



DECISION
RACING VICTORIA STEWARDS
and
SHEA EDEN AND JAMIE DENTITH

Date of Hearing 19 and 20 November 2018
Date of Decision 17 December 2018

Panel Judge J Bowman (Chair), Mr C Fox (Member) and
Mr G Ellis (Member)

Appearances Mr S Schmidhofer assisted by D Bolkunowicz appeared
on behalf of the RVL Stewards.

Mr N Howard of Counsel (instructed by Dwyer & Co Legal)
appeared on behalf of Mr S Eden.

Mr R Hammill of Counsel (instructed by Dwyer and Co Legal)
appeared on behalf of Mr J Dentith.

Shea Eden

Charge 1: AR 64G

- (1) *A horse which is engaged to run in any race, official trial or jump-out must not be stomach-tubed without the permission of the stewards:*
 - (a) *at any time on the day of the scheduled race, official trial or jump-out and prior to the start of such event; and*
 - (b) *at any time during the one Clear Day prior to 12:01am on the day of the scheduled race, official trial, or jump-out.*

- (2) *Any person who, without the permission of the Stewards:*
 - (a) *stomach-tubes a horse;*
 - (b) *attempts to stomach-tube a horse;*
 - (c) *causes a horse to be stomach-tubed; or*
 - (d) *is a party to the stomach-tubing of a horse, or an attempt to stomach-tube a horse, contrary to this rule, commits an offence and may be penalised*

Stewards allege that Mr Eden, without the permission of the Stewards, stomach tubed, caused and/or was a party with Mr Jamie Dentith to

the stomach tubing of Considering on Saturday 9 June 2018, the day that it was scheduled to race.

Charges 2 to 4: AR 178AA

- (1) *A person must not administer an alkalinising agent, in any manner, to a horse which is engaged to run in any race, official trial or jump-out:*
- (a) *at any time of the day of the scheduled race, official trial or jump-out and prior to the start of such event: and*
 - (b) *at any time during the one Clear Day prior to 12.01am on the day of the scheduled race, official trial, or jump out.*
- (2) *Any person who:*
- (a) *administers an alkalinising agent;*
 - (b) *attempts to administer an alkalinising agent;*
 - (c) *causes an alkalinising agent to be administered; and/or*
 - (d) *is a party to the administration of, or an attempt to administer, an alkalinising agent, contrary to AR 178AA(1) commits an offence and may be penalised.*

Stewards allege that Mr Eden administered sodium bicarbonate (an alkalinising agent in accordance with AR 178AA(5)) in the evening feed of Considering, Rosti and Bright Eyes on Friday 8 June 2018, which was within the One Clear Day of those horses being scheduled to race.

Charge 5: AR 175(q)

The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

- (q) *Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.*

Stewards allege that Mr Eden engaged in misconduct and/or improper conduct in that he deliberately attempted to dispose or destroy evidence when he knew, or ought to have known, the Stewards were investigating a possible treatment in breach of the rules.

Charge 6:

AR 178F

- (1) *A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:*
- (a) *the name of the horse;*
 - (b) *the date and time of administration of the treatment or medication;*
 - (c) *the name of the treatment or medication administered (brand name or active constituent);*
 - (d) *the route of administration including by injection, stomach tube, paste, topical application or inhalation);*
 - (e) *the amount of medication given (if applicable);*
 - (f) *the duration of a treatment (if applicable);*
 - (g) *the name and signature of person or persons administering and/or authorizing the administration of the treatment medication.*

Stewards allege that Mr Eden failed to record multiple treatments and medications administered to horses in his care in accordance with AR 178F(1).

Plea

Charge 1: Not Guilty
Charge 2 -4: Guilty
Charge 5: Not Guilty
Charge 6: Guilty

Decision

Charge 1: The Board finds the charge proved.
Charge 5: The Board finds the charge proved.

Jamie Dentith

Charge One:

AR 64G

- (1) *A horse which is engaged to run in any race, official trial or jump-out must not be stomach-tubed without the permission of the stewards:*
- (c) *at any time on the day of the scheduled race, official trial or jump-out and prior to the start of such event; and*
 - (d) *at any time during the one Clear Day prior to 12:01am on the day of the scheduled race, official trial, or jump-out.*

- (2) *Any person who, without the permission of the Stewards:*
- (a) *stomach-tubes a horse;*
 - (b) *attempts to stomach-tube a horse;*
 - (c) *causes a horse to be stomach-tubed; or*
 - (d) *is a party to the stomach-tubing of a horse, or an attempt to stomach-tube a horse, contrary to this rule, commits an offence and may be penalised*

Stewards allege that Mr Dentith, without the permission of the Stewards, stomach tubed, caused and/or was a party with Mr Shea Eden to the stomach tubing, of Considering on Saturday 9 June 2018, the day that it was scheduled to race.

