

**HARNES RACING VICTORIA (“HRV”)**

**RACING APPEALS AND DISCIPLINARY BOARD (“RAD BOARD”)**

**H.R.V. STEWARDS**

Informants

-and-

**CRAIG DEMMLER**

Defendant

**HEARING BEFORE RAD BOARD – 7 MARCH 2016**

**R.A.D. BOARD PANEL:**

MR B.W. COLLIS Q.C. (Chairman)

MR RODNEY OSBORNE (Panel Member)

DR H. MILLAR (Panel Member)

**REPRESENTATIVES OF PARTIES:**

Mr Andy Rogers appeared for H.R.V. Stewards

Mr J. Beder of Counsel appeared for Mr Craig Demmler

**CHARGES LAID BY HRV STEWARDS AGAINST MR CRAIG DEMMLER**

**CHARGE 1 – (07/09/2015):** Breach of Rule 190(1) of the *Australian Rules of Harness Racing*

(“the Rules”), which states:

*“A horse shall be presented for a race free of prohibited substances”.*

**PARTICULARS:**

- (a) On 19 October 2014, the horse “Christian Torado” was presented to race at the Cranbourne Harness Racing meeting

in Race 5, the “Aussie Home Loans Cranbourne Pace (2<sup>nd</sup> Heat)”;

- (b) At the relevant time Mr Craig Demmler was the trainer of “Christian Torado”;
- (c) Following the said Race 5, a urine sample was collected from “Christian Torado” by veterinary surgeon Dr Holly Cathels (Sample No: V318390). The subsequent analysis of this sample revealed a Cobalt concentration in excess of the allowable threshold;
- (d) As the trainer of “Christian Torado” on 19 October 2014, Mr Craig Demmler presented that horse to race in Race 5 of the Cranbourne Harness Racing meeting when that horse was not free of Cobalt, a prohibited substance when present at a concentration in excess of 200 micrograms per litre in urine.

CHARGE 2 – (07/09/2015): Breach of Rule 190B of the Rules which in summary provides:

- 1. A trainer shall at all times keep and maintain a Log Book:
  - (a) Listing all therapeutic substances in his or her possession;
  - (b) Recording all details of treatment administered to any horse in his or her care including or a minimum requirement.....

PARTICULARS:

- (a) On 13 March 2015 HRV Stewards inspected Mr Craig Demmler’s Log Book for the period between 1 January 2014 and 13 March 2015;

- (b) Mr Craig Demmler was a licensed harness racing trainer at all times during such period training harness racing horses including, but not limited to, “Christian Torado”
- (c) During this period, Mr Craig Demmler did not keep and maintain a Log Book recording all details of treatments administered to harness racing horses in his care including, but not limited to, treatments (listed in the Notice of Charge e.g. Coforta, Folic, Vitamin B, B Complex, Glucosamine, VAM, stomach drench, intravenous injections and other listed treatments).

#### JURISDICTION OF RAD BOARD

- (a) Pursuant to s.50M of the **Racing Act** 1958 (Vic) (as amended by Act No: 52 of 2009), if a person is charged with a “*serious offence*”, the RAD Board must hear and determine the charge. See also Rule 49, Victorian Local Rules of Harness Racing.
- (b) “Serious Offence” is defined in the Victorian Local Rules of Harness Racing as meaning breaches of a number of Rules, including Rule 190 of the same.
- (c) Rule 49(5) of the Victorian Local Rules of Harness Racing states:

*“(5) Hearing and determination of mixed charges involving one person:*

*If more than one charge has been laid against a person arising out of the same set of circumstances and any of these charges (is a “serious offence”), all of the matters the subject of the charges must be heard and determined by the RAD Board”.*

No submission was made by either party as to RAD Board’s jurisdiction to hear and determine these charges laid against Mr Craig Demmler.

#### PLEAS

- (a) Mr Craig Demmler through his Counsel Mr J. Beder, pleaded guilty to each of the two charges laid against him by HRV Stewards on 7 September 2015.

- (b) Following such pleas, the RAD Board proceeded to hear the submissions of each of the parties with respect to penalties which ought to be imposed and gave consideration to the documentation tendered to it.

