25 November 2024

**DECISION**

**RACING VICTORIA**

**and**

**RUSSELL CLUNING**

**Date of hearings:** 19 July 2024 and 20 September 2024

**Date of decision:** 19 November 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson), Dr Andrew Gould and Mr Des Gleeson.

**Appearances:** Mr Gregory Buchhorn, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Professor Brynn Hibbert appeared as a witness.

 Dr Grace Forbes appeared as a witness.

 Mr Rhys Melville appeared as a witness.

**Charges and particulars:**

**Charge One: AR 244**

AR 244 reads as follows:

AR 244 Administration of prohibited substance to affect race performance

 (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 for the purpose of affecting the performance or behaviour of the horse in a race, or of preventing it starting in a race.

If a person breaches subrule (1), a disqualification for a period of not less than 3 years must be imposed, unless there is a finding that a special circumstance exists, in which case that penalty may be reduced.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria and bound by the Rules of Racing.

1. You are, and were at all relevant times, the trainer of Cable Glow (the Horse).

1. On 11 June 2023, the Horse ran in Race 3, the Swan Hill Sire Drought Breaker Maiden, over 1600 metres (the Race) at the Swan Hill racecourse.

1. On or about 11 June 2023, you administered, or caused to be administered, to the Horse a prohibited substance, being alkalinising agents, for the purpose of affecting its performance or behaviour in the Race.

1. Alkalinising agents are a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge Two: AR 245 (Alternative to Charge One)**

AR 245 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 and bound by the Rules of Racing.

1. You are, and were at all relevant times, the trainer of Cable Glow (the Horse).

1. On 11 June 2023, the Horse ran in Race 3, the Swan Hill Sire Drought Breaker Maiden, over 1600 metres (the Race) at the Swan Hill racecourse.

1. On or about 11 June 2023, you administered, or caused to be administered, to the Horse a prohibited substance, being alkalinising agents, before running in the Race.

1. Alkalinising agents are a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge Three: AR 247 (Alternative to Charges One & Two)**

AR 247 reads as follows:

AR 247 Administration of Alkalinising Agents

(1) A person must not:

1. administer; or
2. cause to be administered,

(c) attempt to administer, or:

(d) be a party to the administration or attempted administration of, an alkalinising agent in any manner to a horse which is engaged to run in any race, official trial or jump-out:

1. at any time on the day of the scheduled race, official trial or jump-out and prior to the start of that event; and/or
2. at any time during the 1 clear day prior to 12.00am on the day of the scheduled race, official trial, or jump-out.

**Particulars of Charge**

* 1. You are, and were at all relevant times, a trainer licensed by Racing Victoria and bound by the Rules of Racing.

* 1. You are, and were at all relevant times, the trainer of Cable Glow (the Horse).

* 1. On 11 June 2023, the Horse ran in Race 3, the Swan Hill Hire Drought Breaker Maiden Handicap, over 1600 metres (the Race) at the Swan Hill racecourse.

* 1. On or about 11 June 2023, you administered to the Horse an alkalinising agent, being bi-carbonate soda.

* 1. Alkalinising agents are prohibited from being administered to a horse at any time on the day of the race or at any time on the clear day prior to the race day.

**Charge Four: AR 240 (Alternative to Charges One, Two & Three)**

AR 240 (2) reads as follows:

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

(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.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria and bound by the Rules of Racing.

1. You are, and were at all relevant times, the trainer of Cable Glow (the Horse).

1. On 11 June 2023, the Horse was brought to the Swan Hill racecourse and ran in Race 3, the Swan Hill Hire Drought Breaker Maiden, over 1600 metres (the Race).

1. On 11 June 2023, prior to the Race, a blood sample (V679391) was taken from the Horse (the Sample).

1. An analysis of the Sample detected the presence of an alkalinising agent.
2. Alkalinising agents are a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Pleas:** Not Guilty to Charges 1 and 2.

Guilty to Charge 3.

 Charge 4 was withdrawn.

