integrity Investigations Team officials.



Mr Kelly stated that he would never permit a horse to be administered such a substance on a raceday, which Mr Xanthopoulos relied upon to assert that he would never have administered the substance to SHE'S A YOUEFFOH on that date.

Based on the evidence of the two Integrity Investigations Team officials and the initial recording of the stable inspection, Stewards were comfortably satisfied that it was the Applicant's intention to administer Gastrazone to SHE'S A YOUEFFOH prior to it racing that day.

There was no indication that the Applicant was going to seek the permission of Mr Kelly until after the Integrity Investigations Team officials advised him that it was against the Rules of Racing to administer a substance to a horse prior to it racing.

The Applicant was therefore found guilty of the charge.

When determining penalty, the stewards took into account the Applicant's personal circumstances and his disciplinary history.

However, the stewards were also mindful of similar penalty precedents and the requirement to ensure each penalty acts as an appropriate deterrent given the negative impact such actions have on the integrity of the racing industry.

Stewards subsequently disqualified the Applicant for a period of six (6) months effective immediately and to expire on 5 May 2019.

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

- 1. At paragraph 10 on page 4 of the Transcript of Inquiry I gave evidence at all times I was waiting for Les Kelly to arrive to check with him concerning giving the horse Gastrozone.*
- 2. At paragraph 10 on page 5 of the transcript Mr Jackson referred to his digital recording of 3 October 2018 and said: "He did state - and I do have a digital recording here of the conversation. He did state that when we asked what he was doing he said "I'm going to administer to the horse. I'm just waiting for Mr Kelly to arrive before asking him" so he did identify to us that he was waiting for trainer Les Kelly to arrive confirming that I was to wait for Mr Kelly to arrive to discuss administration." I should add that according to my recollection the words by me "If it is allowed" were also used after the word "administer" in this conversation with Mr Jackson whose digital recording was played at the inquiry.*
- 3. At paragraph 25 on page 8 of the transcript Mr Brown referred to the digital recording and said "But on that recording there is no indication that you were going to question or ask if it was okay of Les. I think when asked what you were going to do with it you said that you were going to give it to She's A Youeffoh and you were going to tell Les what you had done when he arrived." In that regard Mr Brown seems to have overlooked the answer by Mr Jackson at paragraph 10 on page 5 of the transcript referred to in (2) above and considering this oversight on his part the decision made by the panel is incorrect.*
- 4. At all times during the inquiry I was adamant I would speak to my trainer about whether it was in order to administer Gastrozone on 3 October 2018 and not before."*

The outcome sought by the Applicant was that it be found there was no objective evidence of intent that the Applicant breached Australian Rule of Racing 175(a) and that the period of disqualification be overturned.



PART 4: Reasons for Internal Review Decision

The Applicant was subjected to a stewards' inquiry following a report received by Mr Scott Heidke and Mr Ryan Jackson of the Queensland Racing Integrity Commission's Integrity Investigations Team into alleged activities that occurred on 3 October 2018 at the stables of licensed trainer Mr Leslie Kelly.

During the initial stewards' inquiry conducted on 3 October 2018, evidence was provided by Mr Heidke, Mr Jackson, Mr Kelly and the Applicant, a licensed employee for Mr Kelly and part owner of SHE'S A YOUEFFOH which was engaged to race later that day at the Gold Coast Turf Club.

Mr Heidke, in evidence, stated *"Ryan Jackson and I, as part of our routine race day inspections, we opened an unlocked gate - (inaudible) gate - into Mr Kelly's property, and making ourselves known Mr Xanthopoulos came out of the room adjacent to the feed room there holding a bottle - which I have taken a picture of - I will get the correct name for it, Gastrozone - with a syringe in his hand. When he identified himself, and when asked what he was doing with that, he admitted his intent was to give the medication to a mare of his that was racing, which I then identified as She's A Youeffoh. Went over it with Mr Xanthopoulos and verified the mare with a brands and marking sheet. That was the correct mare, which is engaged today."*¹

Mr Jackson, in evidence, concurred with Mr Heidke's evidence stating *"Exactly as Mr Heidke said. We entered the property. A stablehand proceeded to walk out of the feed room with a white container and syringe in his hand. When questioned who he was, he presented his licence, and then proceeded to tell us that he was there to administer the medicine to the horse She's A Youeffoh and he admitted that he had intentions to administer and wasn't aware of the race day rule that it is illegal to administer on race day."*² The inquiry heard the Applicant had assisted Mr Kelly for several years at the stables including on race days.