Plea

Charge 1: Not Guilty

Decision

Charge 1: The Board finds the charge proved.

Grace Gugliandolo
Registrar - Racing Appeals and Disciplinary Board

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

Racing Victoria Stewards

v

Mr Shea Eden and Mr Jamie Dentith

DECISION

| | |
|--------------|--------|
| Judge Bowman | Chair |
| Mr G Ellis | Member |
| Mr C Fox | Member |

The Charges

The Stewards have laid six charges under the *Rules of Racing* against licensed trainer Shea Eden and one charge against Jamie Dentith, a registered stable employee of Mr Eden, arising out of the alleged stomach-tubing of the horse *Considering*, of which Mr Eden is the trainer, with an alkalinising agent (sodium bicarbonate) on 9 June 2018 prior to its running in Race 8 at Swan Hill Racecourse on that day, the BusBiz.net.au F&M BM64 Handicap over 1300 metres (**the Race**).

At the time, *Considering* was stabled near Swan Hill at the premises (**the Premises**) of another licensed trainer (Helen Burns), along with certain other horses trained by Mr Eden who were also racing at the Swan Hill carnival. These horses included *Roseberry Street*, *Bright Eyes*, and *Rosti*. Mr Edén, who trains at Cranbourne, had been granted permission by the Stewards to stable the horses at the Premises pursuant to LR 27A, which provides for the stabling of horses at another licensed training premises prior to a race.

Because the Stewards officiating at Swan Hill Racecourse on 9 June 2018 were of the view that they could not be satisfied on the evidence before them that *Considered* had not been treated on the day, the Stewards at about 3.44pm ordered that *Considering* be a late withdrawal from the Race, which was to be run at 4.27pm.

20 The charges against Mr Eden are that:

- (a) in breach of AR 64G, Mr Eden stomach-tubed, caused and/or was a party with Mr Dentith to the stomach-tubing of *Considering* without the permission of the Stewards at the Premises on the day of the Race;
- (b) in breach of AR 178AA, Mr Eden administered an alkalinising agent, namely sodium bicarbonate, to *Considering*, *Bright Eyes* and *Rosti* in the evening feed given to those horses in the one clear day prior to the race in which they were entered to run;
- (c) in breach of AR 175(q), Mr Eden sought to destroy evidence which Mr Eden knew, or ought to have known, was relevant to the Stewards' investigation; and
- (d) in breach of AR 178F, Mr Eden failed to record certain treatments administered to horses in his care, namely *Roseberry Street* (a Ranvet Recovery Drench via naso-gastric stomach tube on 6 June 2018), *Considering* (a Ranvet Recovery Drench via naso-gastric stomach tube on 7 June 2018), *Considering* (a Green Amino Drench via naso-gastric stomach tube on 7 June 2018), *Rosti* (a Green Amino Drench via naso-gastric stomach tube on 7 June 2018), and *Bright Eyes* (a Green Amino Drench via naso-gastric stomach tube on 7 June 2018).

35 When the matter came on for hearing before the Board, Mr Eden entered a guilty plea in relation to the charges under AR 178AA and AR 178F. Mr Eden pleaded not guilty to the charges under AR 64G and 175(q).

40 Only one charge has been laid by the Stewards against Mr Dentith. That charge is that in breach of AR 64G, Mr Dentith stomach-tubed, caused and/or was a party with Mr Eden to the stomach-tubing of *Considering* without the permission of the Stewards at the Premises on the day of the Race.

Mr Dentith has pleaded not guilty to this charge.

The Evidence before the Board

A number of materials was tendered by the Stewards at the hearing. These materials consisted of:

- 45 (a) Statement of Mr Stevens, a Stipendiary Steward of the Compliance Assurance Team (CAT) in the Integrity Department at Racing Victoria;
- (b) Statement of Ms Stevenson, a Deputy Stipendiary Steward of the CAT;