1. DOCUMENTATION TENDERED TO THE RAD BOARD:

(a) By HRV Stewards-

- (i) Booklet of 690 pages in total including:
- (x) Notices of the Charges laid by HRV Stewards against Mr Craig Demmler on 7 September 2015 and Particulars of such Charges;
  - (y) Statement of Investigative Steward, Mr Anthony Pearce, dated 7 September 2015 and 58 Exhibits to such Statement;
  - (z) Statement of Mr Paul Zahra, Scientific Manager of Racing Analytical Services Ltd (“RASL”) dated 13 August 2015 with respect to Sample No: V318390 taken from “Christian Torado” on 19 October 2014 and 16 Exhibits to such Statement;
  - (xx) Further Statement of the said Mr Paul Zahra dated 13 August 2015 with respect to Sample No: 315460 taken from “Christian Torado” on 6 October 2014 and 11 Exhibits to such Statement;
  - (yy) Statement of Mr John Vine, consultant to RASL dated 11 August 2015 together with Exhibits to such Statement;
  - (zz) Statement of Dr Martin Wainscott, Regulatory Veterinarian for Harness Racing New South Wales dated 13 August 2015 together with the Exhibits to such Statement.
- (ii) Offence Report of Mr Craig Demmler with respect to harness racing;

- (iii) Performance Records of Mr Craig Demmler as a trainer and driver in harness racing;
  - (iv) Table of 28 Cobalt Related Matters dealt with in Australia between January 2014 and October 2015 and the decisions made therein.
- (b) By Mr J. Beder of Counsel on behalf of Mr Craig Demmler:
- (i) Submission on Penalty prepared by Mr J. Beder;
  - (ii) Certificate of Children’s Tumour Foundation of Australia presented Ms Jodi Quinlan and Mr Craig Demmler;
  - (iii) Certificate of Appreciation awarded to Ms Jodi Quinlan and Mr Craig Demmler in October 2013 by Pony Trots Victoria
  - (iv) Decision of Judge Jenkins, Vice President VCAT dated 13 May 2015;
  - (v) Performance Record of “Christian Torado”;
  - (vi) Pathology Results forwarded to Mr Craig Demmler by Western Equine Veterinary Services on 26 February 2016;
  - (vii) Statement of Associate Professor Nick Kannegieter, “Vet Claims Cobalt is a ‘Nothing Drug’” and CV of such Associate Professor;
  - (viii) Expert Certificate of Dr Derek Anthony Major, Veterinary Practitioner, dated 3 March 2016 and Curriculum Vitae of Dr Major;
  - (ix) Reference of Mr Thomas Payne dated 29 February 2016;
  - (x) Reference of Mr Barry Purdon dated 3 March 2016;
  - (xi) Undated Reference of Mr Robert Merola, SEW-Eurodrive Pty Ltd;
  - (xii) Reference of Mr John Fitzgerald dated 7 March 2016;

- (xiii) List of 10 decisions made with respect to prohibited substances TC02 between 24 April 2013 and 20 November 2015.

2. MATTERS NOT IN DISPUTE

- (a) Mr Andy Rogers submitted on behalf of HRV Stewards that a penalty of \$250.00 be imposed with respect to Charge 2 namely, failure at all times to keep and maintain on appropriate Log Book. Mr Beder on behalf of Mr Craig Demmler did not oppose the imposition of such a fine for Charge 2;
- (b) Mr Andy Rogers on behalf of HRV Stewards submitted that pursuant to Rules 195, 195A and 200 of the Rules, the horse "Christian Torado" be disqualified with respect to Race 5 on 19 October 2014 (in which the horse finished first) and Race 10 on 26 October 2014 at Kilmore (in which the horse finished fifth) and that all prizemoney such horse received in such races be refunded immediately to the connections to the respective clubs or Controlling Body of HRV.

Mr J. Beder on behalf of Mr Craig Demmler did not oppose that such orders be made by the RAD Board.

- (c) Pursuant to Rule 183(d) of the Rules on 13 March 2015 HRV Stewards directed that the harness racing licences held by Mr Demmler be suspended pending the outcome of the inquiry into these matters. Such suspension was not set aside until 13 May 2015 by Judge Jenkins of VCAT. Mr Craig Demmler had therefore been unable to train or drive harness racing horses during this period of two months.
- (d) Mr Craig Demmler had been involved in harness racing virtually all of his life and had been a licensed driver since 1992 and a licensed trainer since 1995. He was now aged 42 years. His record with respect to driving and training was exemplary. There were no matters whatsoever concerning prohibited substances.

- (e) At all relevant times Mr Craig Demmler was the trainer of “Christian Torado”.