The chairman of the inquiry questioned *"She's A Youeffoh, has it been treated with anything else today?"* to which the Applicant replied *"No. She hasn't been treated at all. As I said to the two stewards, I came out of the tack room with the natural Gastrozone, and obviously I was waiting for Les to ask him can we administer - can we give this to the horse on race day, and Les on the phone when I rang him up when the boys wanted to see him said "No, we can't give anything to a horse on race day." So Les was unaware of what I was doing."* The chairman of the inquiry then questioned *"So why would you be even considering giving a horse Gastrozone today?"* to which the Applicant replied *"Well, being a natural product, it's a humate. It's a humate. It's made from grass and things that horses can't eat in the stables. I wasn't thinking. I thought maybe because it's natural it's got no - no banned substances in it, etcetera, and maybe we could administer it, but, as Les said on the phone, we can't give a horse anything on race day."* The chairman of the inquiry further questioned *"So have you given the horse Gastrozone before?"* to which the Applicant replied *"Before, yes, but not on a race day"* to which the chairman then questioned *"What is the purpose of giving the horse Gastrozone?"* to which the Applicant replied *"Well, it's just for ulcers and stress and things like that, and when they travel. Whatever it says on the bottle. I bought it from Garrards."*³ The inquiry heard SHE'S A YOUEFFOH has no history of stomach ulcers.

The chairman of the inquiry further questioned *"Just to Mr Heidke or Mr Jackson, if you could clarify Mr Xanthopoulos' comments when you first arrived. Was there any indication that he was going to check with Mr Kelly first?"*

¹ Transcript of Stewards' Inquiry dated 3 October 2018, page 2 and 5

² Transcript of Stewards' Inquiry dated 3 October 2018, page 3

³ Transcript of Stewards' Inquiry dated 3 October 2018, page 4



to which Mr Jackson replied *"He did state - and I do have a digital recording here of the conversation. He did state that when we asked what he was doing he said, "I'm going to administer to the horse. I'm just waiting for Mr Kelly to arrive before asking him." So he did identify to us that he was waiting for trainer Les Kelly to arrive."* The Applicant added *"If Les said no, obviously we wouldn't do it because it - it doesn't enhance performance or anything - it is just like giving the horse grass or - it's actually grass from a meadow. If you read the bottle, it's grass from a meadow that's been diluted. Stable horses can't get humates and grass."*⁴

The audio of the stable inspection was played to the inquiry to establish some clarity as to the Applicant's evidence that he was intending to seek advice from Mr Kelly prior to administering the Gastrazone to SHE'S A YOUEFFOH. The transcribed audio of stable inspection, in part, stated:

"MR JACKSON: "Ryan Jackson from QRIC. Your name, sorry?"

MR XANTHOPOULOS: My name is Billy.

MR JACKSON: Billy. This is Scott Heidke.

MR HEIDKE: How are you, Billy. What is your last name, Billy?"

MR XANTHOPOULOS: Xanthopoulos.

MR JACKSON: Stablehand? You are licenced. Very good.

MR HEIDKE: What was going on with this one, Billy?"

MR XANTHOPOULOS: That's for ulcers. Just normal - like humates (inaudible) natural stuff.

MR HEIDKE: Yes. Were you going to give it to one?"

MR XANTHOPOULOS: I was going to give it to my mare, She's A Youeffoh.

MR HEIDKE: Okay.

MR XANTHOPOULOS: If you read it, it's just (inaudible). When they travel or when they (inaudible).

MR HEIDKE: All right.

MR XANTHOPOULOS: (Inaudible).

MR HEIDKE: So where is She's A Youeffoh going?"

MR XANTHOPOULOS: As I said (inaudible). Garrards

MR HEIDKE: So when - what was Youeffoh doing? Is She going out is she?"

MR XANTHOPOULOS: No, no. Youeffoh is running today.

MR HEIDKE: Oh. So you are going to give that to her now?"

MR XANTHOPOULOS: Yes. You are allowed to give it to her now. It's not - it hasn't got anything illegal in it. Well, aren't you? I'm not sure.