- (c) Statement of Dr Grace Forbes, the General Manager of Veterinary Services at Racing Victoria;
- 50 (d) Supplementary Statement of Dr Grace Forbes;
- (e) Statement of Paul Zahra, the Scientific Manager at Racing Analytical Services Limited (RASL);
- (f) transcripts of (as described on the respective cover-sheets) *Recorded Surveillance Conducted by Stevens and Stevenson* dated 9 June 2018 (1.18pm), *Recorded Interview with Eden and Dentith* dated 9 June 2018 (1.26pm), *Video and Audio-recorded stable inspection between Stevens, Stevenson and Eden* dated 9 June 2018, *Recorded Interview with Dentith* dated 9 June 2018 (1.48pm), *Stewards' Inquiry (Eden)* dated 9 June 2018, *Stewards' Inquiry (Dentith)* dated 9 June 2018, *Recorded Interview with Helen Burns* dated 13 June 2018 (10.43am), *Recorded Telephone Interview with Alastair Mitton* dated 13 June (1.38pm),
60 *Recorded Telephone Interview with Grant Craven* dated 18 June 2018 (12.31pm), *Recorded Interview with Eden* dated 21 June 2018 (1.17pm), and *Recorded Telephone Interview with Eden* dated 18 July 2018 (2.07pm);
- (g) documents relating to sample testing by RASL of items taken from the Premises on 9 June 2018;
- 65 (h) photographs of the stable inspection conducted on 9 June 2018, the nostrils of Considering taken on 9 June 2018, the nostrils of Roseberry Street taken on 9 June 2018, and the hind legs of *Considering* taken on 9 June 2018;
- (i) the Treatment Diary of Mr Eden from 1 June to 9 June 2018;
- (j) the Swan Hill Stewards Report and race results dated 9 June 2018; and
- 70 (k) videos downloaded from the mobile phone of Ms Stevenson, titled *Shea Eden Stable Inspection* videos 1, 2 and 3 dated 9 June 2018, and *Re-Enactment of Stable Inspection* videos 1, 2 and 3 dated 13 June 2018.

An Expert Report of Russell Glen Robertson-Smith, an equine veterinarian, was tendered on behalf of Mr Eden and Mr Dentith, as was a video which purported to record Mr Eden stomach-tubing a horse.

- 75 No other evidence was tendered on behalf of Mr Eden and Mr Dentith, and neither Mr Eden nor Mr Dentith gave evidence at the hearing before the Board.

Mr Stevens, Ms Stevenson and Dr Robertson-Smith were cross-examined at the hearing.

The Charges pursuant to AR 64G and the Standard of Proof

As referred to above, both Mr Eden and Mr Dentith have pleaded not guilty to the charges against
80 them pursuant to AR 64G.

Breach of AR 64G is a serious offence which, under AR 196, attracts a penalty of disqualification for a period of not less than 12 months unless there is a finding that a special circumstance exists whereupon the penalty may be reduced.

AR 64G is in the following terms:

- 85
- (1) A horse which is engaged to run in any race, official trial or jump-out must not be stomach-tubed without the permission of the Stewards:
 - (a) at any time on the day of the scheduled race, official trial or jump-out and prior to the start of such event; and
 - 90 (b) at any time during the one Clear Day prior to 12:01am on the day of the scheduled race, official trial, or jump-out.
 - (2) Any person who, without the permission of the Stewards:
 - (a) stomach-tubes a horse;
 - (b) attempts to stomach-tube a horse;
 - 95 (c) causes a horse to be stomach-tubed; or
 - (d) is a party to the stomach-tubing of a horse, or an attempt to stomach-tube a horse, contrary to this rule, commits an offence and may be penalised.
 - (3) Where the Stewards are satisfied that a horse has, or is likely to have been, stomach-tubed contrary to the provisions of this rule, the Stewards may prevent the horse from starting in any relevant race, official trial or
100 jump-out.
 - (4) Where a horse has been stomach-tubed contrary to this rule, the horse may be disqualified from any relevant race in which the horse competed.
 - (5) For the purpose of this rule, “stomach-tubed” and variations of that term means any application to a horse of a naso-gastric tube.

105 In the present case, it is fair to say, as was contended by Counsel for each of Mr Eden and Mr Dentith, that there is no direct evidence of *Considering* being stomach tubed by Mr Eden and/or Mr Dentith at the Premises on 9 June 2018 as alleged by the Stewards. By this we mean direct evidence in the sense of the Stewards having actually witnessed the stomach-tubing of *Considering*.

110 Whilst this is so, the issue for this Board is whether, on the basis of the evidence that has been adduced before it, the Board is comfortably satisfied on the balance of probabilities in accordance with the *Briginshaw* principles that the charges pursuant to AR 64G have been established as against either or both of Mr Eden and Mr Dentith. Comfortable satisfaction can be reached by direct evidence or inference, and inferences should only be drawn if they are more probable than not.

The burden of proof rests with the Stewards.

115 **Submissions**

The Stewards submit that the Board should be comfortably satisfied that *Considering* was stomach-tubed and the charges against Mr Eden and Mr Dentith are proven. The Stewards rely on various matters which are said in combination to provide a more than compelling basis to be comfortably satisfied that the offences alleged pursuant to AR 64G have been committed.

