10 August 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**RICK HOLMES**

**Date of hearing:** 22 July 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Josh Bornstein.

**Appearances:** Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Rick Holmes represented himself.

**Charges and particulars:**

**Charge No. 1.**

Australian Harness Racing Rule (“AHRR”) 190(1) states:

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

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;
2. At all relevant times, you were the registered trainer of the horse ‘Laser Major’;
3. On 19 November 2020, ‘Laser Major’ was presented to race at the Mildura harness racing meeting in Race 1, the ‘Euston Club Pace’;
4. Following Race 1, the ‘Euston Club Pace’, a blood sample was collected from ‘Laser Major’ with subsequent analysis of that sample revealing a plasma total carbon dioxide concentration of greater than 39 millimoles per litre in plasma, being above the allowable threshold;
5. As the trainer of ‘Laser Major’ on 19 November 2020, you have presented that horse to race in the ‘Euston Club Pace’ at Mildura whilst not free of Alkalinising Agents, a prohibited substance when evidenced by total carbon dioxide (TCO2) present at a concentration in excess of 36 millimoles per litre in plasma.

**Charge No. 2.**

(AHRR) 196C(1)(b) states:

*A person must not administer an alkalinizing agent in any manner to a horse which is engaged to run in a race:*

*(b) at anytime within one (1) clear day of the commencement of the race.*

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;
2. At all relevant times, you were the registered trainer of the horse ‘Laser Major’;
3. On 19 November 2020, the horse ‘Laser Major’ was engaged to compete in Race 1, the ‘Euston Club Pace’ at the Mildura harness racing meeting;
4. On 18 November 2020, you administered 30 grams of sodium bicarbonate to ‘Laser Major’ via its feed;
5. You administered an alkalinising agent to ‘Laser Major’ within one (1) clear day of its engagement at the Mildura harness racing meeting on 19 November 2020.

**Charge No. 3.**

(AHRR) 190B states:

*(1) A trainer shall at all times keep and maintain a log book:-*

 *(a) Listing all therapeutic substances in his or her possession;*

 *(b) Recording all details of treatment administered to any horse
 in his or her care and including as a minimum requirement:*

 *(i) the name of the horse*

 *(ii) the date of administration of treatment*

 *(iii) the name of the treatment (brand name of active constituent)*

 *(iv) the route of administration*

 *(v) the amount given*

 *(vi) the name and signature of the person or persons
 administering and/or authorising the treatment.*

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;
2. At all relevant times, you were the registered trainer of the horse ‘Laser Major’;
3. On 18 November 2020, you administered an alkalinising agent, namely sodium bicarbonate, to ‘Laser Major’, being a horse in your care;
4. When inspected by HRV Stewards on 26 November 2020, your log book failed to adequately record this treatment;
5. You have failed to keep and maintain a log book as required.

**Charge No. 4.**

(AHRR) 190(1) states:

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

**The particulars of the charge being:**

1. You were, at all relevant times, the trainer of horse ‘*Laser Major*’;
2. On 20 January 2021, you presented ‘*Laser Major*’ to race at the Mildura harness racing meeting in Race 10, the ‘Mallee Bearings Pace’;
3. After this race, a urine sample was collected from ‘*Laser Major*’ with subsequent analysis of that sample revealing an arsenic concentration reading of 0.55 micrograms per millilitre in urine, which is in excess of the allowable threshold, being 0.30 micrograms per millilitre in urine;
4. As the trainer of *‘Laser Major’* on 20 January 2021, you presented that horse to race at the Mildura harness racing meeting not free of arsenic, a prohibited substance when present at a concentration in excess of the allowable threshold.

**Charge No. 5.**

(AHRR) 190(1) states:

# *A horse shall be presented for a race free of prohibited substances*

**The particulars of the charge being:**

1. You were, at all relevant times, the trainer of horse ‘*Laser Major*’;
2. On 7 March 2021, you presented ‘*Laser Major*’ to race at the Birchip harness racing meeting in Race 8, the ‘Dunstan Wool Pace (3RD Heat)’;
3. Before this race, a urine sample was collected from ‘*Laser Major*’ with subsequent analysis of that sample revealing an arsenic concentration reading of 0.54 micrograms per millilitre in urine, which is in excess of the allowable threshold, being 0.30 micrograms per millilitre in urine;
4. As the trainer of *‘Laser Major’* on 7 March 2021, you presented that horse to race at the Birchip harness racing meeting not free of arsenic, a prohibited substance when present at a concentration in excess of the allowable threshold.

