TASMANIAN RACING APPEAL BOARD

Appeal No 01 of 2022-23

Panel:	**Ms Kate Cuthbertson SC (Chair) Mr Patrick O'Halloran (Deputy Chair) Ms Wendy Kennedy (Member)**	**Appellant:**	**Mr Ivan Belbin**
Appearances:	**Ms Louise Brooks (on behalf of the Stewards) Mr Anthony O'Connell (on behalf of the Appellant)**	**Rules:**	**AR 190(1) A horse shall be presented for a race free of prohibited substances**
Heard at:	**Tasracing 6 Goodwood Road, Glenorchy TAS 7010**	**Penalty:**	**Fined $4000 with $2000 wholly suspended for a period of 24 months**
Date:	**12 September 2022**	**Result:**	**Penalty varied to a fine of $2000 with $1500 wholly suspended for a period of 24 months**

REASONS FOR DECISION

1. The appellant, Mr Ivan Belbin, is the trainer of a harness racing horse *Eye See Double*. This appeal concerns a penalty imposed following the detection of a prohibited substance in a post-race sample taken from *Eye See Double* when he was presented to race and won Race 1, the Tasmanian Equine Veterinary Services Pace held by the Tasmanian Trotting Club on 25 April 2022. The initial analysis of the sample by Racing Analytical Services Limited (RASL) detected the prohibited substance tapentadol. Confirmatory testing conducted by the Australian Racing Forensic Laboratory (ARFL) confirmed the presence of tapentadol in the sample.

2. An inquiry was conducted by Stewards on 9 August 2022. During the course of the inquiry, Stewards issued a charge to the appellant pursuant to AHRR 190(1) which relevantly provides as follows:

   (1) A horse shall be presented for a race free of prohibited substances.

   (2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of a horse is guilty of an offence.

   ...

> (4) *An offence under sub rule (2) ... is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*

3. In a report dated 8 July 2022, Dr Bruce Jackson, a veterinary consultant, relevantly provided the following information in respect of the substance detected in *Eye See Double*'s post-race urine sample:

> *Tapentadol is an opioid analgesic (pain killer) originally developed as a low side effect alternative to tramadol, which was one of the early opioid analgesics used in human medicine as an alternative to morphine. Tapentadol is not present as a natural component of a horse diet as it has been designed in a chemistry laboratory and only exists as a completely synthetic molecule. It is active itself without being metabolised (broken down in the body) and is not a break down product of any other veterinary drug. Horses cannot make their own tapentadol.*
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> *Tapentadol is a controlled Schedule 8 drug in Australia which means that it can only be prescribed by medical professionals such as a doctor and can only be in the possession of a person to whom it has been prescribed. Tapentadol is not registered as a veterinary clinical product for use in horses or any other animal species in Australia.*
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> *Much research has been conducted on the effectiveness and side effects of tapentadol in man. Some research has been carried out on the effectiveness and side effects of tapentadol in dogs, cats and goats, but not in horses, so the effectiveness and side effects have to be assumed from what is known about the effect of other closely related opioids in horses.*
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> *Opioid analgesics when administered in low to moderate doses can stimulate appetite in a horse. Moderate doses can reduce the impact of painful conditions on performance by deadening the perception of pain by the horse, but this may also allow more damage to injured bones, joints, tendons and other tissues when the horse does race with unresolved injuries. A sedative effect may be seen in some horses, and this may be used to reduce race day excitability.*
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> *These effects are likely to artificially enhance performance, and this is why any level of tapentadol detected in urine or blood samples is classified as evidence of use of a performance enhancing doping agent.*
>
> *Administration of excessive amounts of tapentadol to a horse is likely to have a detrimental effect on the welfare of the horse.*

4. Based on the above information which was not challenged during the inquiry or the appeal, for the purposes of AHRR 190, tapentadol is a prohibited substance pursuant to AHRR 188A(1)(b) as it is an analgesic.

5. The particulars of the charge provided to the appellant were as follows:

> *That you as the trainer of* Eye See Double *have presented that horse to race and win Race 1 at Hobart on 25th April 2022, the race name being The Tasmanian Equine Veterinary Services Pace. Swab sample taken from the horse after his win has returned a positive sample to tapentadol.*

6. The appellant advised Stewards that he was guilty of presenting the horse to race. He confirmed, following further exploration of his plea by Stewards, that he wanted to plead guilty to presenting the horse to the race with a prohibited substance in its system.

7. Following submissions from the appellant as to penalty, Stewards ordered that *Eye See Double* be disqualified from the Tasmanian Equine Veterinary Services Pace race held on 25 April 2022 pursuant to AHRR 195. No issue has been taken with that order. Further, Stewards imposed a $4,000.00 fine upon the appellant with $2,000.00 of that fine being suspended for a period of two years. While no specific conditions were advised in respect of the suspension, Stewards went on to say during the course of the inquiry that "*if you are found guilty of another charge under the 190s which is the prohibited substances rules, that will come into effect and then you'll be liable to pay that plus any other fines*". From that discussion it may be inferred that Stewards were attempting to explain that the suspension of the fine was subject to the condition that the appellant commit no further breaches of the prohibited substance rules for a period of two years.

8. During the course of the inquiry Stewards provided the following reasons for the penalty they imposed:

> *... So what we've decided is we're going to start at a starting figure of $4,000.00. Now from that figure we take into account things. One of the things we'll take into account is the strength of the drug that was found, which was a S8 drug, on prescription, which you've got a prescription so, but likely we say it is a, it's what they call as Class 1 drug under this, so it's a higher level than the bottom arsenics and all that.*
>
> *So we've got to take into account that, that's on the negative side but on your positive side we also take into account that you're a long time trainer, you've had no previous blemishes against your record, so we've taken that as being a very good record. We've taken into account that this to all probabilities is a cross-contamination, we don't think that this is a deliberate administration by yourselves. So that in itself entitles you to a good discount.*

9. Stewards later issued a document recording the inquiry decision. Under the heading "Penalty Approach", Stewards stated the following:

> *Prohibited substance rules impose an absolute obligation on trainers and persons in charge of horses to ensure they are presented to race free of prohibited substances, regardless of how the prohibited substance came to be present in the animal. The breach of the prohibited substance rule does not require it to be established how the substance came to be in the horse's system.*
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> *While it is not uncommon for the source of the prohibited substance to be unknown, it seems very likely, in the present case, and the Stewards accept that cross-contamination was the most likely source of* Eye See Double*'s adverse sample result.*
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> *However, whilst cross-contamination may be the reason, there nonetheless rests with the trainer, an absolute onus, to ensure horses are presented free of prohibited substances. Trainers are required, and expected, to take the*

utmost care to ensure that the onus is met and, if not, consequences must follow to ensure the integrity of harness racing is upheld.

This Stewards panel is concerned that Mr Belbin was negligent in not foreseeing that a real risk of the cross-contamination existed when he was taking a personal medication which was of significant strength and potency.

The Stewards find that had Mr Belbin educated himself of the potency of his personal medication then this unfortunate outcome may have been avoided.

10. In respect of penalty, Stewards stated the following:

Turning to the matter of penalty, the Stewards are mindful that penalties are designed to punish the offender for his/her wrongdoing. They are not meant to be retributive in the sense that punishment is disproportionate to the offence, but the offender must be met with punishment.

In the racing context it is extremely important that a penalty has the effect of deterring others from committing similar offences.

In addition, a penalty should also reflect the industry's disapproval of the type of offending in question.

When looking at the appropriate penalty to be imposed the Stewards are guided by ORI vs. Crook *where a penalty of $4,000.00 was imposed for the prohibited substance phenylbutazone.*

This was a Tasmanian case which recognised the peculiarities of the racing industry in the State.

This Stewards panel believes that this matter best reflects the starting point to be employed in this matter.

However, unlike Crook, Mr Belbin's tenure in the industry spans more than four decades with him having a clear record with respect to drug related matters.

This factor we believe entitles Mr Belbin to a discount from the established $4,000.00 starting point.

We also believe Mr Belbin is entitled to relief from other factors in mitigation, including his admission of the breach, his cooperation throughout the currency of the investigation, and that the adverse sample result most likely resulted from contamination.

However, balanced against this, is the reputational damage done to harness racing emanating from his horse racing positive. While this may well have been an unintentional contamination it cannot not be dealt with lightly, nor outside industry norms or expectations. In other words, to simply impose a nominal penalty because of there being no intent would damage the industry's reputation. Resultantly the penalty imposed must be meaningful.

Considering all the factors, the Stewards believe Mr Belbin is entitled to a degree of relief from the $4,000.00 starting point with this relief being

expressed by way of suspending the activation of 50% of the penalty imposed for a period of two years pending no further breaches during this time.

11. The report recorded the outcome as follows:

    Mr Belbin is fined $4,000.00 with $2,000.00 being wholly suspended for a period of two years on condition that no further breaches of ***this*** *rule occur.* (emphasis added)

12. This record of the outcome is not entirely consistent with the advice provided to the appellant during the course of the inquiry to the effect that breaches of the '190s' would result in activation of the suspended portion of the fine. AHRR 190 to AHRR 196D covers a range of matters relating to the presentation and administration of a variety of prohibited substances and other relevant offences.

13. The appellant in his notice of appeal indicated that he was appealing against both conviction and penalty. The notice of appeal states that he believes the penalty was too harsh for contamination as he believes he is not guilty of this offence. At the commencement of the hearing of the appeal, the appellant indicated that he was not pursuing the appeal against conviction. He proceeded with the appeal against penalty on the basis that it was manifestly excessive due to the level of his culpability or blameworthiness in respect of the presentation of *Eye See Double* in the race on 25 April 2022.

Relevant Background

14. During the course of the inquiry, the appellant gave evidence that *Eye See Double* had won races prior to 25 April 2022, was swabbed and no prohibited substances were found in the samples. He had also been the subject of a pre-race swab which was similarly negative to prohibited substances. The evidence indicates that a further sample was taken from *Eye See Double* following the receipt of the initial notification of the positive result on 9 June 2022. That sample was taken on 12 June 2022. This "clearance sample" was screened for tapentadol. The report from RASL dated 24 June 2022 indicated that further investigation is required, that is, the result was inconclusive.

15. As at 25 April 2022, the appellant and his wife were both prescribed the medication Palexia, the active ingredient of which is tapentadol. Both suffer from arthritis so had been taking the medication for approximately 18 months at the time of *Eye See Double*'s positive urine sample. Evidence was provided to Stewards confirming those prescriptions and also the medical conditions for which the medication was prescribed. Mr and Mrs Belbin, who were both present during the course of the inquiry, explained to Stewards that they took the medication at night before going to bed. They also explained that they took the medication in their kitchen. They told Stewards they never prepared their horses' feed in the kitchen. There was, as a consequence, no suggestion of risk arising from the way in which the medication was handled by either Mr or Mrs Belbin.

16. Mr Belbin explained that he was devastated to learn of the positive result. He told Stewards that his first thoughts were that prior to the race in question he was coughing and spluttering and, although he initially tested negative to COVID, he tested positive two days later. He wondered whether the horse came in contact with his medication as a result of him *"coughing and spluttering and carrying on"*. He also advised that he frequently hugged and petted the horse during the course of

feeding him. He also gave evidence that when the vet came out to the property, she noted that the Belbins' septic tank was running over the bank into an adjoining paddock. Mr Belbin gave evidence of it being very wet at the time with "water laying around on the flats everywhere". Other horses were kept in that paddock, namely a mare, a foal and a cross-breed. Although *Eye See Double* was unable to access that paddock directly, the other horses often came up to the fence to nuzzle, lick and interact with him.

17. The other explanation proffered for *Eye See Double* coming into contact with the medication was as a result of Mr Belbin urinating in his paddock.

18. The other horses on the Belbins' property have not been tested. At the relevant time, the evidence suggested that both Mr and Mrs Belbin were using that medication. As a consequence, the septic system would likely contain traces of the medication as a consequence of their use of it.

Appellant's Submissions

19. The appellant submitted that Stewards had accepted that *Eye See Double*'s positive result was the consequence of "likely cross-contamination". The appellant submitted it was a near certainty that was the source of the positive sample, given that both Mr and Mrs Belbin were prescribed that medication to treat arthritis at the time. It was noted that in the 18 months prior to the positive result, *Eye See Double* had won on five previous occasions with all post-race samples returning negative to any prohibited substance. It was noted that Mr Belbin had been exhibiting COVID symptoms in the lead up to the relevant race. It was also submitted that hand-washing and hygiene was not an issue in this case given that the medication was taken at night prior to going to bed and in the kitchen where no horse feed was prepared. It was also noted that no medications or treatments were located during the course of the stable inspection that contained the substance.

20. Against this background, it was submitted that there were a number of factors that were out of the appellant's control leading to the contamination.

21. It was also submitted that the appellant had taken steps to prevent further cross-contamination. First, he ceased taking the medication himself. He reduced his own physical contact with the horse because of fears of cross-contamination with any medication he might be taking. Further, he took steps to fence off the septic system and to keep *Eye See Double* and the other horses away from any potential leaks. It was also noted that the appellant had a long history in the racing industry with no previous prohibited substance breaches. He described himself as a strong advocate for swabbing. It was submitted these factors should be acknowledged in the penalty.

22. In respect of the Stewards' reference to the $4,000.00 fine starting point, it was first submitted that it was inappropriate to mention a specific starting point. It was submitted it was sufficient to indicate that a fine was being considered in order to draw out the relevant submissions as to capacity to pay. Further, Stewards were criticised for their statement that the breach of the rule *"must be met with punishment"*. It was noted that AHRR 256(1) provides that one or more of the penalties set out in the rules **may** be imposed on a person guilty of an offence under the rules. Whether a "punishment" is to be imposed is always a matter of discretion; in support of this position, the appellant referred to AHRR 256(6) which provides that even though an offence is found proven, a conviction need not necessarily be entered or a penalty imposed.

23. In was submitted that the Stewards' decision in the matter of *Crook* was an inappropriate comparator. That case concerned the prohibited substance phenylbutazone and its metabolite oxphenbutazone. Phenylbutazone is a constituent of Bute paste which Mr Crook admitted administering to the horse involved. Those circumstances, it was submitted, were clearly distinguishable from those of the appellant.

24. Reference was also made to other decisions of Stewards and the Board in respect of penalty where cross-contamination was accepted to have occurred. Those cases included:

- the Stewards' decision in *Heenan* dated 28 April 2019 where she received a wholly suspended fine of $1,000.00 in respect of the unexplained presence of cocaine in a horse, but which was accepted to likely be the consequence of a contamination given that the quantity of the substance found was at a "trace" level;

- the Stewards' decision in *Taylor Ford* dated 16 June 2020 where Stewards imposed a fine of $3,000.00 with $1,500.00 of that fine suspended for two years when diclofenec (marketed as Voltaren) was detected in a sample taken from the horse. Stewards there indicated they took into account the possibility of human contamination. The inquiry decision does not note the explanation given during the course of the inquiry but it is understood that Ms Ford indicated she had been applying Voltaren gel to her abdomen at the relevant time; and

- the Board's decision in *Matthew Cooper* Appeal No 02 of 2021-22 where tramadol was found in a post-race urine sample. Mr Cooper had been using tramadol himself at the time of the race. The level of the substance detected was not considered a "trace". Evidence given by the appellant in that case was to the effect that he had handled tramadol in a crushed form shortly before handling his horse. It was noted by the Board that his explanation indicated a failure to exercise due diligence. Other aspects of the appellant's explanation in that case were found by the Board to be difficult to accept. The penalty imposed by Stewards was not disturbed. In relation to that particular offence, a fine of $2,000.00 had been imposed by Stewards in the context of other penalties handed down for other prohibited substance offences which included a significant disqualification.

25. The appellant also referred to the observations of Justice Garde in *Kavanagh v Racing Victoria Limited (No.2)* [2018] VCAT 291 which have previously been cited with approval by this Board. At [15] he stated:

> *Kavanagh and O'Brien rely on the decision of the Racing Appeals Tribunal in McDonough v Harness Racing Victoria, where Judge Williams said:*
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> > *... from the point of view of penalty the ability of a trainer to demonstrate to a Tribunal, and the onus is on the trainer, that he lacks culpability because he did not administer the substance himself or is not otherwise responsible in any way, that is still of course a significant factor in terms of penalty. But I emphasise the evidentiary onus remains in my view, on the trainer, to avail himself of the benefits of proof of reduced or absent culpability. That conclusion, from a legal point of view, is consistent with the criminal law, in the case of Storey and it is also referred to in a thoroughbred case that I was*

reading of the New South Wales Authority v Graeme Rogerson ... a case in which His Honour Mr Barry Thorley presided...:

In the view which this Tribunal takes of the structure of AR178, it is however for the trainer to carry the evidentiary onus of proving facts which serve to reduce the primary inference that would be drawn by the fact of the finding of a prohibited substance in a horse within his charge which has been brought to a race course.

I endorse that statement of the onus in respect of not only the thoroughbred rules but also the harness racing rules.

With this background these prohibited substance cases generally, and I emphasise generally, fall into one of three categories. First where through investigation, admission or other direct evidence the Authority, in this case Harness Racing Victoria, can establish before the Tribunal a positive culpability on the part of the person responsible, perhaps the trainer.

For example, the trainer administered the drug to the horse either himself or at his direction or had otherwise acted in some way as to be instrumental in the commission of the offence. Within that category the culpability may be in the class of deliberate wrongdoing or it may be through ignorance or carelessness or something similar.

Secondly, where at the conclusion of any evidence and plea the Tribunal is left in the position of having no real idea as to how the prohibited substance came to get into the horse. This may be with the trainer giving some explanation which the Tribunal is not prepared to accept or the trainer may simple (sic.) concede that he has no explanation.

I might say that this second category is perhaps the most commonly experienced scenario. Indeed as again His Honour Mr Barry Thorley ... said:

"The common experience is of course that the Stewards have no idea as to how it is in the case of any racehorse that the prohibited substance came to be in it. They immediately, as is required, opened an inquiry. It is very seldom indeed that that inquiry demonstrates the actual culprit. Why is that? For the obvious reason that the sole knowledge of what transpires is within the stable and its staff and its professional advisors. No doubt one can speculate that there are many ways in which a horse may present with a prohibited substance. One can contemplate the act of some intruder by stealth of night entering the stable and administering some drug. One can contemplate the consumption by the animal accidentally of some substance left lying around negligently or the ingestion of some grasses which produce adverse results. One can contemplate that there was an actual, albeit mistaken administration within the stable of some product which was really intended for the horse in the adjoining stall, but mistakenly administered to the horse in question. One can even imagine that the horse might lick a rail or some place which had previously been contaminated. The number of examples one can contemplate is manifold."

As I say, that is perhaps the most common scenario that the Tribunal is left with.

Thirdly, the trainer (or other person being dealt with) may provide an explanation which the Tribunal accepts and which demonstrates that the trainer has no culpability at all. An obvious example would be if the trainer could satisfy the Tribunal that his horse had been nobbled, and it had been nobbled notwithstanding the presence of reasonable measures to prevent same.

And of course there could be various other factual scenarios where the horse could somehow be the subject of the administration or ingestion of a prohibited substance without any culpability either directly or indirectly on the part of the trainer. This category represents cases where the trainer does establish to the Tribunal's satisfaction, the onus being on him, that he is free of blame, that he himself was not instrumental in the administration of the prohibited substance and that he has done all he could be expected to do to prevent same.

Generally cases will fall into one of these three categories of case. Obviously the first category where there is positive evidence of culpability to varying degrees, is the worst from the point of view of the trainer or other person concerned and high penalties as are appropriate would be likely to flow.

The second category, the lack of evidence category, may or may not end up being similar to the first category, every case depending on its own individual facts.

As to the third category where there is little or no culpability, one would expect any penalty to reflect the absence of culpability or its low level. Within this category of cases there may in appropriate situations be instances where it is deemed not to be appropriate that the sentence express denunciation or general deterrence at all and indeed where it is appropriate to impose no penalty at all.

26. In the context of this case, it was submitted that the appellant fell within category 3, that is, that he has provided an explanation which has been accepted **and** which demonstrates that he has no culpability at all.

27. It was submitted that specific deterrence was not relevant in the circumstances of this case given the likely source of the prohibited substance and the actions taken by the appellant to guard against future occurrences. It was accepted that general deterrence was relevant but given the explanation for the contamination, it was said to be somewhat muted.

28. Given the appellant's financial circumstances, namely that he and his wife are both pensioners, that the appellant undertakes a small amount of training more or less as a hobby and any fine would cause a significant hardship it was submitted that the fine was excessive. The appellant's guilty plea and cooperation during the course of the inquiry were also cited as relevant factors.

Stewards' Submissions

29. Stewards submitted that the appellant's admission to taking the medication and the doctor's verification of the prescription was information that had been taken into account. Reference was made to Dr Jackson's letter indicating that there had been

no studies or research into the effect of tapentadol on horses. A relevant factor was, therefore, the unknown effect of such substances in the equine environment.

30. Stewards submitted that it was appropriate to identify up-front the level of the fine being considered in order to give a self-represented participant an opportunity to provide information relevant to their capacity to pay.

31. The Stewards referred to the matters set out above at [8]-[11] which the panel took into account in setting the penalty. It was submitted that against that background, the penalty imposed was appropriate and ought not be disturbed. Stewards relied on this Board's decision in *Cooper* where it stated at [32]-[33]:

> *When determining penalties in respect of such matters, it is useful to have regard to the decision of Senior Member Nixon in Mifsud v Harness Racing Victoria Racing Appeals and Disciplinary Board [2012] VCAT 1438 who endorsed at [14] that the purpose of the prohibited substance rules was to:*
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> *"(i) To ensure that the integrity of harness racing was protected.*
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> *(ii) To ensure that harness racing was conducted on a level playing field.*
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> *(iii) To ensure that harness racing was conducted without the assistance of drugs.*
>
> *(i) To ensure that harness racing was conducted safely - safely with respect to the horse itself and also with respect to other drivers and horses involved.*
>
> *(ii) To conduct harness racing fairly from the perspective of the betting public so that a horse's performance will not vary from start to start depending on whether or not a particular substance/medication has been administered to it."*
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> *The Senior Member went on to further observe at [16]:*
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> > *The integrity of the racing industry is an important consideration and public confidence in the industry is critical. Any loss of public confidence in the honesty and integrity of the industry has the potential to imperil the very lifeblood of the industry due to negative publicity throughout the media associated with the detection of any of the prohibited substances in this rule.*

32. In respect of the other cases referred to by the appellant, Stewards distinguished the matter of Ms Ford as the medication involved was an over the counter one which is quite commonly found and utilised by members of the community. Tapentadol in contrast was noted to be a Schedule 8 substance requiring a prescription and a high level of care. Stewards submitted that it was difficult to make direct comparisons with Stewards' decisions in either this State or other States given that the range of

penalties available was broad and a lot of different medications and substances were involved.

Determination

33. The purpose of the prohibited substance rules and the need to uphold the integrity of the racing industry are critical matters that must guide the imposition of any penalty for breaches of those rules. Those matters have been consistently noted by Stewards and appeal bodies dealing with such breaches. The decisions in *Mifsud* and *Kavanagh* referred to earlier in this decision makes this abundantly clear.

34. In this case, cross-contamination cannot be ruled out as the source of the positive swab results. This does not necessarily mean that the trainer involved has no culpability. Clearly, great care needs to be taken when using medications to ensure that there is no cross-contamination. It may be accepted that the appellant had no actual knowledge of the risks of a leaking septic system contaminating the paddocks and potentially the horses using the paddocks, or that urinating in the vicinity of a horse while using medication might similarly create a risk of cross-contamination. No doubt the appellant did not cast his mind to such considerations. Nevertheless, it is important to bring home to participants in the racing industry the gravity with which breaches of these rules are considered and the importance in adopting measures to mitigate against the risk of any cross-contamination occurring. It is vital that the community have confidence that horses participate in races free of prohibited substances and on a level playing field, not only to protect the integrity of the industry but also the welfare of the horses involved.

35. It is against that background and the nature of the rule with which Stewards were dealing on this occasion that their comment that the "offender must be met with punishment" is to be understood. Clearly it is a very rare case where a breach of the prohibited substance rules results in no penalty.

36. Nevertheless, the Board considers that a $4,000.00 fine, albeit with $2,000.00 of it suspended for a period of two years on condition that no further breaches of the prohibited substance rules occurs, was excessive in the circumstances. It is clear that Stewards accepted, as does the Board, that the likely explanation in this case was cross-contamination. The circumstances of the cross-contamination are not suggestive of a complete disregard of basic hygiene and animal husbandry considerations. Utilising the decision in *Crook* as a starting point does not appear to the Board to be appropriate given that the substance in that case had been administered to the horse by the trainer involved and is well understood to be capable of returning a positive result when insufficient care is taken to ensure that the administration occurs sufficiently clear of a race. It is acknowledged that the substance in this case was an opiate and can only be obtained by way of prescription. In our view, it is not a separate category of case to those where over the counter medications have resulted in cross-contamination. In either case, the utilisation of the medication is lawful; trainers and others involved with the handling of horses need to be vigilant about the use of such medications regardless of whether they are prescribed or not.

37. Further, the appellant has had a long and blameless involvement in the industry for in excess of four decades. This is a very significant matter in this case.

38. Those factors, together with the appellant's plea of guilty and cooperation, were matters that needed to be reflected appropriately in the penalty. In our view, while a

fine was the appropriate penalty, the level of the fine involved was excessive. In our view, an appropriate fine in the circumstances is one of $2,000.00, with payment of $1,500.00 of that fine suspended for a period of two years, on condition that the appellant not commit a further offence contrary to the prohibited substance provisions of the Australian Harness Racing Rules. The order of Stewards dated 9 August 2022 is varied accordingly.

39. As the decision of Stewards has been varied, the Board orders that the appellant forfeit twenty five percent of his prescribed deposit to the Secretary of the Department pursuant to s.34(1A) and (2)(d). Further, the Board orders that the appellant pay twenty five percent of the cost incurred in preparing the transcript of the inquiry pursuant to s.34(4A) and (4B)(c).

DATED: 4 JANUARY 2023