120 The Stewards also rely heavily on the rule in *Jones v Dunkel*, and the inference that they submit may be drawn from the fact that both Mr Eden and Mr Dentith failed to give evidence before the Board, namely that any such evidence would not have assisted Mr Eden's or Mr Dentith's case in resisting the charges. In short terms, it is submitted that both Mr Eden and Mr Dentith, who attended the hearing in its entirety, failed to take up the opportunity to tell the Board of any innocent explanation
125 of what had occurred. The Stewards submit that the inferences that may be drawn are particularly significant where Mr Eden and Mr Dentith are themselves the persons against whom the charges have been laid, and in circumstances where previous inconsistent versions were given by them to the Stewards in relation to the relevant events.

Mr Eden through Counsel submitted (in summary) that the evidence of Mr Stevens and Ms Stevenson
130 (who were both heavily cross-examined by Counsel for the persons charged) was conflicting and inconsistent; that issues as to the credibility and reliability of their evidence means that it should not be accepted, that the investigation itself had been "*blinkered*"; that the Stewards "*explored their own assumptions and made up accusations*"; that Mr Eden had never wavered from the version of events which he told the Stewards on 9 June 2018 (and in particular that he drenched *Roseberry Street*, and
135 not *Considering*, on 9 June 2018), and that there was, on the basis of the evidence of Dr Robertson-Smith, a possible alternative explanation for the elevated TCO₂ reading in *Considering* to the horse having been stomach tubed that day with a drench containing sodium bicarbonate – namely consumption by the horse of left over feed in the horse's feed bin from the night before. A number of serious allegations were also levelled at the Stewards, including as to their integrity and fairness, on
140 the basis that pre-conceived conclusions and eagerness to find fault jeopardised the investigation and clouded their vision.

In much shorter submissions, Counsel for Mr Dentith submitted that the case against Mr Dentith is entirely circumstantial; that for various reasons the reliability and credibility of the evidence given by the Stewards is reduced such that it ought not be accepted; that every fact pointed to by the Stewards
145 as supporting an inference of guilt has an "*equally open and reasonable other explanation which is consistent with innocence*"; and that it is untenable to conclude that *Considering* was in fact stomach-tubed, let alone that Mr Dentith participated in the tubing. Counsel for Mr Dentith also adopted the Submissions by Counsel for Mr Eden in their entirety.

The Events on 9 June 2018

150 Whilst neither Mr Eden nor Mr Dentith gave evidence before us, the following is apparent from the evidence given by the Stewards and the other materials which were tendered.

Mr Stevens and Ms Stevenson, at about 1.15pm on 9 June 2018, were positioned at a location which gave them an unobscured view from some 400-500 metres away of the day yards, paddocks and shelter sheds on the Premises.

155 The reason for Mr Stevens and Ms Stevenson being there was to conduct surveillance as part of a race day stable inspection in relation to Mr Eden, in circumstances where they were aware that a horse trained by Mr Eden, *Considering*, was engaged to run in the Race later that day.

At about 1.19pm, they witnessed a ute with a float enter the property, and a person lead a horse from the float towards the boxes or day yards at the front of the property.

160 At about 1.22pm, with the assistance of binoculars, Mr Stevens witnessed a male walking towards where the Stewards were located to a group of paddocks in which horses were being kept. The male, which according to the Stewards' evidence was Mr Eden, walked into the shelter in a paddock where a horse was located. The horse's head was towards the back of the shelter. From its markings, the horse was identified as *Considering*. About 10 or 15 seconds later, Mr Eden walked out of the shelter
165 holding a red item, which Mr Stevens initially thought was a bucket but was subsequently identified as a red funnel, and tipped the item up. Mr Eden then looked around and re-entered the shelter.

At the hearing, Mr Stevens was adamant that he saw fluid coming out of the funnel when it was tipped up by Mr Eden. However, according to the transcript of the subsequent Stewards' Inquiry on 9 June 2018, in recounting a summary of what he had witnessed, Mr Stevens is not recorded as making
170 reference to seeing fluid coming out of the red funnel.

Suspecting that they might have been seen by Mr Eden, the Stewards ran to their car, and drove to the Premises. This was at about 1.25pm.

From the time log in respect of the audio recordings taken by Ms Stevenson, the time that elapsed between the Stewards leaving their observation point and entering the horse area at the Premises, and
175 meeting first with Mr Dentith, was about 2 minutes.

When they met Mr Dentith, he was leading *Considering* away from the shelter. The horse had its top doona and cotton neck rugs peeled back, and there was a discharge from the horse's right off side nostril. The horse was also breathing heavily.