⁴ Transcript of Stewards' Inquiry dated 3 October 2018, page 5



MR HEIDKE: No.

MR JACKSON: You're not allowed to administer anything race day.

MR XANTHOPOULOS: Oh, all right.

MR HEIDKE: You said you were going to give that to Youeffoh?

MR XANTHOPOULOS: Give that, yes. I was going to give that - when they travel or whatever.

MR HEIDKE: Do you have your licence there?

MR XANTHOPOULOS: Yes.

MR HEIDKE: (Inaudible).

MR JACKSON: It is illegal to administer anything to your horse other food and water on race day.

MR XANTHOPOULOS: (Inaudible). I didn't know that...truly.

MR HEIDKE: When you say your mare, do you own Youeffoh?

MR XANTHOPOULOS: Yeah.

MR JACKSON: Who trains it?

MR XANTHOPOULOS: Les Kelly.

MR JACKSON: Does Les know that's what you were going to do?

MR XANTHOPOULOS: No, but I was going to tell him when he arrived here.

MR JACKSON: Just walked in. Les Kelly is here. His stablehand is Mr Billy Xanthopoulos has admitted to us he was going to administer to one of the horses a Gastrozone oral diuretic.⁵

Subsequent to the audio of stable inspection being played to the inquiry, the chairman of the inquiry questioned "Mr Xanthopoulos, was that - that recording it tends to - well, indicates to myself - and correct me if I'm wrong - that when initially asked about your actions you said you were going to administer the Gastrozone to She's A Youeffoh" to which the Applicant replied "Only if Les would have said it was okay, and when he arrived - but obviously it wasn't okay so it wouldn't have happened." The chairman of the inquiry then questioned "But on that recording there there is no indication that you were going to question or ask if it was okay of Les. I think when asked what you were going to do with it you said that you were going to give it to She's A Youeffoh and you were going to tell Les what you had done when he arrived" to which the Applicant replied "No, that was part of the recording as the stewards will confirm. That was part of the recording with the steward. There was more conversation that went on." The chairman of the inquiry further questioned "Have you ever recorded the treatment in the treatment book?" to which the Applicant replied "It's not a treatment. It's a - you usually pour it on the feed. They eat it. I think the alarm came when I had the syringe there.

⁵ Transcript of Stewards' Inquiry dated 3 October 2018, page 5, 6 and 7



It's an additive to the feed." The chairman of the inquiry then questioned "But you were going to administer it via the syringe today, weren't you?" to which the Applicant replied "No. Not (inaudible) we were going to put it - I was going to put it in the food if Les said it was okay." The inquiry heard SHE'S A YOUEFFOH received its morning feed at 3:30am on the subject day.⁶

The chairman of the inquiry stated "The problem is nothing is allowed to be administered to the horse" to which the Applicant replied "I understand. That's why (inaudible). That being so harmless I thought I would ask Les about it when he arrives. But he was about 15 minutes away. I apologise for the whole drama and inconvenience, especially putting Les in this position. He's a very astute trainer." The chairman then questioned "My next question is - how often or on what basis do you treat the horses without Les' instructions?" to which the Applicant replied "I don't treat the horses without Les' instructions. If anything, I'm I - I give it to my horse. I don't give any other horses anything. Anything that's holistic like humates, molasses, antibiotics."⁷

Further evidence of the audio of stable inspection was played to the inquiry, which stated:

MR JACKSON: Is this the any horse that you are going to give that to, Billy, or

MR XANTHOPOULOS: (Inaudible). Yes.

MR JACKSON: Mr Kelly wasn't aware that that's what you were going to do. Is that normal practice for you to do that on race day?

