

RACING NSW – STEWARDS REPORT



INQUIRY INTO THE RACEDAY TREATMENTS OF DEPTH THAT VARIES, TRAINED BY MR NICHOLAS DIXON AND MR DIXON'S POSSESSION OF A PROHIBITED SUBSTANCE ON COURSE AT RANDWICK 28 DECEMBER 2019.

RNSW Offices
Druitt Street
Sydney

5 March 2020

Stewards: **M F Van Gestel (Chairman)**
 W R Birch
 T J Vassallo
 J J Earl

Racing NSW Stewards today continued an inquiry opened on 28 December 2019 relative to a report from Racing NSW Senior Investigator Ms J Johnstone in respect to an inspection of horse transport vehicles located on course at the Randwick race meeting on that day. An inspection of a horse float used to transport Depth That Varies to the racecourse was found to contain the following items;

1. Used oral syringe
2. Used oral syringe labelled Ulcershield
3. Syringe containing green paste
4. Oral syringe labelled Electro paste

Further, Mr Dixon had made admissions to the Stewards that he had treated Depth That Varies at approximately 3am on 28 December 2019, prior to racing that day and on race morning at the geldings previous 3 starts, with the following products.

1. 4ml – 4Cyte Paste
2. 2ml – Ulcershield

The inquiry was adjourned to allow the exhibits to be analysed by the Australian Racing Forensic Laboratory (ARFL) along with blood and urine samples that were taken from Depth That Varies.

Evidence today was taken from Mr Dixon, who was assisted by Mr G Sharpe, ARFL Science Manager Dr A Cawley, Official Veterinarian Dr J Mizzi and Senior Investigator Ms J Johnstone. The ARFL reported that the samples taken from Depth That Varies did not detect any prohibited substances and accordingly the samples were cleared. The exhibits analysed returned the following results.

1. A260302757 – Used syringe suspected of containing 4cyte - Negative
2. A260302756 – Used oral syringe labelled Ulcershield – Omeprazole
3. A260302755 – Syringe containing green paste– Phenylbutazone
4. A260302754 – Oral syringe labelled Electro paste – Vitamin E & B6.

Charges

Mr Dixon today was charged with the following offences under the Rules of Racing.

1. Charge 1 – AR249(1)(a) – Administering Medication on Race Day

Without the permission of the Stewards, he did administer to Depth That Varies the medication 4Cyte Paste and Ulcersshield on race day 10 November 2019, prior to the gelding racing in Race 5 Class 2 Handicap 950m conducted at Moree Racecourse on that day.

Plea: Guilty

Penalty: 3 Months Disqualification reduced from 6 months for special circumstances.

2. Charge 2 – AR249(1)(a) – Administering Medication on Race Day

Without the permission of the Stewards, he did administer to Depth That Varies the medication 4Cyte Paste and Ulcersshield on race day 23 November 2019, prior to the gelding racing in Race 8 Class 1 Handicap 1100m conducted at Gosford Racecourse on that day.

Plea: Guilty

Penalty: 3 Months Disqualification reduced from 6 months for special circumstances.

3. Charge 3 – AR249(1)(a) – Administering Medication on Race Day

Without the permission of the Stewards, he did administer to Depth That Varies the medication 4Cyte Paste and Ulcersshield on race day 7 December 2019, prior to the gelding racing in Race 7 Class 1 Handicap 1000m conducted at Gunnedah Racecourse on that day.

Plea: Guilty

Penalty: 3 Months Disqualification reduced from 6 months for special circumstances.

4. Charge 4 – AR249(1)(a) – Administering Medication on Race Day

Without the permission of the Stewards, he did administer to Depth That Varies the medication 4Cyte Paste and Ulcersshield on race day 28 December 2019, prior to the gelding racing in Race 3 – TAB Highway Class 3 Handicap 1100m conducted at Randwick Racecourse on that day.

Plea: Guilty

Penalty: 3 Months Disqualification reduced from 6 months for special circumstances.

5. Charge 5 - AR 251 Possession of a prohibited substance at race meeting

Without the permission of the Stewards, did have in his possession in his horse float used to transport Depth That Varies to the Randwick Racecourse to compete in Race 3 – TAB Highway Class 3 Handicap 1100m on 28 December 2019 the prohibited substance phenylbutazone.

Plea: Guilty

Penalty: 1 month disqualification.

6. Charge 6 - AR 251 Possession of equipment at race meeting

Without the permission of the Stewards, did have in his possession in his horse float used to transport Depth That Varies to the Randwick Racecourse to compete in Race 3 – TAB Highway Class 3 Handicap 1100m on 28 December 2019, 4 x oral syringes that could be used to administer a prohibited substance.

Plea: Guilty

Penalty: 1 month disqualification.