**DECISION**

1. Mr Russell Cluning is a registered trainer with Racing Victoria (“RV”). On 11 June 2023 he raced his horse, “Cable Glow”, at Swan Hill. Before the race, the Stewards took a sample of blood from the horse. This sample later tested positive to the presence of an alkalizing agent.
2. The Stewards allege that this reading came about because Mr Cluning had administered an extremely large amount of bicarbonate of soda – one form of alkalising agent – to his horse before the race.
3. Although it appears to have no scientific basis, it is a common practice for horses to be administered bicarbonate of soda. This is often given as handfuls added to feed. Small quantities of bicarbonate of soda are thought by some trainers to assist mares in combating “tie-up” – a colloquial name describing painful lactic acid build up.
4. However, supplementation of feed with alkalising agents runs the risk of artificially reducing fatigue, inducing weight loss and masking the detection of other prohibited substances. For this reason, the Rules of Racing strictly control the administration of alkalising agents to racehorses.
5. Alkalising agents occur naturally in several substances commonly fed to horses. Thus, the presence of these agents is not banned outright. Instead, there is a threshold applied in the Rules.
6. The threshold is presently set by the Rules at a concentration exceeding 36 millimoles per litre in plasma, expressed as exceeding 36mmol/L of TCO2. The letters TCO2 are the chemical description of an alkalising agent.

**Testing of the samples**

1. The A sample from Cable Glow was tested at the Victorian Racing Analytical Services Limited (“RASL”) laboratory, which measured the total carbon dioxide levels in the sample. A screening test of one tube of the A sample measured TCO2 concentration at 36.8mmol/L. A further two tubes from the A sample were then tested and the level for those samples was 37.2mmol/L.
2. The reserve sample, called the B sample, was sent to the equivalent Sydney laboratory for testing. That sample showed total TCO2 levels of 37.0mmol/L.
3. Each of the laboratories provided certificates of analysis confirming those readings.
4. On 15 June 2023, four days after the race, the Stewards took a further blood sample from Cable Glow. That sample was found to have a measurement of 32.3mmol/L.

**The charges**

1. As a result of the outcome of the sampling on 11 June 2023, Mr Cluning has been charged with four offences. These offences are put in the alternative. It is not expected that a finding should be made of guilt in respect of all charges. A finding of guilt is sought on only one of these four charges.
2. Charge 1 is a charge that Mr Cluning administered the bicarbonate soda to the horse on 11 June 2023 for the purpose of affecting the race performance or behaviour of that horse. This is the most serious charge. It requires proof not only of administering the substance, but also that Mr Cluning had the intention when he administered the substance of affecting Cable Glow’s performance or behaviour in the race.
3. Charge 2 alleges that Mr Cluning administered the alkalising agent to the horse on 11 June 2023. In comparison to the first charge, the second charge does not require the Stewards to prove that the administration was done for the purpose of affecting the race performance or behaviour of Cable Glow on 11 June 2023.
4. Charge 3 is a charge that an alkalising agent was administered to the horse either on the day of the race or one clear day beforehand. This charge does not require the Stewards to prove that the substance was administered on the day of the race, but it does require proof that it was administered within one clear day of the race taking place.
5. Charge 4 is a simple charge of presentation of a horse at the racecourse with the prohibited substance present in its system.
6. Mr Cluning has pleaded guilty to Charge 3 and as a consequence the Stewards have withdrawn Charge 4.
7. This case therefore concerns the question of whether the race day sample contained a level of alkalising agents that was in excess of the threshold, and if so the circumstances in which that high level was administered to Cable Glow.
8. In determining this matter, the Briginshaw principle must be applied – that is, that we should not make a finding of guilt unless we are comfortably satisfied that the offending conduct took place.