MR XANTHOPOULOS: No. I was going to give it to them but at the same time I was waiting for Les to come, or somebody to come to hold (inaudible) and if - well, if Les said, you know, 'Don't do it', obviously I would have done it."⁸

The chairman of the inquiry then questioned "Mr Xanthopoulos, at that point I believe I heard you say that you were going to wait for someone to come and hold the horse" to which the Applicant replied "Les holds the horse. I administer some of the humates and the food in the mouth or depending on how Les would have said the best way to do it is if it was allowed." The chairman of the inquiry further questioned "Just before you said you just do it over the feed. Why would you need someone to hold the horse if you are just going to give it in the feed?" to which the Applicant replied "If Les said it was okay to do it on race day (inaudible) know it's not okay to do anything natural, maybe we would have been put to do it with a syringe in the mouth, or he might have said to put in the feed. I didn't know it was - wasn't sure and that's why I was waiting for him." The chairman of the inquiry then questioned "It appears as if the only time you indicated you were going to seek Mr Kelly's permission was after you found out that it is not allowed on race day" to which Mr Xanthopoulos replied "No, that's - I always seek Les Kelly's permission for everything."⁹

Further evidence of the audio of stable inspection was played to the inquiry which, in part, stated:

MR JACKSON: You haven't done it before? Is that the first time you were going to do that or have you done that before to the racehorse?

MR XANTHOPOULOS: Only - not on race days or anything like that, but just, you know, during training or before they go on the walker or when the horse goes for a trip.

⁶ Transcript of Stewards' Inquiry dated 3 October 2018, page 8 and 9

⁷ Transcript of Stewards' Inquiry dated 3 October 2018, page 9

⁸ Transcript of Stewards' Inquiry dated 3 October 2018, page 10 and 11

⁹ Transcript of Stewards' Inquiry dated 3 October 2018, page 10 and 11



MR JACKSON: *Ennm.*

MR XANTHOPOULOS: *It's meant for stress and acid for ulcers.*

MR JACKSON: *Okay.*

MR XANTHOPOULOS: *It's an all natural product. A hundred percent natural.*

MR HEIDKE: *So you had the intention there with the syringe in your hand with the (inaudible) and you admitted that you were planning to give that to the mare (inaudible).*

MR XANTHOPOULOS: *Yes, I was going to ask Les of course. I was going to wait for somebody, especially Les, and say, "Look, do you want to administer it, Les", or whatever, and if it's against race rules, Les would have said, "It's against race rules." I didn't know it was against race rules.*¹⁰

Mr Kelly, in evidence, stated *"There is no way in the world that I would let him give that to a horse. There is no relevance in it. I went off my head when he told me."* The chairman of the inquiry questioned *"It's concerning to say the least that you have got staff that are willing to - or shows an indication to administer products without your knowledge"* to which Mr Kelly replied *"Yes. There is no way in the world that I would let him give it anything on race day."*¹¹ Mr Kelly added *"I can guarantee the horse has had nothing to my knowledge. I didn't know. It was a shock to me. When he rang me I said - I asked him what was going on, and he said - mentioned it, and I said, "Well, you can't give nothing to horses on race day." And I was actually just getting ready to come to the stables because I had the strappers and that coming there at 1 o'clock to get the horses over to the races."*¹²

The inquiry heard the Applicant purchased the container of Gastrazone from Garrards Horse and Hound and further heard Mr Kelly does not use the substance nor is it stored at the stable. The reviewer acknowledges there was no recorded treatment in Mr Kelly's treatment records for the substance Gastrazone to SHE'S A YOUEFFOH or any other horse in the stable.

For clarity Australian Rule of Racing 178F(1) states:

"A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:

- (a) the name of the horse;*
- (b) the date and time of administration of the treatment or medication;*
- (c) the name of the treatment or medication administered (brand name or active constituent);*
- (d) the route of administration including by injection, stomach tube, paste, topical application or inhalation);*
- (e) the amount of medication given (if applicable);*
- (f) the duration of a treatment (if applicable);*

¹⁰ Transcript of Stewards' Inquiry dated 3 October 2018, page 11 and 12

¹¹ Transcript of Stewards' Inquiry dated 3 October 2018, page 8 and 12

¹² Transcript of Stewards' Inquiry dated 3 October 2018, page 13 and 14



(g) the name and signature of person or persons administering and/or authorizing the administration of the treatment or medication.”

The Stewards, pursuant to Australian Rule of Racing 8(m), subsequently ordered the withdrawal of SHE'S A YOUEFFOH from Race 3 at the Gold Coast Turf Club on 3 October 2018 and adjourned the inquiry to a date to be fixed. The Stewards further ordered a swab sample be taken from SHE'S A YOUEFFOH and from all other horses trained by Mr Kelly that were engaged to race on the subject day.

