

**RACING APPEALS AND DISCIPLINARY BOARD  
(Original Jurisdiction)**

*Racing Victoria Stewards*  
*v*  
*Brian Cox and Dr Robert Fielding*

**PENALTY DECISION**

Judge Bowman	Chair
Mr D McGee	Member
Mr S Ryan	Member

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**1. BRIAN COX**

**(a) AR 178H - ADMINISTRATION**

Mr Brian Cox has been found guilty of four breaches of AR 178H. These charges relate to the administration of an anabolic androgenic steroid found in the product  
5 “Nitrotain” to two horses on two occasions, being 17 and 24 August 2015. We would refer to our decision of 2 November 2016 last.

A breach of AR 178H carries with it an automatic penalty of disqualification of not less than two years – see AR 196. That is so unless there is a finding of special circumstances. These special circumstances are listed in LR 73A.

10 It was not argued by Mr Ferwerda on behalf of Mr Cox that any special circumstance exists – see transcript (herein described as “T” 367).

That is fully understandable. Mr Cox certainly did not plead guilty at any stage. Indeed, his attitude in relation to these charges was far from cooperative. It was acknowledged by Mr Ferwerda that the medical evidence did not make out a case for  
15 a special circumstance – again see T 367 and 368 – and we would fully agree.

Thus, Mr Cox has been found guilty of four breaches of AR 178H, each of which carries an automatic penalty of disqualification for two years or more. A total penalty in excess of eight years disqualification is available.

20 Mr Rush, for the stewards, agreed that some concurrency of penalty would be appropriate, although there should be individual sentencing in relation to each charge. The Board is entitled to take a global view and, as far as the stewards' are concerned, that would be satisfactory – see T 366 and 367.

25 In our opinion, a period of two years disqualification should be imposed for each of charges 5 – 8. These are serious offences. The deliberate administration of a prohibited substance strikes at the very heart of the integrity of racing and has the potential to be extremely damaging to its image. We agree with Mr Rush that a message should be sent to all racing participants that this behaviour will not be tolerated and is to be denounced.

30 As regards concurrency, these are offences committed in relation to two separate horses on two different dates. It is not a situation of a “one off” offence. In relation to the two offences involving *Minnie Downs*, the penalties should be concurrent. In relation to the two offences relating to *Baby Jack*, in our opinion one year's disqualification should be cumulative upon the two year period for *Minnie Downs* and one concurrent.

35 Accordingly, Mr Cox is disqualified for a period of three years for the AR 178H offences.

**(b) AR 177B(5) - POSSESSION**

40 Mr Cox pleaded guilty to a breach of this rule, which also relates to Nitrotrain, this is another serious offence. However, there is no fixed minimum period of disqualification or automatic penalty.

In our opinion, the appropriate penalty for this offence is a period of disqualification of twelve months. This period of disqualification is concurrent with the

disqualification imposed for the AR 178H offences. It is closely related to them.

45 (c) **AR 175(a) - IMPROPER OR DISHONOURABLE ACTION**  
**MANHANDLING THE STEWARDS AND OTHER BEHAVIOUR**

Mr Cox has pleaded guilty to two charges pursuant to AR 175(a), these charges relating to his behaviour towards the stewards who attended at his stables on 10 March 2016. Essentially there is one charge based upon his behaviour towards Mr  
50 Dion Villella and one upon his behaviour towards Mr Rhys Melville. Each involves some physical contact. Again, these are serious offences.

The stewards were going about their everyday and official business. Effectively they were at their workplace. We are not of the view that there was anything that was officious, insulting or the like about their behaviour. There is no excuse for the way  
55 Mr Cox behaved towards them once it was apparent that they had found, or were about to find, the Nitrotain.

We appreciate that he has pleaded guilty. We also appreciate that he wrote a letter of apology the following day and that he may suffer from an anxiety disorder. Whilst we take these matters into account, the bottom line is that his behaviour became  
60 violent when it was apparent that he had been, or was about to be, caught out.

In all the circumstances, including the medical and other plea material, we are of the view that a period of disqualification is warranted. The behaviour of Mr Cox was a long way short of what is expected from any licensed trainer, much less one of decades of experience and a leader in his region.