**The evidence**

1. We now detail the events which form the subject matter of the alleged prohibited conduct.
2. Mr Cluning has trained Cable Glow for the horse’s entire career and is solely responsible for its training and feeding regime. Mr Cluning told the Stewards when they visited on the 15 June 2023 that he was accustomed to give all his horses a handful of bicarbonate soda in every meal – in other words, both the morning and night feed. He would sprinkle it with the horse’s feeds.
3. On the night prior to the race, he drove with Cable Glow from his home in Hazelwood to the location of the race in Swan Hill. He told the Stewards that he set off at 1 o’clock in the morning because the trip was going to be a long one. When he was cross-examined, he said that what he meant by this was that he woke at 1.00am, but would not have set off until about 2.30am, after he had prepared the horse and himself for travel. He said that before he set off, he gave the horse a feed which was significantly larger than usual because he knew that the horse would not get a feed until later that morning. There was bicarbonate of soda sprinkled on this feed. He denied having given the horse any further substance during the trip.
4. When asked for his explanation as to how such a high level of alkalinising agent came to be detected in his horse, Mr Cluning said that he thought the horse was dehydrated and said that it had a known history of being “high”. He said that he had seen this phenomenon with his horse many times and had tested it in the past. He said that he thought that it looked like bicarbonate because of the background of the horse. All he knew of bicarbonate was that it was used to control lactic acid and hormones in horses. Mr Cluning denied ever having stomach tubed the horse, although he did agree that he was capable of injecting substances into a horse.
5. The Stewards contend that Mr Cluning deliberately lied in giving this evidence as to the time that he set out for Swan Hill. They say he did so in order to conceal the fact that he would have had a significant amount of time on the trip to stop enroute and administer a “milkshake” to the horse. Mr Cluning denied this allegation.
6. It is clear from Mr Cluning’s description of events to the Stewards that even if his version of events is accepted, the last feed he gave to the horse which contained bicarbonate of soda was well within one clear day of the race. This means that he has admitted to having breached the Rule which is the subject matter of Charge 3. The Rule does not require the Stewards to prove any particular concentration of alkalising agents – it is sufficient if any quantity was administered during the time frame specified.
7. Mr Cluning told the Stewards that he was not aware of the “clear day” rule and said that if that was the Rule, he was sorry and was guilty of breaching it.
8. It is clear from the evidence that all the elements of Charge 3 are made out. Mr Cluning has conceded that he did administer bicarbonate of soda, an alkalising agent, to Cable Glow less than one clear day prior to 12.00am on the day of the race.
9. This charge does not require proof of any particular level of alkalising agent to be administered. It also does not require proof of any motive in doing so. It requires only proof of administration within the prohibited time. We are comfortably satisfied that this charge is made out.

**Discussion**

1. The real contest in this case was the question of how much of the bicarbonate of soda he administered to the horse, when he did it, and his purpose in doing so.
2. The Stewards contend that he administered an amount well over the threshold to Cable Glow, and that he did so for the purpose of affecting its performance or behaviour in the race on 11 June 2023.
3. Mr Cluning described what happened as being a misunderstanding, as he had not realised that bicarbonate was a drug. He said he had given the horse a particularly large feed in the evening before setting out for Swan Hill as he knew that the horse would not eat on the way the next morning. He said that this feed would have been given after 9.30pm on the evening before he left.
4. He said that he also fed a scoop of Salavite, a substance also containing alkalites. He said that he had not given either substance to the horse for any reason related to its performance or behaviour. He said that he did not realise that it was capable of having this effect.

**Dr Grace Forbes**

1. Dr Grace Forbes, the General Manager of Veterinary Services at Racing Victoria, provided a report and gave evidence. She is a veterinarian, not a scientist, but her evidence traversed both veterinary and mathematical science.
2. Her evidence was principally directed at explaining the mechanism for collection of the samples and she was asked to comment on the differing levels of the substance found in each of the three samples.
3. Dr Forbes said that this Tribunal could be 99.99% satisfied of the accuracy of the A sample taken on 11 June 2023 – that is, the sample showing 37.2 concentration. She said that the differences between it and the B sample of 37 were not significant. The difference was most likely caused by variations in time, handling procedures, temperature, and underfilling of the syringe.
4. She gave some evidence about the concept of a “measurement of uncertainty”. She described this measurement as plus or minus 1. Therefore, the A sample could be as low as 36.2 or as high as 38.2. She said that, on either of those calculations, it was still over the threshold of 36. The B sample correspondingly could be as low as 36 or as high as 38 but, in any event, was still over the threshold.
5. She was asked to express a view as to the most plausible reason for the high alkaline reading found in the samples, analysing, in particular, the evidence of Mr Cluning as to the amount of bicarbonate that he added to the horse’s feed. She said that the probability of the amount claimed causing the high readings was zero. She said the probability of any endogenous factors contributing to the result was also zero.