180 At this point Mr Eden came out of the shelter in the paddock adjacent to the paddock with the shelter in which the Stewards had observed him with *Considering*. Mr Eden appeared to be puffing and out of breath and slightly agitated.

When asked what he was doing, Mr Eden stated that he was checking on a mare that was about 15 metres away in the paddock behind him. That horse was *Roseberry Street*.

185 On inspecting the shelter in the paddock in which *Roseberry Street* was located, the Stewards found the red funnel and a naso-gastric tube, which appeared to be slightly stained green. The funnel and the tube were next to a blue water container in the shelter.

On being asked about the items, Mr Eden said that he had just used them to give *Roseberry Street* “a saline”.

The Stewards asked whether Mr Eden had just tubed his “runner”, which Mr Eden denied.

190 Over the dividing wall and in the adjoining shelter in which *Considering* had been located, the Stewards observed a twitch and a plastic bag in the feed bin hanging on the rear wall.

As Mr Stevens and Ms Stevenson exited *Roseberry Street's* paddock towards the shelter in which *Considering* had been, Mr Eden picked up the red funnel and the tube, and dunked both of them into the blue water container in the shelter in *Roseberry Street's* paddock. According to the recording,
195 Ms Stevenson said to Mr Eden:

“Don't rinse that. Stop that.”

In the shelter in which *Considering* had been, the Stewards found that the plastic bag was an ‘ALDI’ bag which contained a small amount of pale, yellow liquid.

200 The Stewards proceeded to the wash bay area, which was where *Considering* was, and they again inspected the horse. The horse's nostrils were flaring, and there was a noticeable discharge from the right nostril.

In response to questioning about the container which had been used to hold the drench, Mr Eden said he had used a white bucket. At first Mr Eden directed the Stewards to a white bucket which was at the back of the paddock with the shelter in which *Considering* had been. On inspection that bucket was
205 found to contain some muddy water. Mr Eden then produced a white bucket from *Roseberry Street's* paddock. This bucket had a large amount of mud around the rim and a small amount of what appeared to be discoloured water.

In the shelter in which they had seen *Considering*, the Stewards found a sizeable splash mark on the side wall of the inside of the shelter, running at a downward angle towards the back of the shelter
210 from above and alongside where a blue water container was located. The splash mark stretched not only across the shelter wall, but also across the sand on the ground, with splash marks virtually reaching the back wall of the shelter.

The Stewards then inspected *Roseberry Street*, focusing on the muzzle area of the horse. The horse's nostrils were reasonably dry and there was a noticeable amount of feed within the nostrils and around
215 the muzzle area.

The Stewards asked for the sachets or packets which had been used for the drench which Mr Eden claimed had been administered to *Roseberry Street*. Nothing was produced by Mr Eden in response. In searching the area, the Stewards located in a blue used HyGain feedbag two largely empty plastic packets containing a yellow/orange powdery substance. The packets had "3 Days" written on the
220 outside of them in permanent marker. In response to questioning, Mr Eden stated that these were not in fact used for the drench of *Roseberry Street*, but had been used a couple of days previously to drench horses engaged to run at Swan Hill on 10 June 2018.

The Stewards seized the red funnel, the naso-gastric tube, the twitch, the ALDI plastic bag, the second white bucket which Mr Eden produced, the two empty plastic packets, and the mobile phones of Mr
225 Eden and Mr Dentith. They also took various photographs of what they had seen.

Blood samples were also taken from *Considering* at 2.36pm, 4.38pm, and 5.03pm.

During and following the stable inspection at the Premises on 9 June 2018, Mr Eden and Mr Dentith made a number of statements to Stewards in relation to what had occurred and whether *Considering* had been stomach-tubed. We refer to these statements below.
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The Test Results and the Expert Evidence

At this point it is convenient to refer to what the test results showed in relation to the items seized by the Stewards on 9 June 2018, and the blood tests taken from *Considering*.

The yellow powder in the two clear plastic bags with "3 Days" written on them (and found in the used
235 HyGain feed bag) was found to contain approximately 37.6% and 32.4% by mass soluble carbonates and/or bicarbonates (equivalent to sodium bicarbonate).

No prohibited substances were detected by RASL in the ALDI bag, the white bucket, the red funnel or the naso-gastric tube.

The blood samples taken from *Considering* gave the following results in relation to TCO₂:

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| Sec Doc Number | Time (9 June 2018) | TCO ₂ (mmol/L) |
|----------------|--------------------|---------------------------|
| V477545 | 2:36pm | 29.2 |
| V477670 | 4:38pm | 33.3 |
| V477660 | 5:03pm | 33.4 |

It is apparent from these results that *Considering*'s plasma TCO₂ levels increased from 29.2 mmol/L at 2.36pm to 33.3 and 33.4 mmol/L at 4.38 and 5.03pm respectively.