**Pleas:** Guilty

**DECISION**

Mr Rick Holmes, you are a licensed trainer who is pleading guilty to a total of five charges. Two charges relate to the horse Laser Major and its involvement in Race 1 at Mildura on 19 November 2020, which it won. A post-race test revealed the presence of sodium bicarbonate at a prohibited level. Charge 1 relates to Rule 190(1) and the presentation of the horse with a concentration in excess of 39 millimoles per litre. Charge 2 concerns Rule 196C(1)(b) and the administration of the substance within one clear day of the horse racing. Also grouped with these charges is Charge 3 – (a breach of Rule 190B) – effectively, failing to keep and maintain an up-to-date logbook.

The second group of charges concerns Laser Major’s run at Mildura on 20 January 2021 in Race 10, which it won, and at Birchip, on 7 March 2021, when it ran sixth. On each occasion, a urine sample revealed an arsenic concentration in excess of the allowable threshold. We say now that there was no dispute but that these elevated arsenic readings resulted from the horse chewing treated fence posts.

As stated, you have pleaded guilty to all charges and have virtually done so for a considerable period.

In relation to the principal sodium bicarbonate charge, being charge one, the reading obtained was, as stated, in excess of 39 millimoles. This is a high reading, consistent with administration on race day. A possible explanation of Laser Major eating another horse’s feed, feed which had arsenic on it, and doing this on the previous day, seems unlikely. Of the 5 charges, this is by far the most serious.

Mr Cusumano, on behalf of the Stewards, has emphasised the need for both general and specific deterrence. General deterrence seems to us to be more important in the particular circumstances. The concepts of a level playing field and races being conducted by horses free of prohibited substances are of great importance to the well-being of the industry. Mr Cusumano referred us to various decisions in this regard.

In relation to your personal circumstances, you are 51 years of age. You have been licensed for a considerable period, but were absent from the industry for a period of eleven years. In 2018, you returned to the industry in South Australia, before being relicensed in Victoria on 31 July 2020. You have a good record, with no relevant prior convictions.

You have had a number of horses that has varied between five and seven. You supplement your income by working as a farrier, shoeing horses for others in the industry. You and your partner previously lived in Mildura.

Recently, you have moved to the Echuca/Moama district. This was apparently to be with your father, who very sadly passed away only a week ago. It is the intention of you and your partner to remain in Echuca. You have found employment as a farm hand. You no longer train any horses. The farrier work is important to you, as it provides income.

We turn now to penalties. We shall not go into all the charges in detail. Charge 1 is the most significant charge. All the charges are directed towards the importance of a level playing field, the proper administration of the industry and the protection of its image. You are certainly entitled to some consideration because of your good record and your early pleas of guilty.

On Charge 1 – you are suspended for a period of 18 months, with 6 months being suspended for a period of 18 months. Your early plea of guilty, your co-operation with the Stewards and your financial situation, with the importance of your farrier work, have been taken into account and a suspension decided upon accordingly.

On Charge 2 – the feeding of sodium bicarbonate the day before the race – you are fined $2,000.

On Charge 3 – the logbook charge – you are fined $250.

On Charge 4 – the Mildura arsenic charge – you are fined $1,000, with $500 suspended for 12 months.

On Charge 5 – the Birchip arsenic charge – you are fined $3,000, with $1,500 suspended for 12 months.

We might add that the increased size of the financial penalty for the Birchip offence is because you should have been on alert and moved the horse more swiftly following the Mildura offence, which had been brought to your attention well before the race at Birchip.

Finally, Laser Major is disqualified from the Mildura races on 19 November 2020 and 20 January 2021, as well as the Birchip race of 7 March 2021, and the finishing orders are amended accordingly.

We appreciate that all of this may be a little difficult to take in quickly, so we would repeat the penalties in summary form.

You are suspended for 18 months, 6 months of which are in turn suspended for 18 months.

You are fined a total of $6,250 of which $2,000 is suspended for 12 months. The commencement date of your suspension is 10 August 2021.

Mark Howard
Registrar, Victorian Racing Tribunal