21 May 2020

**FURTHER RULING – APPLICATION FOR TESTING**

**RACING VICTORIA**

**and**

**MR RICHARD LAMING**

**Date of hearing:** 21 April 2020

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Justin Hooper appeared on behalf of the Stewards

Mr Adrian Anderson appeared on behalf of Mr Laming.

**Charges & Particulars:**

**Charge One: Australian Rule (AR) 245**

The Stewards charge you with breaching AR 245 which reads as follows:

*AR 245 Administration of prohibited substance in sample taken from horse before/after running in race*

1. A person must not:
	1. administer; or
	2. cause to be administered,

a prohibited substance on Prohibited List A and/or Prohibited List B to a horse which is detected in a sample taken from the horse prior to or following the running of a race.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. At all relevant times, you were the trainer of *Iam Ekstraordinary.*
3. On 23 May 2018*, Iam Ekstraordinary* ran in the City of Ballarat Maiden Plate over 1200 metres at the Ballarat racecourse (the race).
4. Prior to the race you administered, or caused to be administered, to *Iam Ekstraordinary* a prohibited substance, being cobalt at a mass concentration in excess of 100 micrograms per litre in urine, which was detected in a pre-race urine sample taken from *Iam Ekstraordinary* prior tothe running of the race.
5. Cobalt exceeding a mass concentration of 100 micrograms per litre in urine is a prohibited substance pursuant to Part 2 of Schedule 1 of the Australian Rules of Racing.
6. At the time of the relevant conduct described, it was an offence under AR 175(h)(ii) (as then in force) to engage in the conduct described in particular 4.
7. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**Charge Two: AR 240 [Alternative to Charge One]**

The Stewards charge you with breaching AR 240 (2) which reads as follows:

*AR 240 Prohibited substance in sample taken from horse at race meeting*

1. 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.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. At all relevant times, you were the trainer of *Iam Ekstraordinary.*
3. On 23 May 2018*, Iam Ekstraordinary* was brought to the Ballarat racecourse and ran in the City of Ballarat Maiden Plate over 1200 metres (the race).
4. A prohibited substance, being cobalt at a mass concentration in excess of 100 micrograms per litre in urine, was detected in a pre-race urine sample taken from *Iam Ekstraordinary* prior to the running of the race.
5. Cobalt exceeding a mass concentration of 100 micrograms per litre in urine is a prohibited substance pursuant to Part 2 of Schedule 1 of the Australian Rules of Racing.
6. At the time of the relevant conduct described, it was an offence under AR 178 (as then in force) to engage in the conduct described in particulars 3 and 4.
7. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

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

The Stewards charge you with breaching AR 104(1) which reads as follows:

*AR 104: Trainers must keep treatment records*

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:
3. the name of the horse;
4. the date and time of administration of the treatment or medication;
5. the name of the treatment or medication administered (brand name or active constituent);
6. the route of administration including by injection, stomach tube, paste, topical application or inhalation;
7. the amount of medication given (if applicable);
8. the duration of treatment (if applicable);
9. the name and signature of the person/s administering and/or authorising the administration of the treatment or medication.
10. For the purposes of this rule “treatment” includes:
11. shock wave therapy;
12. acupuncture (including laser treatment);
13. chiropractic treatment;
14. the use of any electrical stimulation device (including transcutaneous electrical nerve stimulation (TENS));
15. magnetic field therapy;
16. ultrasound;
17. any form of oxygen therapy, including hyperbaric oxygen therapy;
18. the taking of a blood sample.
19. For the purposes of this rule “medication” includes:
20. all Controlled Drugs (Schedule 8) administered by a veterinarian;
21. all Prescription Animal Remedies (Schedule 4), including those listed in Schedule 1, Part 2, Division 2 to these Australian Rules;
22. all Prescription Only Medicines (Schedule 4), prescribed and/or dispensed by a veterinarian for off-label use;
23. all injectable veterinary medicines (intravenous, intramuscular, subcutaneous, intra-articular) not already referred to above;
24. all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines;
25. all veterinary and other medicines containing other scheduled and unscheduled prohibited substances;
26. all alkalinising agents;
27. all herbal preparations.
28. All records required to be kept in accordance with this rule must be retained by the trainer for at least 2 years.
29. 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 Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 20 June 2018, Racing Victoria Stewards (Stewards) attended your stables at Clyde to complete an inspection (Inspection).
3. During the Inspection, Mr Marnu Potgieter, a stable hand employed by you, provided a treatment diary to the Stewards (Treatment Diary).
4. On the evening of 20 June 2018, after completion of the Inspection that day, Mr Potgieter provided the Stewards with a revised version of the Treatment Diary via email (Revised Treatment Diary).
5. The Revised Treatment Diary included treatments that had been administered to *Iam Ekstraordinary* in May 2018 that had not been recorded in the Treatment Diary when the Stewards undertook their Inspection.
6. Your conduct, as described above, was in breach of AR 104(1).
7. At the time of the relevant conduct described, it was an offence under AR 178F(5) (as then in force) to engage in the conduct described in particular 5.
8. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**Plea:** Reserved

**FURTHER RULING – APPLICATION FOR TESTING**

I have previously ruled on an application for testing in relation to the swab positive to cobalt returned by ‘Iam Ekstraordinary’ on 23 May 2018. The horse is trained by Mr Richard Laming. On 15 May 2020, I ruled that I would not order that the urine sample in question be released and forwarded to Royal North Shore Hospital, Sydney. The issue of the proposed referral to that establishment was at the centre of the argument and application conducted before me on 21 April 2020, and was the subject of my Ruling.

That leaves two subsidiary applications, which received no attention on 21 April, when Counsel spoke to written submissions. They are contained in paragraph 2 of the original written submissions of 7 October 2019 on behalf of Mr Laming. They received little attention thereafter. They are as follows. Alternatively to Royal North Shore Hospital, it is sought that there be a referral to ChemCentre, LGC Limited or some other laboratory approved by Racing Victoria.

In relation to LGC Limited, it was asserted on behalf of the Stewards on 15 May 2020 that such laboratory does not carry out the type of testing in question and that ordering such a referral would be futile. This proposition was not challenged. Accordingly, I am not prepared to make such a ruling. I am aware of the background to the situation with LGC Limited. If the proposition that making such an order would be futile (an unchallenged proposition), is correct, there is no point to it, and I will not make it.

Whether or not ChemCentre or some other official racing laboratory as defined in Rule 2 could conduct the type of testing proposed seems doubtful. However, I would suggest the following. If Chemcentre or another Official Racing Laboratory is equipped and prepared to carry out testing of the type sought by Mr Laming, I would order it, assuming that it could definitely be done and done within a reasonable time frame. If no Official Racing Laboratory is so equipped or proposed, such proposed Order would fall into the same category of futility as that relating to LGC Limited.

The difficulties encountered in relation to the Ruling of Garde P in Hope v Racing Victoria [2018] VCAT 1688 are to be borne in mind.

I would repeat that matters to do with proposed testing by bodies such as these received virtually no attention in the recent written submissions of the parties or the oral arguments advanced on 21 April 2020.

My ultimate Ruling is that I am not prepared to order testing of the relevant sample or samples by LGC Limited. If there is some point in ordering testing by ChemCentre or a like Official Racing Laboratory, and I am convinced to this effect, I would order it. I repeat that any such testing must be of a sample forwarded to an Official Racing Laboratory as defined and listed in AR2.

I will await further submissions, bearing in mind the type of testing sought and whether an Official Racing Laboratory is equipped and prepared to carry out such testing. This matter has been on foot for a long time. I see no reason why the situation could not be clarified within 14 days.

Mark Howard
Registrar, Victorian Racing Tribunal