65 On each charge, Mr Cox is disqualified for a period of six months. Effectively it is all the one incident, so that it seems reasonable that the two periods of disqualification be served concurrently. However, whilst part of the whole Nitrotain saga, they are really quite separate offences from matter of administration and the like. In our opinion, this period of disqualification for six months should be cumulative upon  
70 the penalties imposed pursuant to AR 178H.

**(d) AR 175(g) – PROVIDING FALSE AND MISLEADING EVIDENCE**

This is another serious offence concerning which Mr Cox has been found guilty. Providing false and misleading evidence hinders the stewards in the execution of  
75 their duties and tarnishes the image of racing. The inaccuracies and falsehoods told by Mr Cox were quite blatant. The appropriate penalty seems to us to be three months disqualification. Without in any way minimising the culpability of Mr Cox's behaviour, we are of the view that this period of disqualification should be served concurrently with the other such periods already imposed. The giving of false  
80 evidence is closely related to the other components of the behaviour of Mr Cox and the Nitrotain offences.

**(e) CONCLUSION**

85 In summary, the end result is that the period of disqualification to be served by Mr Cox is three years and six months.

The Board orders that the commencement of the period of disqualification be deferred until midnight, Tuesday 6 December 2016, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6).

90 Pursuant to AR 196(6)(b) Mr Cox must not start a horse in any race from the date of the Board's decision, 29 November 2016, until the expiration of the period of disqualification.

## 2. DR ROBERT FIELDING

95 Before turning to the individual charges, an issue raised by Mr Winneke on behalf of Dr Fielding should be dealt with at the outset. Written submissions from both Mr Winneke and Mr Rush have been received in relation to it. It is as follows.

Dr Fielding is licensed not in Victoria, but in New South Wales. Do the Rules of Racing permit the warning off of someone in his position?

100 The argument of Mr Winneke is to the effect that the Board cannot disqualify Dr Fielding as he is not a licensed person. LR 71 states that the power to warn off is ancillary to the power to disqualify. Hence, if there is no power to disqualify, there is no power to warn off.

Further, argues Mr Winneke, the general power to warn off is expressly given to the  
105 Principal Racing Authority in certain particular circumstances, but to neither the stewards, nor the Board unless LR 71 or 71A applies.

We are not persuaded by the argument of Mr Winneke. Section 5F of the *Racing Act 1958* clearly states that the Rules of Racing may be enforced against a relevant person. Section 3 of that Act defines a "Relevant Person" in broad terms. A "Relevant Person"  
110 includes a person who participates, at a racecourse or any other place, in an activity connected with or involving horse racing in Victoria.

At all relevant times Dr Fielding was clearly participating in an activity connected with or involving horse racing in Victoria. Therefore, the Rules of Racing apply to him.

115 Turning to these Rules, LR 6E(1)(b) gives to this Board the power in the hearing or determination of any matter, to penalise any person. Further, pursuant to LR 6E(1)(b), this Board has the power to penalise under AR 196(1), if the Board has the power to penalise, it has the power to disqualify. Then, pursuant to LR 71, the power to disqualify includes the power to warn off.

120 Thus, the logical conclusion is that the Board has the general and inherent power to  
warn off a relevant person. As stated, Dr Fielding is a relevant person. Therefore the  
Board has the general and inherent power to warn him off.

We now move on to the individual charges.

125 **(a) AR 175(a) - DISHONEST AND IMPROPER ACTIONS**

This is a serious charge, although there is no fixed or automatic penalty, essentially it  
relates to the provision of a false invoice and being part of what could be described as  
the Nigel Cox false explanation of who was being supplied with the Nitrotrain.

Such behaviour has the potential to damage the image of racing and its integrity.

130 Certainly the issue of general deterrence is relevant.

We have considered this matter at some length, as stated, it is a serious charge and the  
stewards have sought a period of warning off. On the other hand, Dr Fielding is  
approaching the latter stages of a long and illustrious career as a veterinarian. We  
accept that he has given decades of service to the racing industry and the community.