245 Evidence was adduced from Dr Forbes (for the Stewards) and Dr Robertson-Smith (for Mr Eden and Mr Dentith) concerning, amongst other things, elevated plasma TCO₂ concentrations of the kind revealed by *Considering*'s blood tests.

It was common ground that alkalinising agents can be administered to horses by naso-gastric tube, oral dosing syringe, intravenous injection and in feed, and that the administration of alkalinising agents including bicarbonates by stomach-tubing can elevate a horse's TCO₂ concentrations in the manner observed with *Considering*, although TCO₂ concentrations can be affected by other factors, such as feed, disease, and water deprivation.

255 Dr Robertson-Smith gave evidence that, having regard to studies conducted in relation to the rate of absorption of alkalinising agents in horses following administration by stomach-tubing, the elevated plasma TCO₂ concentrations in relation to *Considering* were consistent with administration of the alkalinising agents having occurred sometime between 12 noon and 2.36pm on 9 June 2018. This was on the basis that the 4.38pm and 5.03pm readings were the peak levels, with the first reading at 2.36pm indicating a baseline TCO₂ level at which time little or no sodium bicarbonate had yet been absorbed.

260 Dr Robertson-Smith also gave evidence that a possible alternative explanation for the elevated TCO₂ readings in *Considering* was the consumption by *Considering* of sodium bicarbonate in the horse's feed bin. This was on the basis that he had been informed by Mr Eden that a handful of bicarbonate

had been added to *Considering's* feed the evening before, and on the assumption that this bicarbonate remained in the feed bin on 9 June 2018 and was consumed by *Considering* after midday.

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Findings

Having considered all of the evidence adduced before it, the Board is comfortably satisfied that the charges against Mr Eden and Mr Dentith pursuant to AR 64G are made out and that the inference that should properly be drawn is that they were parties to the stomach-tubing of *Considering* on 9 June 2018 with an alkalinising agent (sodium bicarbonate) prior to the Race in which it was scheduled to run that day.

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The reasons are as follows:

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1. Mr Eden went into the shelter with *Considering* shortly after 1.22pm, and exited the shelter holding the red funnel, which he tipped up before re-entering the shelter;

2. The evidence given by Mr Eden to the Stewards was that Mr Dentith was holding *Considering*, which Mr Dentith also stated in his evidence to the Stewards;

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3. The condition of *Considering* when Stewards arrived at the property, when the horse was being led away by Mr Dentith. The horse had its neck rugs peeled back, there was discharge from her right off side nostril, she had flaring nostrils, and she was breathing heavily;

4. The presence of the twitch and the ALDI bag with the residual liquid in the feed bin in *Considering's* shelter;

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5. The implausibility of the version of events advanced by Mr Eden in response to questioning by the Stewards that in the period of about two minutes from the time the Stewards left their observation point and arrived at the Premises, Mr Eden left the shelter housing *Considering*, went into the adjoining paddock containing *Roseberry Street*, gathered that horse, stomach tubed the horse entirely on his own without the use of a twitch or a head collar (notwithstanding the evidence that the horse was “erratic”, a “rat bag” and off colour, that “9 times out of 10” Mr Eden would have someone else holding a horse when stomach-tubing it, and Dr Robertson-Smith’s evidence that stomach-tubing is a risky, dangerous procedure), with the horse then still having time to go about 15 metres away in its paddock (which is where it was when the Stewards arrived);

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6. The condition of *Roseberry Street*, which showed no signs of having been stomach tubed, with its' nostrils being reasonably dry with a noticeable amount of feed within the nostrils and around the muzzle area;
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7. The inconsistencies in the evidence given by Mr Eden and Mr Dentith in relation to the supposed drenching of *Roseberry Street*, with Mr Eden initially saying that he used a twitch; then saying that no twitch or head collar was used; and Mr Dentith then saying that he thought he saw Mr Eden put a head collar on the horse;
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8. The action of Mr Eden of plunging both the red funnel and the naso-gastric tube in the water in the blue water container after the Stewards arrived, and after he had been asked whether he had just tubed his runner;
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9. Mr Eden's initial claim that he had put the red funnel down in *Roseberry Street's* shelter or paddock and had not had it with him when he then went into *Considering's* shelter, even though that is where the Stewards saw him with it;
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10. The subsequent claim by Mr Eden when shown the splash mark in *Considering's* shelter that in fact he did go into *Considering's* shelter with the red funnel and the naso-gastric tube first and "washed his hands", before then proceeding into *Roseberry Street's* paddock to "sort" her out;
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11. The further claim by Mr Eden at a subsequent Stewards Inquiry that he had initially gone into *Considering's* shelter to look at a "nick on her back leg", when this had not been suggested previously;
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12. The implausibility of the claim advanced by Counsel for Mr Dentith that the splash marks on the wall of *Considering's* shelter may have resulted from the horse spraying water, and of the suggestion by Mr Eden that the splash marks may have had something to do with the washing of his hands which he claimed to have done, when the more likely explanation from the appearance and extent of the splash marks are that they were associated with the contents of the funnel or bucket being flung onto the wall and ground deliberately or as a consequence of the tube being hurriedly retracted;
13. The changing stories advanced by Mr Eden and Mr Dentith as to the drench used, who made it up, and where it was made up. Initially Mr Eden stated that the drench was "*just Amino – it's Aminovite*", which he made up that morning at a caravan park using sachets which he had thrown out; Mr Dentith then said that Mr Eden had made up the drench that morning at the