1. Dr Forbes was asked whether the result could be seen as having come about by a perfect storm of exhaustion, dehydration and travel. She said there was no credible scientific evidence to support this suggestion. She said that the only credible explanation is that there had been a large quantity of alkalising agent administered to the horse within one clear day of the race and that treatment did not correspond to the documented treatment records of the horse.
2. She also gave evidence about background factors relating to the use of bicarbonate of soda in racehorses. She said that there was a benefit to trainers to administer alkalising agents in that they improve the performance of a horse and delay the onset of fatigue. These agents could also assist the horse to lose weight by increasing urine production and therefore also increase the performance of the horse.
3. Lastly, she noted that the use of bicarbonate of soda could be to mask the presence of other prohibited substances in the horse.
4. Dr Forbes outlined how in the past trainers had given horses what were colloquially known as milkshakes. In this procedure, a stomach tube is used to administer to the horse a large amount of up to 500 grams of sodium bicarbonate four to six hours before the race. This was done to increase significantly the performance of the horse. This stomach tubing is now illegal, but her evidence was that the trainers do now load or top up a horse with bicarbonate of soda shortly before a race. It was because of this practice that Rule 247 was enacted, providing that topping up is not allowed to occur within one clear day of racing.
5. It was suggested to Dr Forbes that individual horses could have varying normal levels of TC02. Mr Cluning had said that he believed that his horse had a high natural level, which he described as a natural high. She said that the level can vary over the day, but that there was no naturally high level of TC02 in horses. She said that she expected that the impact of a morning feed containing TC02 would be dissolved before the second dose was administered in the afternoon.

**Professor Hibbert**

1. Given that Dr Forbes’ area of expertise is in veterinary science, not mathematical analysis, the Stewards also called evidence from Professor Brynn Hibbert. Professor Hibbert is an analytical chemist of some renown. In particular, he is an expert in the measurement of TCOL in horses, both as a statistician and as an analytical chemist.

1. He calculated the probability that the true value of TC02 present in the A sample is greater than the threshold – i.e. 36mM – as being 99.9991%. He also calculated the probability that the true value of TC02 present in the B sample is greater than the threshold of 99.9822%.
2. He agreed with Dr Forbes that the difference between the A and B samples was produced by “random effects within the measurement uncertainty of this method”.
3. Professor Hibbert was asked to comment on the proposition that the TC02 found in each of the samples was caused by endogenous factors – that is, naturally occurring factors. He calculated that the mathematical chance of any such hypothesis was very low – a figure of 0.00077%.
4. He was also asked to explain the concept of measurement of uncertainty as it applied to the values given in these samples. He said that this calculation addressed the problem that no measurement can be 100% accurate all the time. He said that the measurement tries to understand how near the calculation is to accuracy. He pointed out that all mathematicians are dealing in probabilities and that the probabilities can be calculated to provide the best estimate. He said that it was inconceivable that there would be significant error in the calculations which he described in his evidence.
5. His evidence was that the standard measurement of uncertainty which should be applied in relation to blood plasma TC02 concentration is 0.28 mmol/L. The applying of this measurement is simply another way of saying that there is a 67% probability that the true value of a substance in a tested sample will be either 0.28 lower or 0.28 higher than the level indicated on the certificate. This figure decreases to 0.20 mmol/L if the three figures are combined.

1. Professor Hibbert further explained that there are standards which all testing laboratories must adhere to in dealing with this calculation of the measurement of uncertainty as part of the accreditation of those laboratories. He said that each of the laboratories which had performed the A and B samples would lose their accreditation if they had not complied with the relevant standards set out by the national accreditation agency which controls the testing process.
2. He also gave evidence that there was no doubt on his calculations that each of the A and B samples came from the same source. There was no statistical difference between the results of each sample.