3. MATTERS IN DISPUTE

- (a) Mr Andy Rogers on behalf of HRV Stewards submitted that the appropriate penalty which should be imposed with respect to Charge 1, was a period of disqualification within the meaning of the Rules for a period of twelve (12) months as from this day and that would be in addition to the two months Mr Demmler had been suspended from driving and training between 13 March 2015 and 13 May 2015;
- (b) Mr J. Beder on behalf of Mr Craig Demmler submitted that the appropriate penalty which ought to be imposed in all of the circumstances was an appropriate fine of in line with fines which had been imposed for first offences for presenting horses to race with a TC02 level above the permitted threshold.

4. SECTION 190

- (a) Section 190 provides:

- “(1) A horse shall be presented for a race free of prohibited substances.*
- (2) If a horse is presented for a race otherwise than in accordance with Rule (1), the trainer of the horse is guilty of an offence.*
- (4) An offence under sub-rule (2).... is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse”.*

- (b) Section 188 provides:

- “(1) The following are prohibited substances:*
- (a) Substances capable at any time of causing either directly or indirectly an action or effect, or both or action and effect, within one or more of the following mammalian body systems....;*

(b) *Substances falling within, but not limited to, the following categories...*

*(Cobalt is not specifically listed).*

(2) *The following substances when present at or below the levels set out are excepted from the provisions of sub-rule (1).*

(k) *(as amended on 14 October 2014) Cobalt at a concentration at or below 200 micrograms per litre in urine”.*

(c) The analysis of the post Race 5 urine sample obtained from “Christian Torado” on 19 October 2014, namely Sample No: 318390, by Laboratories approved by HRV, namely:

- National Measurement Unit / Australian Sports Drug Testing Laboratory (N.S.W.);
- Chemistry Centre (W.A.) and;
- Hong Kong Jockey Club Laboratory-

revealed that such sample contained Cobalt at a concentration of:

- 360 micrograms (Chemistry Centre WA – 23/02/2015, Booklet p32)
- 372 micrograms (NMI, NSW – 06/03/2015, Booklet p34)
- 350 micrograms (Chemistry Centre WA – 09/03/2015, Booklet p37)
- About 360 micrograms (H.K.J.C. Laboratory – 13/03/2015, Booklet p185)

per litre in urine. The Certificate of Analysis provided by such approved laboratories clearly demonstrate a concentration of Cobalt well above the permitted threshold and the RAD Board is cognisant of the provisions contained in Rule 191 of the Rules. The RAD Board further notes that no submissions were made that the analysis procedures were materially flawed and with respect to the matters contained in the two statements of Mr Zahra and that of Dr Vine.



- (d) On 13 March 2015 a stable blood sample was obtained from the horse “Christian Torado” when HRV Stewards etc. visited Mr Demmler/Ms Quinlan’s property. Subsequent analysis of this sample by RASL demonstrated Cobalt at a concentration of 3.2 micrograms per litre in urine (Booklet p171).
- (e) On 31 March 2015 a stable urine sample was obtained by HRV Stewards from the horse “Christian Torado” i.e. Sample No: V337474 (Note: the horse was not being trained by Mr Craig Demmler at that time as he had been suspended by HRV Stewards on 13 March 2015). Subsequent analysis of Sample No: V337474 by NMI (N.S.W.) demonstrated Cobalt at a concentration of 11 micrograms per litre in urine (Booklet p311).

5. Submissions made by the parties with respect to the presence of Cobalt in the post race urine sample taken from “Christian Torado” On 19 October 2014

- (a) The RAD Board has given due consideration to the Statement of Dr Wainscott in his statement dated 13 August 2015 wherein he stated (Booklet p561):

*“16. After due enquiry and to the best of my knowledge, there do not appear to be any reports that specifically investigate the relationship between Cobalt and performance of a horse”.*

- (b) The RAD Board has also given due consideration to the Statement of Associate Professor Nick Kannegieter wherein he stated:

*“(Cobalt) has no performance-enhancing effect, it is a nothing drug”.*

He further stated he had not encountered a veterinarian who disagreed with this opinion.

- (c) The RAD Board notes that Dr Derek Major in his Statement did not specifically deal with Cobalt and performance enhancing. He stated in paragraph 8:

*“Cobalt is a metallic element essential to life in small amounts. It is classified as a trace nutrient. In large quantities it is assumed to be toxic to horses although toxic signs have not been reported in horses”.*

- (d) The RAD Board finds on the balance of probabilities after considering all of the evidence before it and the submissions of each of the parties that:

- (i) whether or not the presence of Cobalt in a horse can enhance its performance, the presence of Cobalt in a horse above the threshold level is a prohibited substance under the Rules. The amendment to s.188(2)(k) was made by Australian Authorities after an extensive enquiry into the role of Cobalt and horses;
- (ii) the level of Cobalt found in the post race urine sample taken from the horse “Christian Torado” by three approved laboratories far exceeds the natural level one would expect to find in horses. In this regard, the RAD Board notes the level of Cobalt found in stable samples obtained from the horse “Christian Torado” on 13 March 2015 and 31 March 2015. Dr Wainscott’s Statement in paragraphs 8 and 9 of his statement dated 13 August 2015 (Booklet p560) that three studies involving in excess of 11,060 samples demonstrated mean urinary Cobalt levels in horses to be less than 10 micrograms per litre in urine was not challenged in any meaningful way.

