

RACING VICTORIA LIMITED  
ACN 096 917 930

RACING APPEALS AND  
DISCIPLINARY BOARD



400 Epsom Road  
Flemington VIC 3031

Telephone: 03 9258 4260  
Facsimile: 03 9258 4848  
radboard@racingvictoria.net.au

## HEARING RESULT

**Distribution:** Chief Executive  
Group Integrity Services, Group Racing  
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Office of Racing  
C Polglase – Racing NSW  
Racing Press

**FROM:** Registrar – Racing Appeals and Disciplinary Board

**DATE:** 11 November 2010

**SUBJECT:** **HEARING RESULT – LICENSED TRAINERS:  
BEVAN LAMING and RICHARD LAMING**

**Panel** Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy Chair), Mr Geoff Ellis.

**Appearances** Dr Cliff Pannam QC and Mr Matthew Stirling, instructed by Mr Noel Waters of Waters Lawyers, appeared as Counsel for Mr Bevan Laming and Mr Richard Laming.

Mr Paul Holdenson QC and Mr Christopher Winneke, instructed by Mr David Poulton of Minter Ellison Lawyers, appeared as Counsel for the Stewards.

### **Charges 1 – 3 inclusive: Breach of AR 175(h)(i)**

Charges withdrawn 9 November 2010.

### **Charges 4 – 6 inclusive: Breach of AR 177B**

Mr Richard Laming only – guilty plea for all three charges.

### **Charges 7 – 10 inclusive: Breach of AR 80E**

Mr Richard Laming – guilty plea for all four charges.

Mr Bevan Laming (**charges 8 & 9 only**) – guilty plea for both charges.

### **Decision**

In relation to charges 4-6 inclusive Mr Richard Laming disqualified for a period of 3 years on each charge, the period of disqualification to be served concurrently, commencing at midnight on Tuesday, 30 November 2010.

In relation to charge 7 Mr Richard Laming fined the amount of \$250.

In relation to charges 8 and 9 Mr Richard Laming and Mr Bevan Laming each fined the amount of \$500 on each charge – a total of \$1,000 each.

In relation to charge 10 Mr Richard Laming fined the amount of \$2,000.

Fines due on or before 30 November 2010.

*Appeal to VCAT lodged by Richard Laming against severity of penalty imposed in relation to charges 4-6 inclusive and charge 10: dismissed.*

# **TRANSCRIPT OF PROCEEDINGS**

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## **RACING APPEALS AND DISCIPLINARY BOARD**

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman  
MR B. FORREST, Deputy Chairman  
MR G. ELLIS**

### **DECISION**

**TRAINERS: RICHARD and BEVAN LAMING**

**MELBOURNE**

**THURSDAY, 11 NOVEMBER 2010**

MR P. HOLDENSON QC, with MR C.J. WINNEKE appeared on behalf of the RVL Stewards

DR C.L. PANNAM QC, with MR M.J. STIRLING appeared on behalf of Richard and Bevan Laming

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CHAIRMAN: Bevan Laming, you have pleaded guilty to two charges, being charges 8 and 9, laid under Australian Rule of Racing 80E, namely that on 31 July 2009, you had on your licensed premises substances not labelled or prescribed or obtained in compliance with relevant state or Commonwealth legislation, such substances being two by 10-mil bottles of Testoprop, a short-acting steroid, and 20 by one-mil vials of adrenaline, a respiratory cardiac stimulant. These charges were laid on 20 November 2009. You pleaded guilty on 8 November 2010, that is, on the first day of this hearing. In the circumstances, the Board imposes a fine of \$500 on each charge.

Richard Laming, you have pleaded guilty to three charges, being charges 4, 5 and 6, laid under Australian Rule of Racing 177B, namely that a sample taken from Benelli on 11 June 2009 and 2 July 2009, and a sample taken from War Dancer on 11 June 2009, contained a prohibited substance, darbepoetin alfa, hereinafter called "DPO". You have further pleaded guilty to three charges, being charges 7, 8 and 9, laid under Australian Rule 80E, namely that on 31 July 2009, you had on your licensed premises substances not labelled or prescribed or obtained in compliance with relevant state or Commonwealth legislation, such substances being eight by 10-mil bottles of triamolone forte, an anti-inflammatory drug; two by 10-mil bottles of Testoprop, and 20 by one-mil vials of adrenaline.