Penalty

Charges 1-4

Under the provisions of AR283(6)(i) the mandatory minimum penalty for a breach of AR249(1) is 6 months disqualification, unless Stewards are satisfied special circumstances apply, as defined by NSW LR108(2). Having regard to the evidence and submissions made by Mr Dixon Stewards found the following special circumstances existed.

1. Mr Dixon pleaded guilty at an early stage and assisted the Stewards in investigating and prosecuting.
2. The medication in the opinion of the Stewards did not contain a prohibited substance, was of an insignificant nature and was for the welfare of the horse.

Having regard to the decision of the NSW Supreme Court 2017 in *James McDonald v Racing New South Wales*, Stewards rules that the mandatory minimum penalty for each charge be reduced to a period of 3 months disqualification. Further, as the charges related to the same course of conduct and had commonality, the Stewards determined that under the provisions of AR283(4) that the penalties were to be served concurrently, resulting in a total penalty of 3 months disqualification for charges 1 to 4.

Charges 5 & 6

Stewards determined the appropriate penalty for charges 5 & 6 to be a total period of 1 month disqualification having regard to the commonality of the charges.

Total Penalty

Mr Dixon was disqualified for a period of 4 months in total to commence on 5 March 2020 and to expire on 5 July 2020. Under the provisions of AR283(7), the commencement was deferred to commence on 12 March 2020, to allow Mr Dixon to attend to his horses, however during this period he is not permitted to start a horse in a race.

In assessing penalty, the Stewards took into consideration the following matters.

1. Mr Dixon's personal circumstances, including the effect of the drought on regional NSW
2. His guilty plea and co-operation with the Stewards
3. Character references provided.

Further the general principles when considering penalty were taken into account.

4. What message is to be given to this individual to not only ensure that in the future this type of conduct is not repeated, but to also ensure that there is an appropriate penalty imposed to indicate the response of the community to integrity and welfare issues.
5. What general message is required to be sent to the community at large to indicate to those who might be likeminded to engage in such conduct, what the likely consequences are, and, secondly, to indicate to the broader community who are not likely to engage in the type of conduct that, should it be detected, they, whether they be wagers or people just generally interested in the individual code, will know that it is operating at the highest possible standards.

Relevant Rules

AR2 – Dictionary

medication means any drugs or other substances.

AR 249 Administration of medication on race day

- (1) *Notwithstanding the provisions set out in Schedule 1, Part 2, Division 2, a person must not, without the permission of the Stewards:*
 - (a) *administer; or*
 - (b) *cause to be administered,**any medication to a horse at any time on race day prior to the commencement of a race in which the horse is engaged to race.*
- (2) *If a person breaches subrule (1), a disqualification for a period of not less than 6 months must be imposed, unless there is a finding that a special circumstance exists, in which case that penalty may be reduced.*

AR 251 Possession of a prohibited substance/equipment at race meeting

- (1) *A person must not, without the written permission of the Stewards, have in his or her possession:*
 - (a) *on a racecourse where a race meeting is being conducted; or*
 - (b) *in any motor vehicle, horse float or other mode of transport used for the purpose of transporting a horse/s to and/or from a race meeting,**any prohibited substance, or a syringe, needle, naso-gastric tube or other instrument that could be used:*
 - (i) *to administer a prohibited substance to a horse; or*
 - (ii) *to produce a prohibited substance in a horse.*

AR283 Penalties

- (4) *Unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension imposed under subrules (1) to (3) is to be served cumulatively to any other suspension or disqualification.*
- (6) *Where a person breaches any of the rules listed below, a disqualification for a period of not less than the period specified for that rule must be imposed unless there is a finding that a special circumstance exists, in which case that penalty may be reduced:*
 - (i) *AR 249(1): 6 months;*

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- (7) A person or body authorised by these Australian Rules to suspend or disqualify any trainer may defer the commencement of the period of suspension or disqualification for no more than 7 clear days following the day the suspension or disqualification was imposed, and upon terms and conditions considered fit.*
- (8) Notwithstanding that the commencement of a period of disqualification may be deferred under subrule (7), a trainer must not start a horse in any race from the time of the decision to disqualify that trainer until the expiration of the period of disqualification.*

LR 108. *(1) Unless otherwise ordered, fines or costs imposed by the Board, Appeal Body, Association, Club or Stewards, must be paid within 14 days. If a fine remains outstanding after 14 days of its imposition, such person may be placed on the forfeit list.*

(2) For the purposes of AR196(5), special circumstances means where:

(a) the person has pleaded guilty at an early stage and assisted the Stewards or the Board in the investigation or prosecution of a breach of the Rule(s) relating to the subject conduct; or

(c) in the case of offences under AR178E, the medication in the opinion of the Stewards does not contain a prohibited substance, is of an insignificant nature and is for the welfare of the horse;

M F Van Gestel
Chairman of Stewards
General Manager - Integrity