**Further samples**

1. An issue arose during the case regarding a set of samples which was produced in evidence after both Dr Forbes and Professor Hibbert had given their evidence. Mr Melville, the Steward producing the sample, was initially unable to explain satisfactorily how these samples had come into existence or what they represented. He thought that at least one of the entries had come about by human error.
2. The significance of this issue was that some of the samples appeared to indicate that the horse had produced results markedly different from those of samples A and B. This discrepancy appeared to be potentially extremely relevant, given that it was accepted by Dr Forbes that a reading of 36 would be below the threshold once the measurement of uncertainty was applied to the raw figures. It became apparent that the taking of these samples and their interpretation needed to be further investigated.

1. At a further hearing, supplementary reports were provided by Dr Forbes and Professor Hibbert dealing with this issue.
2. The Stewards submitted to us that the evidence taken as a whole was consistent with an intentional administration of bicarbonate of soda by Mr Cluning in order to affect the race performance or behaviour of the horse.

**Motive**

1. Mr Cluning’s motive in doing so is only relevant to Charge 1. For this charge to succeed, we need to be comfortably satisfied that Mr Cluning’s purpose in administering the bicarbonate of soda was to affect the behaviour or performance of Cable Glow in the race.
2. There would, we consider, be few occasions on which such a motive would be openly expressed. In this case, the Stewards ask us to infer that Mr Cluning had such a motive by looking at the surrounding circumstances.
3. Firstly, the Stewards rely on the finding of a very large quantity of the substance. The scientific evidence from Dr Forbes was that the only benefit in administering such a substance would be to reduce fatigue, to induce weight loss, or to disguise the presence of other prohibited substances. The Stewards point out that Mr Cluning admitted that he knew that bicarbonate could help prevent the build-up of lactic acid and that he had the time to do such administration on the trip to Swan Hill. The Stewards also say that the only reason to administer such a large quantity of the substance shortly before a race would have been to affect the performance of the horse in that race.
4. The Stewards rely on the scientific evidence that administration of the quantities described by Mr Cluning in his evidence would not have produced the high reading which was identified in the certificates. The Stewards say that this demonstrates that Mr Cluning was lying when he gave evidence as to the quantity of bicarbonate soda that he had administered to his horse and that this supports the inference that he intentionally administered the substance for the purpose of affecting the race.
5. On the other hand, Mr Cluning strenuously denies any such intent. He points out that he was under no financial pressure to win a race. The race itself was of little consequence. He undertook the race, as he is accustomed to do, as a hobby for its own enjoyment.

1. On balance, we are not comfortably satisfied that Mr Cluning had the requisite purpose. It is indeed possible from the evidence that he did so. The evidence is consistent with him having such a purpose. However, we do not regard this as enough. There is no direct evidence one way or the other. The evidence is equally consistent with Mr Cluning having made an innocent mistake in feeding such abnormally large amounts of bicarbonate soda to his horse on the day before the race.
2. We are not persuaded that the prize money represents any significant incentive to administer a prohibited substance. We accept Mr Cluning’s submissions that the amount involved was inconsequential, and that the race itself was not of a status providing the incentive to win.
3. Thus, we find Charge 1 not proven.

**Administration**

1. The fact that Mr Cluning has pleaded guilty to administration in Charge 3 does not lead to the conclusion that he must also be guilty of administration as it is defined in Charge 2. This is because Charge 2 requires the threshold of in excess of 36mmol/L to be applied.
2. The Stewards submit that we should be comfortably satisfied that the threshold has been met.
3. When the A sample was tested on 13 June 2023, it was split into 4 tubes.

