



HEARING OF CHARGES ISSUED AGAINST LICENSED TRAINER MR DAVID ATKINS AND RACING NSW PERMITTED VETERINARIAN DR MADELAN BALTUSSEN.

**Racing NSW Offices**  
**Druitt Street**  
**Sydney**  
**(By Video Conference)**

**4 February 2021**

**Stewards: M F Van Gestel (Chairman)**  
**W R Birch**

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Racing NSW Stewards today conducted a hearing of charges issued against licensed trainer Mr David Atkins and Racing NSW Permitted Veterinarian Dr Madalen Baltussen, following the analysts finding of trendione in a urine sample taken from Xiaoli's Ying after running at the Quirindi race meeting conducted on 24 November 2019. By leave Mr Atkins was assisted by solicitor Mr P O'Sullivan and Dr Baltussen was assisted by Barrister Ms B Epstein, instructed by Ms C Darroch. The inquiry was opened on 6 August 2020 and adjourned to allow Mr Atkins and Dr Baltussen to obtain expert advice and for Racing NSW to provide additional evidence. The inquiry resumed on 17 November 2020 and charges were issued against Mr Atkins and Dr Baltussen on 10 December 2020. During the inquiries evidence was provided by Racing NSW Chief Veterinary Officer Dr Toby Koenig and ARFL Science Manager Dr Adam Cawley.

## **General**

The evidence established the following.

1. In June 2018 Racing NSW provided notification to the racing industry that injectable altrenogest products should not be administered to thoroughbreds following trendione, epitrenbolone and trenbolone being found at low levels due to impurities being present in altrenogest products. In conjunction with the introduction of NSW LR44A, Racing NSW advised that oral altrenogest products could be used but not within one clear day of racing. Several notifications subsequent to this advice in June 2018 were released by Racing NSW reminding participants of this notification. Mr Atkins advised he was not aware of warnings provided by Racing NSW in respect to the use of injectable altrenogest products and altrenogest products in general.
2. During a stable inspection conducted by Stewards on 18 December 2019, Stewards took possession of a bottle of Regumate Oral Progestagen for Pigs (Pig Regumate) supplied to Mr Atkins by Dr Baltussen on 28 November 2019 for general stable use. The label on the Pig Regumate failed to record the name of the horse and directions for use. Analysis of the Pig Regumate found trendione to be present at between approximately 10 to 100 times greater than in the oral altrenogest products registered for use in horses when analysed by the ARFL.
3. During the stable inspection it was identified that Mr Atkins had not kept treatment records for the administration of the Pig Regumate.
4. Mr Atkins advised that Dr Baltussen had informed him the Pig Regumate was not registered for use in horses. Mr Atkins agreed he had been directed to administer 5ml orally to Xiaoli's Ying but had administered 7ml, when 5ml did not have the desired effect on Xiaoli's Ying.

5. The Stewards did not consider it appropriate to exercise the discretion under NSW LR44A in respect of this charge as the analysis by the ARFL confirmed the presence of trendione in the urine sample provided by Xiaoli's Ying to be above 1ug/l set by NSW LR44A and, as set out above, the substance used was not a registered product for use in horses.

### **Charges**

Stewards gave careful consideration to which of the prohibited substance Rules of Racing should be applied and considered that, given the circumstances of the matter and having regard to the veterinary and scientific evidence, AR240(2) was the Rule of Racing that most appropriately reflected the relevant conduct.

#### **Mr David Atkins**

Mr Atkins was charged with the following offence.

1. **Charge 1 - AR240(2)** – Presented Xiaoli's Ying to race at the Quirindi racecourse on 24 November 2019 and a post-race urine sample was found to contain the prohibited substance trendione.  
**Plea: Guilty**
2. **Charge 2 - AR252(1)** – Had in his possession Pig Regumate that had not been prescribed and dispensed in accordance with the Poisons and Therapeutic Goods Regulation 2008.  
**Plea: Guilty**
3. **Charge 3 - AR104** – Failing to keep treatment records for the administration of Pig Regumate the leading up to Xiaoli's Ying racing at Quirindi on 24 November 2019.  
**Plea: Guilty**

#### **Dr Baltussen**

1. **Charge 1 – AR227(a)** – Engaging in conduct that led to licensed trainer Mr David Atkins breaching AR240(2) for supplying Pig Regumate to administer to Xiaoli's Ying.  
**Plea: Guilty**
2. **Charge 2 – AR256(1)(a)(iii)** – Supply Pig Regumate to licensed trainer Mr David Atkins when such substance was not permitted to be in Mr Atkins's possession in accordance with AR252(1) as it had not been prescribed and dispensed in accordance Poisons and Therapeutic Goods Regulation 2008.  
**Plea: Guilty**

### **Penalty**

#### **Mr Atkins**

Stewards considered the following matters in respect to penalty for Mr Atkins in addition to submissions made by Mr O'Sullivan on behalf of Mr Atkins.