6. (a) The RAD Board prefers the statements of Dr Wainscott in his Statement dated 13 August 2015 in paragraphs 35, 36, 37, 38 and 39 that:

- (i) high levels of Cobalt by intravenous route has been shown to cause observable signs of distress such as sweating and abdominal discomfort

exhibited by pawing, restlessness, flank watching and the Flehmen response (which is curling back of the upper lip expressing the teeth);

- (ii) there are a number of papers referring to the deleterious effects of Cobalt in both horses and other species;
- (iii) Mobasher & Proudman make reference to unexplained deaths of horses that were found to have elevated blood levels of Cobalt.

(b) In contrast Associate Professor Nick Kannegieter states:

*“For many, many years people have been supplementing horses with Cobalt. It has never done any harm. It helps horses that are under racing stress”*

He does not refer to any authorities to that effect and furthermore he does not refer to any level of Cobalt resulting from such supplementing of horses. As we have previously stated the level of Cobalt found in the sample obtained from “Christian Torado” on 19 October 2014 was far in excess of the natural level expected to be found. For completeness the RAD Board notes the statement of Dr Major that “Cobalt is a metallic element, essential to life in small amounts. It is classified as a trace nutrient. In large quantities it is assumed to be toxic to horses, although toxic signs have not been reported in horses. Toxic effects in humans are well recorded.

7. (a) Notwithstanding that it would appear Dr Wainscott did not have access to the pathology testing of the horse “Christian Torado” (which was available to Dr Major), the RAD Board prefers the possible explanations preferred by Dr Wainscott for the concentration of Cobalt found in the urine sample obtained from “Christian Torado” on 19 October 2014. In paragraph 33 of his Statement dated 13 August 2015, Dr Wainscott concluded:

*“There appears to be two (2) possible explanations for the readings above the threshold for “Christian Torado”:*

- (i) *a race day administration of an injectable therapeutic Cobalt containing product such as Hemoplex, Hemo – 15 or VAM;*
- (ii) *the administration of a “high concentration” form of Cobalt at some time prior to the sampling”.*

The basis for this conclusion is set out in his Statement.

- (b) Associate Professor Kannegieter does not deal with this matter (i.e. possible explanations for the concentration of Cobalt revealed in “Christian Torado’s” urine sample obtained 19 October 2014;
- (c) Dr Major in his Statement dated 3 March 2016 stated:

*“(i) I disagree with (Dr Wainscott’s) assertion. While the explanations listed at (a) and (b) (paragraph 33) above are certainly possible explanations they are not the only available explanations”.*

- (ii) Dr Major considered that in his opinion:

*“The urine level recorded in this case is easily explained by a combination of the individual circumstances of the horse in particular:*

- *Subclinical liver disease;*
- *Supplementation program including chelating agents;*
- *The multitude of variables listed in this report, where combined effect is untested and unknown”.*

- (d) As to Dr Major’s conclusion that a possible explanation was that the horse was suffering from subclinical liver disease, the RAD Board notes that there is no evidence that the horse was ever treated for such disease and the concentration of Cobalt found in the stable samples obtained from “Christian Torado” on 13 March 2015 and 31 March 2015 namely 3.2 (blood sample) and 11.00 microgram per litre in urine are inconsistent with this finding.
- (e) The RAD Board finds that if its acceptance of Dr Wainscott’s as to the possible explanations for the concentration of Cobalt revealed in “Christian Torado” urine

sample obtained on 19 October 2014 is incorrect, and had accepted Dr Major's other possible explanations, this would not have in any way affected its decision as to the appropriate penalty to be imposed upon Mr Demmler for breach of Rule 190(1) of the Rules.

#### PENALTY

8. (a) After considering all of the evidence and the submissions of each of the parties, notwithstanding:
- (i) Mr Demmler's exemplary record as a harness racing trainer and driver over a period of almost 25 years;
  - (ii) The consequences a period of disqualification would have for him;
  - (iii) The fact that this matter has now been hanging over his head for almost 12 months;
  - (iv) The excellent references that have been tendered;
  - (v) The fact that he has contributed to charities;
  - (vi) His Plea of Guilty and his co-operation in this matter.