335 Premises; Mr Eden at the first Stewards Inquiry hearing on 9 June 2018 stated that the drench
was not in fact Amino drench, but was “*Salkavite and a mix that I use for all my runners*”,
which Mr Eden said he had obtained from his former foreman Grant Craven a couple of years
previously, but did not know what exactly was in it, and that Mr Dentith had made it up; Mr
Dentith then said at a further Stewards Inquiry hearing that day that he had made up the
340 drench at the Premises, using water from the caravan park and a sachet from the back seat of
Mr Eden’s car, which Mr Dentith thought was an Amino drench; on 21 June 2018, after
evidence had been obtained from Mr Craven that he had never supplied drenches to Mr Eden,
Mr Eden told a further Stewards Inquiry that he did not obtain the drench from Mr Craven,
but rather it was a drench from a box of about 25 to 30 drenches which he obtained from Cory
345 Harkin about 4 years earlier, that he did not know what was in the drenches, Mr Harkin was
deceased, and Mr Eden did not now have any of the drenches left (having used the last of
them at Swan Hill);

14. The admission ultimately made by Mr Eden at the Stewards Inquiry that the drench that was
350 used was made up from the clear plastic packets containing a yellow/orange powdery
substance with “*3 Days*” written on the outside of them in permanent marker, which the
Stewards had found discarded in the empty HyGain feed bag, and which the testing found to
contain approximately 37.6% and 32.4% by mass soluble carbonates and/or bicarbonates
(equivalent to sodium bicarbonate);

355 15. The difficulty Mr Eden had in producing the bucket which had been used to assist with the
drench;

16. *Considering’s* TCO₂ readings which are consistent with *Considering* having been stomach-
360 tubed with bicarbonate during the precise period (midday to 2.36pm) in which the stomach-
tubing is alleged to have occurred, and when Mr Eden was observed coming out of
Considering’s shelter and tipping the red funnel;

17. *Considering’s* TCO₂ readings represent maximum absorption of sodium bicarbonate
365 following administration at about the time scheduled for the Race (4.27pm);

18. The implausibility of the alternative hypothesis for the elevated TCO₂ readings advanced
through Dr Robertson-Smith, namely that *Considering* may have eaten left over bicarbonate
in her feed bin from the previous evening’s feed during the period from midday until 2.36pm
370 on 9 June 2018, given that (1) normal stable practice would be expected to empty out leftover
feed when a morning feed is given; (2) had any feed been left, it would be expected that that
may have been a cause for concern, given that *Considering* was to race on 9 June 2018; (3)

375 the evidence is that the feed was a dry feed and not a wet feed (with the possibility of bicarbonate from a previous feed remaining being higher if the feed is a wet feed); (4) the
unlikelihood of *Considering* choosing this exact period in which to eat any leftover bicarbonate; and (5), in any event, Mr Eden's own evidence to the Stewards was entirely
contrary to this alternative possibility:

MR VILLELLA: The night feed, was that done in a mash or was it just dry?

380 MR EDEN: It was dry.

MR VILLELLA: So did the horse eat the bicarb, Considering?

MR EDEN: She ate up that night, yeah. She's good doer, yeah.

MR VILLELLA: So she ate the bicarb, although she doesn't normally get fed bicarb in her feed?

385 MR EDEN: No. No, like, the boys said that every horse ate up. Every horse ate really well. It's just – some horses -
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MR VILLELLA: It's something that some horses – some horses, I've experienced in my time - - -

MR EDEN: Yep.

MR VILLELLA: - - - if fed bicarbonate in a dry feed - - -

MR EDEN: Turn their nose up at it.