For clarity, Australian Rule of Racing 8(m) states:

“To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Racing Authorities, with the following powers:

(m) to prohibit any horse from starting in any race.”

During the resumed stewards' inquiry conducted on 5 November 2018, further evidence was provided by the Applicant, Mr Kelly, Dr Kevin Squire, stable veterinarian for Mr Kelly, and Dr Martin Lenz, Director of Veterinary Services at the Racing Science Centre.

The Applicant disputed parts of the audio of the stable inspection that was transcribed and played at the initial stewards' inquiry conducted on 3 October 2018. The Applicant, in evidence, stated *“I would like to go through it with my solicitor this transcript because there are a lot of errors. Firstly my name is not spelt correctly. I've always been aware of race day rules and I had no intentions of administering anything to the horse because I'm aware of race day rules, and it is illegal to administer under race day rules.”* The chairman of the inquiry questioned *“So you say now that you are aware that you can't treat a horse on race day?”* to which the Applicant replied *“I've always - I said it to - I'm not sure who the two guys were. You've got names here but I'm not sure - because if - it was very windy on the day and you have a lot of inaudible - inaudible things here which means you couldn't make - couldn't be - can't be deciphered on the recording.”* The chairman of the inquiry then questioned *“I think our concern is that had it not been for the interference of the two QRIC officials the horse would have been administered the substance”* to which the Applicant replied *“No. This is incorrect, sir. As I said I fully apologise for even being there on the day and having that product and having a syringe in my hand, but I was not going to administer anything to the horse because I'm very aware of race day rules, and all I was going to do was ask Les seeing it's a fine line being a liquid food can this be given, and Les, as we found out in the process, said, "No". I was not going to give anything to the horse.”¹³*

The chairman of the inquiry further questioned *“So if you were aware of the rules about not treating horses on race day”* to which the Applicant replied *“I am”* the chairman then questioned *“Why did you have to ask Les if you could treat the horse?”* to which the Applicant replied *“Because it is a liquid food, and it was such a fine line I thought, "Maybe I should ask Les whether this can be given on a race day", because it is a feed.”¹⁴* The Applicant added *“I apologise for my mistake, but I was not going to administer anything to the horse. I fully apologise for my mistake even being there and even thinking that you could give anything, even a feed to a horse. But I was not going to administer anything to the horse because - without asking Les I - I might have been - if I had administered that to the horse without asking Les, I might have been hindering its performance.”*

¹³ Transcript of Stewards' Inquiry dated 3 October 2018, page 27 and 28

¹⁴ Transcript of Stewards' Inquiry dated 3 October 2018, page 28 and 29



The chairman of the inquiry questioned *"But it doesn't appear from the transcript we are looking at that you had any doubt as to whether or not the horse could have - I go back to page 6, line 40 and you say: "Yes, you are allowed to give it to her now. It's not - it hasn't got anything illegal in it. Then you go on to say, "Well, aren't you. I'm not sure." - that's only once you have been questioned by the stewards"* to which the Applicant replied *"Please take into consideration that I was sitting in the sun there for a few minutes. It was a hot day. We were anxious. Even when we were brought here in between races 1 and 2, it - it was like a pressure tank. It wasn't as relaxed as today. We couldn't think properly. If there were a few things said that were misconstrued, all I can do is apologise, but I can assure you I was not going to administer anything to the horse without Les' permission. If Les had have come and said, "Look, it's a feed. Give it over its feed", or whatever, I would have done it, but without Les' permission, as I said, on a stack of Bibles, I would not have given it to the horse."*¹⁵