The RAD Board finds that a monetary fine would be an inappropriate penalty to be imposed upon Mr Demmler for the Breach of Rule 190(1) of the Rules.

- (b) The RAD Board finds that the appropriate penalty for this Breach of Rule 190(1) of the Rules is a period of disqualification within the meaning of the Rules;
- (c) In coming to this decision, the RAD Board has carefully considered the booklet of decisions that have been made by various authorities throughout Australia with respect to Cobalt matters over the past two years or so. Many of those matters relate

to offences under Rule 190(1) of the Rules i.e. a trainer presenting a horse to race when not free of prohibited substances, namely a concentration of Cobalt in excess of the threshold level of 200/260 micrograms per litre in urine. As per the Summary on p1, of such booklet, the circumstances of such offences are diverse in that such trainers presented one or more horses to so race, the period that they had been licensed varied from four months to 36 years, some had relevant prior convictions whilst others did not and the level of Cobalt concentration varied considerably. Also, some of such decisions are under appeal. As we have stated, the RAD Board has considered all of those decisions, but merely by way of example we refer to the matter of *Chapple*: Trainer *Dean Chapple* presented a horse to race at Tamworth on 1 September 2014. A post race urine sample was collected from the horse and subsequent analysis of such sample revealed the presence of Cobalt at a concentration of 250 micrograms per litre in urine. Mr *Chapple* had been a licensed trainer for 30 years, had no relevant prior convictions, and pleaded guilty. The decision deals with the treatment administered to the horse and the fact that Mr *Chapple* could not explain the elevated level detected and maintained that he did nothing to cause the elevated level in the horse. The Judge dismissed his appeal from decision of Stewards to disqualify him for 2 ½ years.

The RAD Board has also considered the decisions of the Racing Victoria RAD Board handed down on 16 and 17 March 2016 with respect to the thoroughbred trainer Mr Peter Moody, who had two charges with elevated levels of Cobalt. Such Board suspended his trainer's licence for 12 months (but suspended six months of that period). Clearly such decision may be appealed by either party. The RAD Board also notes its decision in the matter of *V. Costa* i.e. three charges under Rule 196A(i) of the Rules i.e. administering a prohibited substance. The RAD Board is

mindful of the fact that consistency with respect to penalties imposed is a relevant matter.

- (d) In coming to this decision the RAD Board has also given due weight to:
- (i) both specific and general deterrence;
  - (ii) the purposes and objects of Rules relating to prohibited substances which this Board has consistently stated are to ensure as far as possible, that:
    - (x) the integrity of racing is protected;
    - (y) racing is conducted on a level playing field;
    - (z) horses race without the assistance of drugs;
    - (xx) racing is conducted safely – safely with regard to the horse itself and also with regard to the drivers and other horses involved in a race;
    - (yy) racing is conducted fairly from the perspective of the betting public so that a horse's performance will not vary from start to start depending on whether or not a particular substance/medication has been administered to it.
  - (iii) the RAD Board's acceptance of Dr Wainscott's statements that Cobalt can have deleterious effects on horses and other species and the reference by Mobasher & Proudman to the unexplained deaths of horses that were found to have elevated blood levels of Cobalt.
- (e) As to the length of the period of disqualification that ought to be imposed upon Mr Demmler that RAD Board finds that in the circumstances it ought to be less than the period of disqualification of 18 months imposed by this Board on Mr Vincent Costa in May 2015;

(f) The RAD Board notes and takes into consideration that Mr Demmler's training and driving licences were suspended between 13 March 2015 and 13 May 2015;

(g) It is the decision of the RAD Board that:

(i) Breach of Rule 190(1):

Mr Demmler be disqualified within the meaning of the Rules for a period of twelve (12) months. Pursuant to Rules 195, 195A and 200 of the Rules, the horse "Christian Torado" be disqualified with respect to Race 5 at Cranbourne on 19 October 2014 (in which it finished in first place) and Race 10 at Kilmore on 26 October 2014 (in which it finished in fifth place) and that all prizemoney such horse received in such races be refunded immediately by the connections of that horse to the respective Club or HRV Controlling Body.

(ii) Breach of Rule 190B:

Mr Demmler be fined the sum of \$250.00. A stay of seven (7) days is granted with respect to payment of this fine.

**B.W. COLLIS Q.C.**  
Chairman

**RODNEY OSBORNE**  
Panel Member

**Dr H. MILLAR**  
Panel Member