390 MR VILLELLA: Yeah. It will sieve its way all the way down to the bottom of the feedbin - - -

MR EDEN: Yep.

MR VILLELLA: - - - because it's dry.

MR EDEN: Okay.

MR VILLELLA: It hasn't been mixed up in a mash or - - -

395 MR EDEN: Yep.

MR VILLELLA: So in its feed. All right, okay.

MR EDEN: I didn't do the feeds but I'm tipping that it was dry.

MR VILLELLA: Well, who put the handful of bicarb in there, you or - - -

MR EDEN: I did, but I didn't mix the feeds. I didn't put the feeds in. I, yeah, put 'em into the bucket.

400 We accept that there were inconsistencies in some of the evidence given by Mr Stevens and
Ms Stevenson in relation to the events on 9 June 2018, including the evidence by Mr Stevens to the
Board that he saw liquid coming out of the red funnel when it was tipped up by Mr Eden (which had
not been his evidence previously). However, in our view these inconsistencies are not sufficient to
offset all the factors referred to above, which point strongly to Mr Eden, with the assistance of
405 Mr Dentith, having stomach-tubed *Considering* with a drench made up of the contents of the
discarded empty plastic packets which had "3 Days" written on the outside of them in permanent

marker and which, as the testing has established, contained approximately 37.6% and 32.4% by mass soluble carbonates and/or bicarbonates (equivalent to sodium bicarbonate).

We find the charges against Mr Eden and Mr Dentith made out.

410 In the case of Mr Dentith, we do not find that he stomach tubed *Considering*. However we are comfortably satisfied that he was a person who was a party to the stomach tubing of the horse by Mr Eden in breach of AR 64G.

There are four further observations which we make.

415 The Board accepts that it may have assisted in the assessment of this matter if samples had been obtained by the Stewards for testing of the discharge in *Considering's* nasal passage, *Roseberry Street's* blood, the feed in the feed bin in *Considering's* shelter, and the splash mark across part of *Considering's* shelter, and if tests had been conducted on the tubing equipment itself (albeit that such tests would likely be impacted by the equipment having been dunked in water). However, the fact that these samples were not taken and tests were not done does not affect the Board's conclusion in this
420 matter.

Secondly, the Board places little weight in the video tendered on behalf of Mr Eden purporting to show him stomach tubing a horse without assistance and without a head collar or twitch applied. No evidence has been given, including by Mr Eden in particular, as to such matters as the identity of the horse, the horse's temperament, the number of times it might have been tubed previously, the quantity
425 of liquid administered, whether the horse was sedated in any way, the nature of the equipment used (including the diameter of the naso-gastric tube), and other relevant matters which might allow for the probity of the evidence to be assessed.

Thirdly, assertions were made on behalf of Mr Eden (in particular) as to the integrity and fairness and ethics of the Stewards in relation to the conduct of the investigation, which assertions we consider
430 were inappropriate and misplaced. We do not see any basis to exclude evidence as to their questioning of Mr Eden and Mr Dentith as we were invited to do by Counsel for Mr Eden. This is in more the case in circumstances where the accused themselves elected not to give evidence to the Board so as to advance their version of events.

Fourthly, it is of course a matter for persons who are charged as to whether they wish to give evidence
435 before the Board. Mr Eden and Mr Dentith chose not to do so. The Board was therefore deprived of any assistance which they might have been able to provide in relation to the otherwise conflicting and inconsistent evidence which they provided to the Stewards, and also as to direct evidence of the version of events which they might wish to advance. In the absence of evidence from Mr Eden and Mr Dentith, the Board has necessarily relied upon the other evidence which has been adduced, and to

440 the extent necessary drawn inferences from the evidence. The Board also accepts the submission by
the Stewards that it is entitled to infer that, by not giving evidence to the Board, any evidence which
Mr Eden and Mr Dentith might have given would not have assisted them in resisting the charges.

The Charge pursuant to AR 175(q)

445 The evidence is unequivocal that Mr Eden dunked the red funnel and the naso-gastric tube in the
water in the blue container in the shelter in *Roseberry Street's* paddock shortly after the Stewards
arrived at the Premises and after he had been asked by Ms Stevenson whether he had just tubed his
runner.

In the Board's view, the only inference to be drawn from this action in the circumstances in which it
450 occurred is that it was done by Mr Eden with a view to destroying evidence which Mr Eden knew or
must have appreciated was relevant to the Stewards investigation, and in particular the investigation
of whether he had just tubed *Considering*.

Destruction of evidence in the circumstances is misconduct.

The Board is comfortably satisfied that the charge against Mr Eden pursuant to AR 175(q) is also
455 established.