Dr Squire, in evidence, stated *"I have been in racetrack practice for 40 years over four different continents - have serious concerns with the marketing of these products. To start with they are labelled incredibly confusingly so that people without a medical education would look at this - for example, the third line down here in capital letters it says "Ulcers", but the words above it say "Horses give trainers ulcers." But you would infer that Gastrozone - the other thing is there is a legal veterinary medicine called Gastrozol which has metrozol in it, which is one of the two medicines that treats ulcers - and both of them are restricted and can only be obtained through veterinarians. So Gastrozone and Gastrozol, you know - so it would infer to most people that the word ulcer - that this is going to treat horse ulcers. I have been doing Mr Kelly's work probably for nearly 20 years, and he's - well at least over the last 2 or 3 years has never bought any ulcer medication. We have never treated his horses for ulcers. We have never - he has never asked me to look at horses which might have a problem with ulcers. So Mr Kelly's training and feeding regime does not include treatment for ulcers. So this product would be one that an owner would like to have administered to his horse maybe. The other problem that I have with these products as open sellers is this product - this is not quite the label - it's very close to it. It doesn't have any indication what's in there. Who knows? I'm surprised that the AVPMA - which is Australia Veterinary and Pesticide Management Authority - allows these products to be sold. So if the racing authorities have problems with trainers or owners using these products, I'm just a little bit amazed that Racing Australia doesn't get on to the manufacturers, or at least have some regulations as to the sale of products like this. If you look at the back of the bottle in fine print: "Typical constituents per litre" - all nothing. Also added thiamine - which is Vitamin B1 - at 2350 milligrams per litre. That's all it's got. So we have no idea. There could be cobalt in here. There could be salicylic acid. Who knows what's in there. So I can't look at this professionally and say what this is. If you read through the marketing label on this printout here - which Mr Kelly got off the Internet - and the bottle it never says it's for treatment of horse ulcers, although that first statement there, and also here, "It's forever said that" - "It's forever being said that horses give trainers ulcers." Big red letters. You know, so it's very easy for someone who doesn't read the label closely, "Oh, Gastrozone - it's not Gastrozol" - it's ulcers - for horse ulcer treatment."*¹⁶

Dr Lenz provided evidence particular to the product Gastrazone stating *"It actually states in part of the information that is available with the product - I mean - look, to most people, and certainly to my way of looking at it, it's a feed supplement. It's something that you supplement the feed with. It doesn't contain, you know, the regular components of a normal feed - you know, that you would class it as a feed per se - but it has some additional products in there that are*

¹⁵ Transcript of Stewards' Inquiry dated 3 October 2018, page 33 and 34

¹⁶ Transcript of Stewards' Inquiry dated 3 October 2018, page 19 and 20



used to supplement what a normal feed would provide the horse. So my opinion is that it is certainly one of the many feed supplements that are available out there. Looking at the label itself, it lists one particular component - thiamine - which is a vitamin - one of the B group vitamins - which is often utilised to try and maintain normal appetite in a horse, and obviously has other plant-based ingredients, but, yes, to me it's certainly in the large group of, you know, dietary supplements that are freely available to trainers and owners to use. It's - my veterinary colleagues said it's an open seller so it doesn't require a prescription from the vet, but, yes, it certainly is what I would class as a nutritional supplement.

The chairman of the inquiry questioned *"The rules regarding race day administration refer to a medication, and I think a medication is defined as effectively any other substance"* to which Dr Lenz replied *"I - certainly, you know, if it has ingredients like thiamine in there - thiamine being a B vitamin - it has a specific action on one of the systems in the body. So it would be a - you know, it would be classed broadly speaking as a prohibited substance under that definition. So not - you know, the definition is very broad, but it is anything that has an effect on one of the body systems, and the argument is certainly quite easy to make for thiamine. It is a, you know, particularly - you know, it is a Vitamin B1 so it has a specific - specific set of actions on, you know, the nervous system for one, but on multiple systems in the horse's body."*¹⁷

Dr Lenz added *"I would say it's a liquid supplement. There are a multitude of these supplements available, but it's not - in of its own it's not - it's not a feed as such because it doesn't provide, you know, the sort of the general nutritional and dietary requirements of a horse - it supplements what a normal feed would provide. The racing rule that I would say it falls under is not to be administered on the day of racing. You know, nothing to be given on the day of the race except for feed and water."*¹⁸

The inquiry heard all samples obtained from Mr Kelly's horses engaged to race on the subject day including SHE'S A YOUEFFOH were clear of prohibited substances.

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

The reviewer finds the Applicant's evidence between the two aforementioned stewards' inquiries noteworthy, and in complete contrast particular to his knowledge of the Rules of Racing pertaining to race day treatment and alleged evidence he was intending to seek advice from Mr Kelly prior to considering administering Gastrazone to SHE'S A YOUEFFOH on the day such horse was engaged to race on 3 October 2018 at the Gold Coast Turf Club.