You have also pleaded guilty to charge 10 laid under Australian Rule 80E, namely that on 31 July 2009, you had on your licensed premises a substance being one 20-mil bottle of aminocaproic acid, which was not registered for

veterinary use under the relevant state or Commonwealth legislation. This substance is an anti-bleeding agent.

In relation to charges 7 to 10 inclusive, on charge 7 you are fined the sum of \$250; on each of charges 8 and 9, you are fined the sum of \$500. In relation to charge 10, the Board understands that aminocaproic acid is available in Victoria. However, it is not registered for veterinary use under state or Commonwealth legislation. In the circumstances, the Board imposes a fine of \$2000.

I now return to the consideration of charges 4, 5 and 6. Following the taking of the samples to which I have referred, screening tests undertaken by Racing Analytical Services Ltd and the Australian Sports Drug Test Authority indicated the presence of human erythropoietin, known as EPO, and/or a related material such as DPO. Further tests conducted by the Hong Kong Jockey Club and the United Kingdom laboratory, Quotient Bioresearch Ltd, showed that the said sample had present within them DPO.

DPO is a synthetic EPO. It is not naturally produced in either humans or horses. The evidence is that the only way in which DPO may enter a horse is by human agency, generally by way of injection. DPO has no legitimate therapeutic or veterinary use. Apparently the purpose for which DPO is given to a horse is to increase red blood cell concentration, resulting in an increased oxygen-carrying capacity to the muscles. It is a matter of some debate as to the extent to which a horse's performance is enhanced.

Dr Cust, a very experienced veterinarian, believes that it does enhance performance, and Dr O'Callaghan is of the opinion that it is likely to do so. The Board also accepts the evidence of Drs Cust and O'Callaghan that DPO produces adverse effects. In particular, Dr Cust in his statement of 1 November 2010 says in paragraph 8:

*The adverse effects of the use of DPO in a racehorse include conditions such as fatal anaemia, fatal haemorrhage, fatal pulmonary haemorrhage, cardiovascular incidents which may result in sudden collapse and potential death during exercise. These conditions would all arise as a result of haemoconcentration and increased clotting of the blood, leading to potential thrombosis and embolism formation. The haemoconcentration that occurs following DPO administration results in a substantial increase in red blood cell concentration. However, plasma volume is reduced, leading to a marked increase in the viscosity of the blood.*

This being the case, such adverse effects impact upon the safety and welfare of horses and riders, in that there is the potential for a catastrophe to occur, particularly during the running of a race.

As Mr Holdenson has observed, the use of DPO and the unfair advantage thereby conferred may lead to a perception within some members of the public and the racing public in particular that thoroughbred racing is unfair because a

number of the participants are cheats. In short, the revelation that DPO is used in racehorses tarnishes the image of racing and therefore due regard must be had to this aspect in arriving at an appropriate penalty.

However, having regard to the circumstances of this case, the principle of general deterrence is the prime sentencing consideration. Few mitigating factors have been established in this case. The Board has been left in the position where there is no explanation for the presence of the prohibited substance in the horses' systems.

Your plea of guilty came at a late stage. The Board takes into account your hitherto good character in relation to your involvement in racing, your age, the absence of any previous transgressions and the fact that most of your working life has been in the racing industry.

I now come to the question of punishment. This is the first case to come before the RAD Board involving DPO. The Board is mindful of the fact that these are not administration offences. Nevertheless, it is a case of considerable significance. It is clear that both parties recognise the seriousness of these offences. Indeed, both counsel refer to a number of cases involving disqualification. The Board found these cases of limited assistance as the outcome in each case depends on that case's own particular facts and circumstances.

However, in the Board's opinion, nothing less than a lengthy term of disqualification is the only appropriate penalty. On each of charges 4, 5 and 6, you are disqualified for a period of three years, such terms of disqualification to be concurrent. The period of disqualification is to commence at midnight, 30 November 2010, to enable you to make the necessary arrangements in relation to your horses and personal affairs.

**ADJOURNED**