

STEWARDS DECISION

OFFICE OF RACING INTEGRITY

and

Mr BRENDAN McSHANE

Date of hearing: 27th June 2024

Stewards Panel: Bruce Free (Chair); Tony Harding and Tracy Canham
Morice-Smith

Present: Mr Brendan McShane (Respondent)

Rule: Australian Rule of Racing AR240(2)

Australian Rule AR240 – 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.

Charge: That charge being pursuant to AR240(2) which reads:

The particulars of the charge being that on Wednesday 6th March 2024, Mr Brendan McShane, being the registered trainer of WADDY WADDY, which was brought to the Tasmanian Turf Club meeting for the purpose of participating in race 5, the GOOD FRIDAY FAMILY FUN DAY 29th MARCH MAIDEN/CLASS 1 over 2150 metres, did present the gelding to race when not free of a prohibited substance, as detected by a pre-race blood sample which

when analysed was found that the Total Plasma Carbon Dioxide (TCO₂) was above the prescribed threshold, and that finding was confirmed in the Reserve Sample being analysed.

The permitted threshold for TCO₂ is 36.0mmol/L. Analysis of the first sample found the level of TCO₂ was 38.5mmol/L and analysis of the reserve sample found it to be 39.0mmol/L.

Plea: Admitted

1. Background

- (a) The Respondent, Mr McShane is a licensed thoroughbred trainer based at Broadmarsh, Tasmania.
- (b) On Wednesday 6th March, 2024 Mr McShane presented WADDY WADDY for Race 5 at a meeting of the Tasmanian Turf Club.
- (c) WADDY WADDY was subjected to a pre-race blood sample prior to starting in Race 5.
- (d) The sample obtained was given the unique number V669729.
- (e) On Tuesday 12th March 2024 Racing Analytical Services Ltd advised that sample number V669729 had returned an adverse result above the permitted threshold for TCO₂.
- (f) On Friday 15th March 2024, the Australian Racing Forensic Laboratory confirmed the presence of TCO₂ above the permitted threshold in the reserve sample V669729.

2. Respondents Submissions

- 2.1 When addressing the panel Mr McShane stated he had not been able to identify the cause of the TCO₂ being above the allowable threshold, however he did state that since the positive notification that he had taken remedial steps in having security cameras installed.
- 2.2 Additionally, locks had also been placed on all main gates to the property and to the stabling area.
- 2.3 Mr McShane also submitted a letter from his Equine Veterinary Surgeon, Dr Mark Buckerfield who stated that he had worked for the McShane's family for a period dating back to 1990's. In his opinion he stated that Mr McShane would not be capable of tubing a horse to deliver a dose of a substance that would result in the reported TCO₂ level.

3. Penalty Considerations

3.1 Turning to the matter of penalty the Stewards were cognisant of the following Sentencing Principles –

- (i) That penalties are designed to punish the offender for his wrongdoing. They are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but the offender must be met with a punishment.
- (ii) That in a racing context it is very important that a penalty has the effect of deterring others from committing similar offences through the consideration of both general and specific deterrence.
- (iii) That penalties imposed upon those offending the prohibited substance rules should reflect the industry's disapproval of drugs being detected in racehorses.
- (iv) The need for penalties to be consistent with national precedents.

4. Penalty Discussion

4.1 In determining penalty Stewards discussed the following:

- The nature, circumstances, and seriousness of the offence
- Mr McShane's personal circumstances
- Mr McShane's disciplinary history
- Mr McShane's admission of the charge.
- The number of starters produced by Mr McShane during the racing season.
- The need for the penalty to act as both a specific deterrent to Mr McShane to reduce the risk of further offending and as a general deterrent to the wider racing industry.
- The penalty precedents from other states for similar offences.

5. Outcome

5.1 Having considered all the circumstances, Stewards issued Mr McShane with a suspension of his trainer's licence for a period of 5 months. This being to hold Mr McShane accountable for his actions and to others from committing the same or similar offences. Mr McShane was advised of his right of appeal to the Tasmanian Racing Appeal Board.

Mr McShane's penalty was set to commence at midnight on 27th June, 2024 and expire at midnight 27th November, 2024.

6. Disqualification Of Horse WADDY WADDY

- 6.1 It is mandatory that if a horse competes in a race and is found to have competed with a prohibited substance in its system that it must be disqualified from that race – AR 240 (1). Accordingly, WADDY WADDY will be disqualified from Race 5 at the Tasmanian Turf Club Meeting on the 6th March, 2024.

The placings are to be adjusted as follows to reflect the disqualification of WADDY WADDY which finished 1st.

2. THE TAZWEGIAN
1. ELLA DULCIE
8. MIGHTYMAXI
5. SHAKEEDA

Decision Date: 27th June, 2024