135 The large bundle of character references that you have placed before us is impressive  
indeed. It includes references from the former Attorney-General of the  
Commonwealth of Australia, Michael Duffy; Professor Ted Whittam, Professor and  
Chair of the University of Melbourne; Mr Mark Anderson, the manager of Toll  
Transport Australia; Associate Professor Bryan Hilbert of the Veterinary Clinical  
140 Centre at Charles Sturt University; Dr Bill Sykes, a veterinarian and former member  
of the Legislative Assembly; various fellow veterinarians and medical practitioners;  
and various people connected to the racing industry and with horse interests  
generally.

They speak as one of Dr Fielding's integrity, ethics, professionalism, honesty,  
145 compassion and the like. There is no argument but that his accord over decades of  
practice has been without blemish.

It has also been pointed out by Mr Winneke that Dr Fielding is now aged 66 years. His desire is to wind down and sell his practice and then to continue as an industry veterinarian.

150 We accept that, for someone with such a long, illustrious and blameless record, a warning off would be a particularly devastating end to a fine career. Further, in some ways, while the actual penalties involved are identical, there is something about a warning off that makes it sound even more severe and for a more heinous offence than disqualification. We accept that a warning off would be very damaging to a fine  
155 reputation such as that of Dr Fielding.

As stated, it is a serious offence. There is no point in speculating as to why it occurred, it warrants a stern penalty.

In other circumstances, we would impose a warning off. In the particular circumstances of this case, and bearing in mind all of the above, we have decided to  
160 impose a financial penalty. Dr Fielding is fined \$20,000. He is also reprimanded.

**(b) AR 175(k) - AIDING AND ABETTING A BREACH OF THE RULES**

Whilst this is also a serious offence and considerations such as the image of racing and general deterrence continue to be relevant, the particulars of this offence overlap considerably with those of the charge that has just been discussed. We shall not  
165 again go through the matters that have just been discussed.

In the circumstances, on this charge Dr Fielding is fined \$10,000. As we consider the circumstances of this charge to be “part and parcel” of Charge 1, the penalty in this instance is concurrent with the fine of \$20,000 imposed for that charge.

The end result is that Dr Fielding is reprimanded and fined a total of \$20,000.

170 The date for payment is stayed for a period of 28 days. That is, it is due and payable on Tuesday, 27 December 2016.



**RACING APPEALS  
AND  
DISCIPLINARY BOARD**

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**DECISION**  
**RACING VICTORIA STEWARDS**  
*and*  
**BRIAN COX**

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- Date:** 29 November 2016
- Panel:** Judge Bowman (Chair), Mr Darren McGee, Mr Shaun Ryan.
- Appearances:** Mr Jack Rush QC, instructed by Mr Daniel Bolkunowicz, appeared as counsel for the stewards.
- Mr Joe Ferwerda, instructed by Ryan Carlisle Thomas Lawyers, appeared as counsel for Mr Cox.
- Charges 1-4:** **AR 175(h)(i)** - Administered, or caused to be administered, a prohibited substance (Ethylestrenol - via *Nitrotrain*) for the purpose of affecting the performance or behaviour of a horse in a race.
- Charges 1 & 2 - Administration to *Minnie Downs* on 17 August and 21 August 2015.
  - Charges 3 & 4 - Administration to *Baby Jack* on 17 August and 21 August 2015.
- Charges 5-8:** AR 178H (alternatives to **Charges 1-4**) - Administered, or caused to be administered, an anabolic androgenic steroid.
- Charges 5 & 6 - Administration to *Minnie Downs* on 17 August and 21 August 2015.
  - Charges 7 & 8 - Administration to *Baby Jack* on 17 August and 21 August 2015.
- Charge 9:** **AR 177B(5)** - Possession of a prohibited substance which could give rise to an offence under AR 177B if administered to a horse at any time.
- Charges 10 & 11:** **AR 175(a)** - Improper action or practice in connection with racing.
- Charge 12:** **AR 175(g)** - Give evidence that is false or misleading in any particular.
- Charge 13:** **AR 175(o)** - Fail to exercise reasonable care to prevent an act of cruelty to an animal. The charge relates to the presentation of the horse *Cochrane's Gap*, trained by Mr Cox, at a jump-out on 9 December 2015 which, it is alleged, was contrary to veterinary advice.