The Applicant's initial evidence, when questioned by Mr Heidke and Mr Jackson for the reason the Applicant was in possession of a syringe and container of Gastrazone during an unannounced race day stable inspection at Mr Kelly's stables on 3 October 2018, initially stated *"I was going to give it to my mare, She's A Youeffoh - you are allowed to give it to her now. It's not - it hasn't got anything illegal in it. Well, aren't you? I'm not sure."*

Subsequent to Mr Jackson informing the Applicant *"It is illegal to administer anything to your horse other food and water on race day"* the Applicant replied *"I didn't know that...truly."* Subsequent to Mr Jackson stating *"Does Les know that's what you were going to do?"* the Applicant replied *"No, but I was going to tell him when he arrived here."*

¹⁷ Transcript of Stewards' Inquiry dated 3 October 2018, page 48 and 49

¹⁸ Transcript of Stewards' Inquiry dated 3 October 2018, page 51



Subsequent to being informed it was illegal to administer anything to a horse other food and water on race day, the Applicant altered his initial evidence by stating “*I was going to ask Les of course. I was going to wait for somebody, especially Les, and say, "Look, do you want to administer it, Les", or whatever, and if it's against race rules, Les would have said, "It's against race rules." I didn't know it was against race rules.*”

During the resumed stewards' inquiry conducted on 5 November 2018, the Applicant again altered his initial evidence particular to his lack of knowledge pursuant to Australian Rule of Racing 178E(1) by stating “*I've always been aware of race day rules and I had no intentions of administering anything to the horse because I'm aware of race day rules, and it is illegal to administer under race day rules.*”

The reviewer finds any reasonable assessment of the Applicant's evidence demonstrates it lacks any form of credibility. The reviewer finds any administration or intent of administering a substance, irrespective of the source of substance, in this case namely Gastrazone, is in complete contravention of Australian Rule of Racing 178E(1) and is intended to cheat and gain an unfair advantage.

The reviewer accepts Australian Rule of Racing 178E(1) is a 'common knowledge' rule that places a strict obligation and responsibility on participants to ensure that no person without the permission of the stewards may administer or cause to be administered any medication to a horse on a race day. The rule is designed to provide a level playing field for racing participants that play within the boundaries of the rules, and to protect the interests of the wagering public and broader racing community. The reviewer finds it fanciful to accept in the current climate that any stable employee would not be completely au fait with the strict requirements pursuant to the aforementioned rule.

The reviewer finds the evidence compelling and demonstrates the Applicant's intention was to administer Gastrazone to SHE'S A YOUEFFOH in contravention of Australian Rule of Racing 178E(1), and such action was only prevented as a consequence of a timely unannounced stable inspection conducted by officials of Queensland Racing Integrity Commission's Integrity Investigations Team, namely Mr Heidke, Mr Jackson.

The reviewer acknowledges each case is treated on its merits and set of circumstances and, in carefully considering the evidence and aforementioned factors, is satisfied the Applicant's actions were intentional and an improper action in connection with racing pursuant to Australian Rule of Racing 175(a) and therefore is completely satisfied to the requisite standard the charge is proven.

The Applicant's disciplinary history is clear of any prior offence pursuant to Australian Rule of Racing 175(a). The penalty precedents pursuant to Australian Rule of Racing 175(a) range between a monetary fine and up to nine (9) years disqualification. The reviewer notes the mandatory penalty pursuant to Australian Rule of Racing 178E(1) is six (6) months disqualification (unless special circumstances apply pursuant to Australian Rule of Racing 196(5)) and that the Applicant was only prevented from administering Gastrazone to SHE'S A YOUEFFOH in contravention of Australian Rule of Racing 178E(1) as a consequence of a timely unannounced stable inspection conducted by officials of Racing Integrity Commission's Integrity Investigations Team.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, disciplinary history, not guilty plea and penalty precedents particular to Australian Rule of Racing 175(a). The charge the subject of review pursuant to Australian Rule of Racing 175(a) is an extremely serious offence and has a detrimental effect on the racing industry.



The reviewer, in considering the aforementioned factors and taking into account the seriousness of the offence, and in particular the Applicant's initial evidence noting it was his intention to administer Gastrazone to SHE'S A YOUEFFOH, finds the penalty imposed is consistent with the penalty precedents for such offence and accordingly confirms the original decision of 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