

APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF JOCKEY ANDREW GIBBONS

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Ms J. Foley; Mr J. Rouse**

Representatives: **Appellant - Mr T. Crisafi, Chief Executive Officer of the NSW Jockey's Association**
Racing NSW - Mr T. Moxon, Deputy Chairman of Stewards

Date of Hearing: **12 May 2023**

Date of Reasons and Orders: **12 May 2023**

REASONS FOR DECISION

1. On 2 May 2023, Licensed Jockey Mr Andrew Gibbons (**appellant**) pleaded guilty to a charge under AR 139(1)(a) of the Australian Rules of Racing (**Rules**) in that he did, at the Port Macquarie Racecourse meeting on Sunday, 5 February 2023, provide a sample of urine which, upon analysis, was found to contain a banned substance, namely the opioid oxymorphone, which constitutes a prohibited substance under AR 136(1)(i).
2. The Stewards arrived at a penalty of a two weeks suspension of Mr Gibbons' license to ride in races, rather than a full suspension of license. No direction was made by the Stewards under AR 139(4).
3. The appellant has appealed against the severity of the penalty imposed upon him. He was represented by Mr T. Crisafi, Chief Executive Officer of the NSW Jockey's Association. The Stewards were represented by Mr T. Moxon, Deputy Chairman of Stewards.
4. An appeal book was tendered that contained the transcript of the Stewards' Inquiry (Ex. A). The also appellant provided oral evidence.
5. The submissions made by Mr Moxon and Mr Crisafi centred around the appellant's strict liability to ensure a prohibited substance was not detected in a sample taken from a rider on the one hand, and the active steps taken by the appellant at Port Macquarie Racecourse when he believed there was risk he may ride with a prohibited substance in his system on the other hand.
6. It was generally accepted that the appellant's breach of AR 139(1)(a) was an aberration rather than an ongoing issue with respect to prohibited substances. While on any measure the presence of prohibited substances involves serious breach of the Rules, it is also well

settled that the purpose of imposing penalties for breaches of the Rules is protective in nature, rather than punitive.

7. In considering this appeal the Panel considered various factors, including the following:
 - I. the objective seriousness of breaches of the prohibited substances rules in this case, including that the substance in this case was oxymorphone, a metabolite, as opposed to its parent form, oxycodone;
 - II. the Endone that was consumed by the appellant was prescribed for a medical condition;
 - III. the appellant failed to seek approval for a banned substance exemption under AR 142;
 - IV. the appellant's excellent record in that this was his first such offence during his 28 year career;
 - V. the appellant's guilty plea and cooperation and candour throughout proceedings; and
 - VI. the tacit acquiescence of the Stewards at Port Macquarie Racecourse in permitting the appellant to fulfill his riding obligations when the appellant offered to stand down from his rides when it became apparent there was a risk he would be riding with a prohibited substance in his system.
8. Taking into account all relevant factors the Panel was unanimously of the view that we should alter penalty, although Mr Krouse had considered a different penalty should be applied.
9. The orders of the Panel are:
 - I. Appeal against severity of penalty for breach of AR 139(1)(a) upheld.
 - II. Penalty of a one week suspension of the appellant's license to ride in races.
 - III. The suspension is to commence on Wednesday, 17 May 2023 and expire on Tuesday, 23 May 2023, on which day the appellant may ride.
 - IV. Appeal deposit to be refunded.