1. Notifications issued by Racing NSW in respect to the use of altrenogest products and Mr Atkins failing to make himself aware of such warnings.
2. His request to Dr Baltussen to be supplied with Pig Regumate despite Dr Baltussen advising the product was not registered for use in horses and level of trendione detected in the Pig Regumate.

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3. The nature of the substance detected, being listed on prohibited substance List A.
4. Failure to keep treatment records.
5. Guilty plea.
6. Personal and professional circumstances.
7. Good disciplinary record being licensed as a trainer for over 35 years.
8. Principles applied by Stewards when issuing penalties.
9. Precedent penalties.

**Charge 1 AR240(2)** - Stewards determined the starting point for the offence under AR240(2) was a period of 6 months disqualification, with the penalty being reduced to 4 months having regard to a 25% reduction for his early guilty plea and Mr Atkins good record over 35 years as a licensed trainer. Acting under the provisions of AR283(7) was deferred to commence on 11 February 2021 and to expire on 11 June 2021, however Mr Atkins is not permitted to start a horse in a race during this 7 day period.

**Charge 2 – AR252(1)** - \$500 fine

**Charge 3 – AR104** - \$750 fine

**Total penalty being a period of 4 months disqualification and \$1250 in fines.**

### **Dr Baltussen**

Stewards considered the following matters in respect to penalty for Dr Baltussen in addition to written submissions made by Ms Epstein on behalf of Dr Baltussen and character references provided.

1. Notifications issued by Racing NSW in respect to the use of altrenogest products.
2. Level of trendione detected in the Pig Regumate.
3. The nature of the substance detected, being listed on prohibited substance List A.
4. Guilty plea.
5. Professional circumstances.
6. Good record
7. Principles applied by Stewards when issuing penalties.
8. Precedent penalties.

**Charge 1 – AR227(a)** – Stewards determined the starting point for the offence under AR227(a) was a period of 4 months suspension of Dr Baltussen's Racing NSW Veterinary Permit, with the penalty being reduced to 3 months having regard to a 25% reduction for her early guilty plea. Dr Baltussen's suspension is to commence on 5 February 2020 and to expire on 5 May 2020.

**Charge 2 – AR256(1)(a)(iii)** – Fine \$750

**Total penalty being 3 months suspension of Racing NSW Veterinary Permit and \$750 fine.**

### **Xiaoli's Ying**

Under the provisions of AR240(1) Stewards disqualified Xiaoli's Ying from it's 1st placing in Race 1 – 2 & 3YO Maiden Plate conducted at Quirindi racecourse on 24 November 2019 and amended the placings to read;

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04. Espressino	1st
11. Old Town Road	2nd
02. Zapluck	3rd
09. Stashes	4th
03. Dawnstar	5th
06. Olympic Fame	6th
08. Reigning Supreme	7th
07. Perfect Pattern	8th
01. Charlie Hascet	9th

### **Relevant Rules**

#### **AR 240 Prohibited substance in sample taken from horse at race meeting.**

- (1) Subject to subrule (3), if a horse is brought to a racecourse and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the horse must be disqualified from any race in which it started on that day.
- (2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

#### **AR 252 Possession of medication/substance/preparation in breach of legislation**

- (1) A person must not have in his or her possession or on his or her premises any medication, substance or preparation which has not been registered, labelled, prescribed, dispensed or obtained in accordance with applicable Commonwealth and State legislation.

#### **AR 104 Trainers must keep treatment records**

- (1) A trainer must record any medication or treatment administered to any horse in the trainer's care by midnight on the day on which the administration was given.
- (2) For the purpose of subrule (1), each record of administration 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 treatment (if applicable);
  - (g) the name and signature of the person/s administering and/or authorising the administration of the treatment or medication.

### **AR 227 Breaches of the Rules**

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

- (a) commits any breach of the Rules, or engages in conduct or negligence which has led or could have led to a breach of the Rules;*

### **AR 256 – Prohibition on supply and procurement of certain substances/preparations**

*(1) A person must not:*

- (a) supply;*

*any substance or preparation to another person (including but not limited to, a trainer or any person on behalf of a trainer), which is:*

- (iii) a substance or preparation that is not permitted to be in a person's possession or on a person's premises in accordance with AR 252(1).*

**M F Van Gestel  
Chairman of Stewards  
General Manager-Integrity**