



HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 27 May 2015

SUBJECT: **HEARING RESULT – TRAINER: BRENDAN MCCARTHY**

Panel Judge Russell Lewis (Chair), Mr Geoff Ellis, Mr Shaun Ryan.

Appearances Dr Cliff Pannam QC instructed by Dayle Brown appeared on behalf of the Stewards.

Mr Chris Winneke instructed by Mr Tony Hargreaves appeared on behalf of Mr McCarthy.

Charge 1 **Breach of 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.

Charge 2 **Breach of 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...'

The particulars of Charge 1 being that, at Caulfield on Saturday 4 April 2015, Mr McCarthy administered or caused to be administered a medication by way of injection to the horse *Zedi Knight* prior to Race 6 *Theshark.com.au Handicap* (1100m), a race in which it was engaged to run.

Plea Charge 1 – Guilty.
Charge 2 – Guilty.

Decision

Charge 1 - Mr McCarthy convicted and suspended for a period of three months commencing from midnight on Wednesday 3 June 2015.

Charge 2 - Mr McCarthy convicted and fined \$750 – due on or before 30 June 2015.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR G. ELLIS
MR S. RYAN**

EXTRACT OF PROCEEDINGS

DECISION

TRAINER: BRENDAN McCARTHY

MELBOURNE

WEDNESDAY, 27 MAY 2015

DR C.L. PANNAM QC appeared on behalf of the RVL Stewards

MR C. WINNEKE appeared on behalf of Mr B. McCarthy

CHAIRMAN: Mr Brendan McCarthy has pleaded guilty to one charge laid under Australian Rule 178E(1) and to one charge laid under Australian Rule 178F. The first charge reads as follows:

(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.

The particulars of the charge are (1) you are and were at all relevant times a trainer licensed by Racing Victoria; (2) you are and were at all relevant times the trainer of the horse, Zedi Knight; (3) on 4 April 2015, Zedi Knight was entered to run in race 6, theshark.com.au Handicap over 1100 metres at Caulfield; (4) in contravention of AR 178E(1), on 4 April 2015, you administered or caused to be administered a medication by way of injection to Zedi Knight which was engaged to run in the above race.

The relevant part of the second charge reads as follows:

(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.

There is set out the information required. The particulars of the charge, so far as are relevant, are: contrary to the minimum requirements of AR 178F(1), you failed to make, keep and retain an accurate record of treatment administered to Zedi Knight.

The essential facts relating to charge 1 are as follows: on race morning, at approximately 9 am, two members of the Compliance Assurance Team, Messrs Stevens and Scarlett, arrived at McCarthy's Caulfield stables and inspected Zedi Knight. As part of the inspection, the horse's neck was scanned. During that process, Stevens found nothing unusual of note on the nearside of the horse's neck in the immediate vicinity of the jugular vein. The Stewards then left the stables. Later, they returned unannounced at approximately 12.30 pm and again inspected the horse. They found a puncture mark as well as a small amount of fresh blood in the area of the jugular vein.

By his plea of guilty, Mr McCarthy has admitted that he administered the medication, which has not been specified, by way of injection that morning.

In this case, Dr Pannam, one of Her Majesty's counsel, appeared on behalf of the Stewards, and Mr Christopher Winneke appeared on behalf of Brendan McCarthy. When it was announced that what was going to be a contested matter had turned into a plea of guilty, the Board requested counsel to turn their minds to the provisions of AR 196(5) and Local Rule 73A, in particular, to consider the question of which special circumstance, if any, had application.

Counsel duly considered the question and Mr Winneke provided the Board with a written submission which provided two bases in support of the proposition that a special circumstance had been established: (1) that McCarthy had pleaded guilty at an early stage; (2) that in the interests of justice, the circumstances may be deemed or considered to be special.

Dr Pannam did not oppose the submissions put by Mr Winneke and a copy of Mr Winneke's submissions are appended to the Board's reasons. Dr Pannam provided the Board with a copy of the Stewards' submissions as to the meaning of "the interests of justice" which have previously been referred to in the case of Beshara.

The Board has considered the material provided by counsel and has concluded that a special circumstance has been established by way of an early plea of guilty and by satisfying the Board that it is in the interests of justice so to find. The Board takes into account the savings of cost and expenses and inconvenience as a result of the plea of guilty.

Mr McCarthy's past record of breaches of the rules does not entitle him to any discount. He has numerous infringements for what may be termed administrative offences, but notably was fined the sum of \$4000 by the RAD Board in November 2006 for a breach of AR 178 and was fined \$2000 in May 2006, and more recently was fined \$500 for a minor breach of AR 175(k).

In this case, the principles of special and general deterrence apply. The image of racing and the preservation of the integrity of racing are also important sentencing considerations. In the Board's opinion, nothing less than a period of suspension is warranted in this case.

Brendan McCarthy, you are suspended for a period of three months, such period of suspension to commence at midnight on Wednesday, 3 June 2015.

In relation to charge 2, the Board observes that this is an all-too-frequent offence committed by trainers. In this case, you had no record of treatment to Zedi Knight in the week prior to race day, notwithstanding that the horse had been treated. As the Board has said on several occasions, it is essential that proper records be maintained, otherwise Stewards' investigations are hampered and are unnecessarily prolonged by a lack of this type of evidence. On this charge, you are fined the sum of \$750, to be paid on or before 30 June 2015.