1. The first tube was tested by RASL and returned a result of 36.8. mmol/L.
2. The second and third tubes returned a result of 37.2 mmol/L.
3. The fourth tube was sent to ARFL together with the B sample. Two tubes from the B sample returned a result of 37 mmol/L.
4. Each of these results is over the threshold. Rule 259(6) requires this Tribunal to treat the evidence of these certificates of analysis as prima facie evidence that the relevant sample contains an alkalising agent. This means that the certificates must be accepted unless we are satisfied from other evidence that the certificates are incorrect. The burden of so satisfying us falls on Mr Cluning.
5. As we have outlined, there was evidence of many other samples which had been taken from the same horse on occasions other than the day of this race. Those samples had returned results lower than the threshold.
6. Mr Cluning says that the sample results taken as a whole paint a consistent picture of his management of the horse through use of bicarbonate supplements and his feeding regime throughout the horse’s career. He suggests that the horse has a naturally high bicarbonate level. He suggests that this is in part because the horse is relatively short compared to horses generally sampled, and that at the time that it was sampled it was suffering from water deprivation and had just completed a long journey.
7. He argues as follows:

*“To summarise, in this case we have a smaller than average horse, with a higher than average baseline, who has an elevated level some 12 hours later, after not consuming water for the vast majority of this, with an accepted fluctuation of levels of around 1.6 throughout the day. From this, one could reasonably deduce that a smaller dose might achieve a higher reading, when one or all of the additional considerations above are factored in. Not necessarily a significant amount as described by the Stewards. All studies consistently demonstrated a return to baseline levels at around hours 22 to 24 after administration, all of which is consistent with the evidence I provided to Stewards, and Dr Forbes own statements outlined above”.*

1. As to the readings of 36.8, 36 and 37.2 mmol/L obtained from the sampling on race day, Mr Cluning has applied the measurement of uncertainty to reduce those results by 1.0mmol in each case. This brings two of the three samples down below the threshold.
2. Mr Cluning also relies on the frankly unsatisfactory evidence which was given by the Steward, Mr Melville, as to the source of some of the out of competition sample results presented in evidence by him.
3. He says that this evidence shows that the Stewards have taken a cavalier attitude towards the sampling process, relying on readings which benefit their case, and disregarding those which throw doubt on it. He says that the introduction of the evidence, and the way it was introduced, throw doubt on the sampling process overall.
4. The difficulty with this approach is that the evidence of Professor Hibbert, the only expert in analytical chemistry and statistics who gave evidence before us, does not support these conclusions.
5. His evidence was that, on the mathematical view most favourable to Mr Cluning, the probability of each of the samples being more than the threshold was extremely high-being well over 99% probability in each case.
6. His view as to these matters was not altered by the sampling results relied on by Mr Cluning.
7. As we have earlier outlined, Dr Forbes also gave evidence about some of the mathematical and statistical aspects of the testing process. It is true that her evidence conflicted in some respects with that of Professor Hibbert, particularly in respect of her application of the measurement of uncertainty. However, although she attempted to outline what she understood of these concepts, we accept, as she conceded, that her expertise lies in veterinary medicine and not in statistics and we have disregarded her evidence on these issues, without concluding that it significantly detracts from Professor Hibbert’s much more detailed analysis.
8. Having carefully considered all the objections Mr Cluning has made to the accuracy of the certificates of analysis, we are not persuaded that the certificates are inaccurate. We are comfortably satisfied from the evidence of the certificates of analysis, together with all of the surrounding evidence presented to us in this hearing, that Mr Cluning has administered bicarbonate of soda to Cable Glow in such quantity as to produce a level over the threshold.
9. We now apply this finding to the elements of Charge 2.
10. There is no direct evidence that Mr Cluning administered the bicarbonate to his horse on race day. He has given evidence that he last gave the horse bicarbonate at about 9.30pm on the 10 June 2023 – the day before the race.
11. However, there is no time specified in the Rule as to when the administration is to take place. We read the words “prior to or following the running of a race” as applying to the time when the sample is taken, not the time at which the substance was administered.
12. There was no contrary argument put regarding this.
13. Accordingly, all the elements of Charge 2 are made out.
14. Charge 1 is dismissed.

Mark Howard

Registrar, Victorian Racing Tribunal