**Plea:** Charges 9, 10 & 11 – guilty.  
Charges 1-8, 12 and 13 – not guilty.

**Decision:** Handed down 2 November 2016.

**Charges 1-4** – the Board does not find the charges proved. The charges are dismissed.

**Charges 5 – 8** (alternatives to Charges 1-4) – the Board finds the charges proved.

**Charges 9, 10 & 11** – pleaded guilty.

**Charge 12** – the Board finds the charge proved.

**Charge 13** – the Board does not find the charge proved. The charge is dismissed.

**Penalty:** Handed down 29 November 2016.

**Charges 5 - 8**

A period of two years disqualification is imposed for each of charges 5 – 8. As regards concurrency, in relation to the two offences involving *Minnie Downs*, the penalties should be concurrent. In relation to the two offences relating to *Baby Jack*, in our opinion one year’s disqualification should be cumulative upon the two year period for *Minnie Downs* and one concurrent.

Accordingly, Mr Cox is disqualified for a period of three years for the AR 178H offences.

**Charge 9**

Mr Cox disqualified for a period of twelve months. This period of disqualification is concurrent with the disqualification imposed for Charges 5 – 8.

**Charges 10 & 11**

On each charge, Mr Cox is disqualified for a period of six months, the two periods of disqualification are to be served concurrently.

This period of disqualification for six months is cumulative upon the penalties imposed pursuant to AR 178H.

**Charge 12**

Mr Cox is disqualified for a period of three months, this period of disqualification is to be served concurrently with the period of disqualification already imposed.

## **Summary**

Mr Cox is disqualified for a period of three years and six months.

The Board orders that the commencement of the period of disqualification be deferred until midnight, Tuesday 6 December 2016, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6).

Pursuant to AR 196(6)(b) Mr Cox must not start a horse in any race from the date of the Board's decision, 29 November 2016, until the expiration of the period of disqualification.

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**Georgie Gavin**  
**Registrar - Racing Appeals and Disciplinary Board**



**RACING APPEALS  
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**DECISION**  
**RACING VICTORIA STEWARDS**  
*and*  
**DR ROBERT FIELDING**

---

- Date:** 29 November 2016
- Panel:** Judge Bowman (Chair), Mr Darren McGee, Mr Shaun Ryan.
- Appearances:** Mr Jack Rush QC, instructed by Mr Daniel Bolkunowicz, appeared as counsel for the stewards.
- Mr Chris Winneke QC, instructed by Meridian Lawyers, appeared on behalf of Dr Fielding.
- Charge 1:** AR 175(a) - Dishonest or improper action or practice in connection with racing.
- Charge 2:** AR 175(k) - Conduct that could have led to a breach of the Rules.
- Charge 3:** AR 175(g) - Give evidence that is false or misleading in any particular. The charge relates to evidence given of veterinary advice provided to Mr Cox regarding the horse *Cochrane's Gap*.
- Charges 1 and 2 relate to the finding of Nitrotrain during a stewards' race day stable inspection at Mr Cox's stables in Wodonga on 10 March 2016. Nitrotrain is an anabolic androgenic steroid and a prohibited substance under the Rules.
- Plea:** Not guilty - all charges.
- Decision:** Handed down 2 November 2016.
- Charge 1** - the Board finds the charge proved.  
**Charge 2** - the Board finds the charge proved.  
**Charge 3** - the Board does not find the charge proved. The charge is dismissed.
- Penalty:** Handed down 29 November 2016.
- Charge 1** - Dr Fielding is fined \$20,000. He is also reprimanded.
- Charge 2** - Dr Fielding is fined \$10,000.  
This penalty is concurrent with the fine for Charge 1.

**Summary:**

Dr Fielding is reprimanded and fined a total of \$20,000.

The date for payment is stayed for a period of 28 days. That is, it is due and payable on Tuesday, 27 December 2016.

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**Georgie Gavin**  
**Registrar - Racing Appeals and Disciplinary Board**