10 November 2022

**DECISION**

**RACING VICTORIA**

**and**

**RON STEPHENS**

**Date of hearing:** 8 November 2022

**Panel:** Judge John Bowman (Chairperson) and Judge Julie Nicholson.

**Appearances:** Mr Scott Hunter appeared on behalf of the Stewards.

Mr Ron Stephens represented himself.

**Charges:** Australian Rule of Racing (“AR”) 240(2) states:

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

 AR 104 states:

 (1) A trainer must record any medication or treatment administered to any horse in the trainer’s care by midnight on the day on which the administration was given.

(2) For the purpose of subrule (1), each record of administration 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, orally, topical application or inhalation;

(e) the amount of medication given (if applicable);

(f) the duration of treatment (if applicable);

(g) the name and signature of the person/s administering and/or authorising the administration of the treatment or medication.

(3) For the purposes of this rule “treatment” includes:

(a) shock wave therapy;

(b) acupuncture (including laser treatment);

(c) chiropractic treatment;

(d) the use of any electrical stimulation device (including transcutaneous electrical nerve stimulation (TENS));

(e) magnetic field therapy;

(f) ultrasound;

(g) any form of oxygen therapy, including hyperbaric oxygen therapy;

(h) the taking of a blood sample.

(4) For the purposes of this rule “medication” includes:

(a) all Controlled Drugs (Schedule 8) administered by a veterinarian;

(b) all Prescription Animal Remedies (Schedule 4), including those listed in Schedule 1, Part 2, Division 2 to these Australian Rules;

(c) all Prescription Only Medicines (Schedule 4), prescribed and/or dispensed by a veterinarian for off-label use;

(d) all injectable veterinary medicines (intravenous, intramuscular, subcutaneous, intra-articular) not already referred to above;

(e) all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines;

(f) all veterinary and other medicines containing other scheduled and unscheduled prohibited substances;

(g) all alkalinising agents;

(h) all herbal preparations.

(5) All records required to be kept in accordance with this rule must be retained by the trainer for at least 2 years.

(6) When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required under subrule (1).

**Particulars of charges:** **Charge 1: AR 240(2)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of Composed Legend (The Horse).
3. On 26 January 2022, the Horse was brought to the Balnarring Racecourse and ran in race 6, the George Robinson Pitt Open Trophy Race Handicap over 1008 metres (the Race).
4. On 26 January 2022, a pre-race blood sample was taken from the Horse (the Sample).
5. An analysis of the Sample detected the presence of Salbutamol.
6. Salbutamol is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

 **Charge 2: AR 104(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You were, at all relevant times, responsible for the maintenance of the treatment records for any horse in your care.
3. On 8 March 2022, you were interviewed by Stewards from Racing Victoria’s Compliance Assurance Team with respect to a pre-race blood sample collected from your horse, Composed Legend, on 26 January 2022 (the Interview), and during the course of the day, the Stewards inspected your treatment records.
4. During the Interviews, when questioned about your treatments of Composed Legend, you stated that Composed Legend would receive the Dexapent via the nebuliser “a couple of times a week”.
5. From 29 August 2021 to 15 January 2022, your treatment records did not contain any medications or treatments administered to Composed Legend as required by AR 104(2).

**Pleas:** Guilty

**DECISION**

Mr Ron Stephens, you have pleaded guilty to two charges. The first charge is a breach of Australian Rule of Racing (“AR”) 240(2) and could be summarised as the bringing of a horse to a racecourse for the purpose of participating in a race and that horse testing positive to a prohibited substance. Such a charge is commonly referred to as a presentation charge.

The second charge is a breach of AR 104, being the failure to keep proper treatment records.

Turning to the first charge, the horse involved was “Composed Legend”, trained by you, which was brought to the Balnarring picnic races on 26 January 2022 in order to compete in Race 6 over 1006 metres. A pre-race blood sample proved positive to the prohibited substance, salbutamol.

There is little dispute as to how this positive swab came to occur. You suffer from asthma. You use a Ventolin puffer. Ventolin contains salbutamol. In the expert opinion of Dr Barry Smyth, Veterinary Surgeon, the most likely source of the salbutamol was the Ventolin in the puffer. We would refer to his report of 10 May 2022 to Racing Victoria. On the float, you had taken a couple of puffs when unloading the horse at Balnarring. We accept that you were completely unaware of any risk associated with the use of the puffer or of the presence of salbutamol.

Turning to your circumstances, you are a 66 year old single man and you are a pensioner. The pension is your sole source of income and you currently have three horses in work. Each competes only at the picnic races. Your nephew is a 50% part-owner of two of them and also contributes appropriately to training fees and expenses. As we understand it, you live on his father’s property.

By way of background, you have been a licensed trainer for 46 years and have an excellent record. Having a few horses has always been a hobby for you, particularly in relation to the picnic races. You worked for many years as a dairy farmer and have done some work as a farrier. Your only income is the age pension of $1,687 per month. Out of this, you pay a modest amount of rent and also track fees and, at the moment, some stabling expenses at Pakenham racecourse. There are also some motor vehicle expenses.

Mr Scott Hunter, on behalf of the Stewards, has referred to the decision of this Tribunal in the matter of Racing Victoria v Matt Laurie (28 March 2022), which has some similarities to the present case, although an administration error seems to have been the most logical explanation in that case.

We bear that decision, and the penalty imposed of $1,000, in mind. We would repeat the observation contained in that decision as to the great care that has to be taken by trainers. However, the offence in the present case is not one involving a possible lack of supervision of the use of horse medication. It is more one of possible lack of care in relation to the use of personal medication, but against a background of total unawareness of any risk associated with the use of that medication.

In the circumstances, you are fined the sum of $1,000, but of that amount $500 is suspended for a period of 12 months. It will only be payable if you commit a similar offence during that period. We are confident that you will not.

In relation to Charge 2, the failure to maintain proper records, we would repeat the comments made in previous decisions, such as Racing Victoria v Russell Cluning (17 August 2022). In particular, we again adopt the observation contained in that decision concerning the importance of keeping accurate and complete records. On this charge, you are fined the sum of $500.

Finally, Composed Legend is disqualified from Race 6 at Balnarring on 26 January 2022 and the finishing order is amended accordingly.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal