



**Racing
Victoria**

**RACING APPEALS
AND
DISCIPLINARY BOARD**

400 Epsom Road
Flemington VIC 3031
Telephone: 03 9258 4260
Fax: 03 9258 4848
radboard@racingvictoria.net.au

DECISION
RACING VICTORIA STEWARDS
and
RICHARD LAMING

Date of Hearing 21 August 2018
Date of Decision 29 August 2018

Panel Brian Forrest (Deputy Chair)
Dr June Smith
Prof Raymond Harbridge

Appearances Jack Rush instructed by Stephen Schmidhofer appeared on behalf of the stewards.

Paul Holdenson QC instructed by Dwyer & Co Legal appeared on behalf of Richard Laming.

Charge 1 AR 178E(1)
Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

Summary The stewards allege that on 7 February 2018, during a race day stable inspection, *Patient* who was entered to run in Race 5 at Ladbrokes Park Sandown that day was being, or had been, administered a medication 'Accent' by nebuliser, in contravention of AR 178E(1).

Plea Guilty

Penalty **Charge 1** – The Board finds the Charge proved, Mr Laming is convicted and suspended for two months commencing 12.01am Thursday 6 September 2018, being seven clear days following the date of this decision as per AR 196(6)(a).

Grace Gugliandolo
Registrar
Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

Racing Victoria Stewards

v

Richard Laming

DECISION

Mr Brian Forrest	Deputy Chair
Dr June Smith	Member
Prof Raymond Harbridge	Member

MR J.T. RUSH RFD QC (instructed by Mr S Schmidhofer) appeared on behalf of the RVL Stewards

MR P. HOLDENSON QC (instructed by Dwyer and Co Legal) appeared on behalf of Mr R. Laming

Background and Evidence

On Wednesday 7 February 2018, the mare *Patient* trained by Mr Richard Laming was an acceptor to run in Race 5 The Ladbrokes Handicap at Sandown.

- 5 Shortly after 9am, stewards arrived at Mr Laming's Clyde stables to conduct a race day inspection and observed a horse identified as *Patient* being administered a medication with a nebuliser. The medication on analysis was confirmed to be Accent, an antibiotic commonly used in racing stables for the treatment of lower respiratory tract infection

Accent may be administered by inhalation up to but not prior to racing on race day: AR 178E.

- 10 During the stable inspection stewards interviewed Mr Laming and members of his staff and subsequently ordered that *Patient* be withdrawn from racing that day: AR 178E(2).

Mr Laming was charged with a breach of AR 178E(1) which reads:

- 15 *Notwithstanding the provisions of AR 178C(2), no person without the permission of the stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.*

Following a Directions Hearing on 10 July, the particulars of charge were amended to read,

8. *You contravened AR 178E(1) as follows*

20 (a) *On or about 6 February 2018, you directed in a worksheet that staff at your stable administer Patient with medication (Accent) via nebuliser on 7 February 2018 when you knew that Patient would race on that day. In so doing, you caused Patient to be administered a medication (Accent) on race day; and/or*

25 (b) *On 7 February 2018, you failed to have in place at your stables any proper protocol or procedure to ensure staff employed by you at your stables did not cause medication (Accent) to be administered to Patient on race day. By failing to have such protocol and procedures in place, you caused Patient to be administered a medication (Accent) on race day.*

30 Stablehand Manjeet Kumar who was with *Patient* when the stewards arrived, had earlier been told by another stablehand Mdzeyaur Rahman to treat *Patient* with the nebuliser. Mr Kumar was unaware if *Patient* was racing that day.

35 Earlier that morning Mr Rahman had been told by text message from the foreman Marnu Potgeiter to nebulise four horses including *Patient*. “I don’t know, I wasn’t sure”, Mr Rahman replied when asked if he knew *Patient* was racing that day.

Mr Potgeiter told stewards he thought *Patient* would be scratched as Mr Laming had her on the work list to be worked on the treadmill. He also believed *Patient* would be scratched because “she scoped dirty” the day before. He further said he tried unsuccessfully to contact Mr Laming who was not at trackwork on the Wednesday morning, it being his morning off.

40 Veterinarian Dr Ruth Melbourne who performed the endoscopy on *Patient* between 6am and 7am the previous day at the Cranbourne Training complex noted the horse had mucus in its trachea. She spoke to Mr Potgeiter who she said was unsure whether *Patient* was going to run next day.

45 Dr Melbourne suggested the horse be scratched and recommended treatment with Ambroxol and Flixotide which she prescribed at the time. She did not recommend treatment with Accent and contradicted Mr Potgeiter who had claimed that she had.

Asked how treatments and medications are communicated to him, Mr Potgeiter said,

“Richie will normally phone me Will decide on treatments and then if we think it is bad enough that Richie will obviously – we’ll do the treatments. Normally if Richie is there I will discuss it with him first.”

50 Mr Laming emails the daily work sheets to Mr Potgeiter. The *Patient* worksheet for Wednesday 7 February contained notations “Race Pm” and under treatments “neb / ultrasound”. Questioned regarding these instructions “Richie has told me was on there from the other day and never deleted”, Mr Potgeiter told stewards.

Mr Laming who was at the stables when the stewards arrived said he had no idea why Marnu would
55 have instructed staff to give *Patient* nebuliser treatment that morning. He had no intention to scratch *Patient*, he said. Asked how staff are informed of treatments

Mr Laming: Yeah, Marnu is in charge of all the treatments and he delivers what treatments have to be done to the horses daily. Obviously he can't do all the treatments 'cause there's quite a lot some days but he's in charge of all the treatments.

60 *Mr Stevens: Okay. And is that something that comes from you?*

Mr Laming: Myself or the vets. Depends on what treatment it is. Mainly the nebuliser comes from the vet after we do scopings every Tuesday; we work out which ones get nebulisers after their work.

And as to when the horses are racing

65 *“I tell Marnu when they're racing and it goes from there”.*

Questioned about the notations in the *Patient* worksheet for that day;

*Mr Laming: That's been there for ages. Marnu put that in there when it was being ultrasounded and then nebulised because she's on the treadmill, for a program – I don't – I haven't touched that for ages. That's just a mistake and it's been there for a while. You can
70 go back and look at the last 10 days and it's been there since last time.*

Consideration and Finding

According to Mr Laming, his foreman was in charge of treatments. That is not to say Mr Laming relinquished decision making where treatments were concerned.

75 On this occasion, Mr Potgeiter followed the worksheet instruction in requesting staff nebulise *Patient* in circumstances where he claimed being unable to contact Mr Laming with his concerns about the scope and uncertainty as to whether the horse was to be scratched.

For his part, Mr Laming said he was aware that *Patient* had been scoped but did not know the result. Nor had he made any inquiry of his vet or foreman to satisfy himself the horse was fit to race, an

80 inquiry which normally would be expected of a trainer unless he was firm in his intention the horse was to race irrespective of the result of the scope.

In Racing Victoria Ltd v Mark Kavanagh and Danny O'Brien [2017] VSCA 334, the Court of Appeal discussed the meaning of “cause to be administered” in a decision on appeal from Garde J, President of VCAT who, contrary to a finding of the RAD Board, found that neither trainer had any awareness or suspicion of an intention to administer the context of a vitamin complex bottle to their horses, a finding which was unchallenged in the Court of Appeal. McLeish JA with whom Cavanough AJA agreed, held that a person causes another person to administer if the person either authorises that person to administer the substance to the horse or exerts a capacity of control or influence to direct the person to do so.

90 The Board is satisfied that Mr Laming directed in a worksheet that staff administer *Patient* with medication via a nebuliser on 7 February when he knew *Patient* would race that day. In so doing Mr Laming caused *Patient* to be administered a pre-race medication on race day.

Discussion and Penalty

Turning to the question of penalty, if a person is found guilty of a breach of AR 178E, a disqualification of 6 months must be imposed unless a special circumstance as described in LR 73A is found to exist where upon the penalty may be reduced: AR 196(5).

Mr Holdenson, counsel for Mr Laming submitted a special circumstance has been established on two grounds, a guilty plea at an early stage and in the interests of justice, for a reduced penalty namely a fine or alternatively a suspended licence suspension.

100 Mr Rush, counsel for the stewards argued for a licence suspension of three months.

Mr Laming has pleaded guilty.

The Board accepts the plea was made at a relatively early stage given the timing of the amended particulars of the charge and notwithstanding that when first interviewed by stewards his attempt to deflect responsibility for the worksheet instructions to staff.

105 Further, Mr Holdenson submitted that in the interests of justice, the reduced moral culpability of his client in what occurred should be taken into account.

The Board does not accept this is a case involving little or no blameworthiness, primarily for the reasons outlined earlier, Mr Laming’s worksheet instructions and lack of inquiry as to the result of the *Patient* scope.

110 In the Board's view, but for the intervention of the stewards, it was more likely than not that *Patient*,
the recipient of pre-race medication, would have raced that day, in contravention of the medication
rule.

Trainers are obliged to exercise due diligence to ensure that substances administered to the horses in
their care comply with the rules of racing and that in collaboration with veterinarians, clear guidelines
115 and instructions are given to staff who administer the treatments.

The material before the Board revealed questionable instructions, communication break downs and a
failure to keep staff properly informed.

The Board was informed that Mr Laming, to his credit, in recognition of previous shortcomings has
recently had installed a management system to properly record stable procedures and practices.

120 Deterrence, both specific and general is important. Trainers must realise that breaches of the rule
banning pre-race treatment reflect badly on the image of racing. While Accent is not a prohibited
substance, administration of any medication pre-race is a serious offence, as recognised in the penalty
regime.

Mr Laming does not have the benefit of a good record. He ended a three year disqualification in
125 November 2013 for a prohibited substance detected in out of competition blood samples from two
horses and in March 2015 was fined in South Australia for possession of a needle which could be
used to administer a prohibited substance.

Decision

130 After consideration of all the material and the submissions of counsel, the Board is of the unanimous
opinion that the penalty be a suspension of licence of two months commencing 12.01am, Thursday 6
September 2018, (seven clear days following the date of this decision, the maximum period permitted
for deferment of the commencement of the period of suspension), and ending on 12.01am,
6 November 2018.