

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 21 October 2013

SUBJECT: **HEARING RESULT – TRAINER: PAUL BESHARA**

Panel Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy),
Mr Jeremy Rosenthal.

Appearances Mr James Williams appeared on behalf of Mr Beshara.

Dr Cliff Pannam QC, instructed by Mr Dayle Brown, appeared as
Counsel for the Stewards.

Charge Breach of AR 178E(1)

Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

The particulars being that Mr Beshara administered a medication by way of injection to the horse *Happy Trails* on the morning prior to Race 6 the *Dato' Tan Chin Nam Stakes* (Group 2, 1600m) at Moonee Valley on Saturday 14 September 2013, a race in which it was entered to run.

Plea Not guilty.

Decision In accordance with the reasons for decision handed down on 18 October 2013, the Board finds the charge proved.

Mr Beshara convicted and disqualified for a period of 6 months, deferred to commence at midnight on Monday, 28 October 2013 in order for Mr Beshara to make arrangements for the disposal or transfer of horses trained by him. In accordance with AR 196(6)(a) and AR 196(6)(b) he, as a trainer, is unable to start any horse from today.

Application to VCAT for a review of the decision dismissed.

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

***RVL Stewards v Paul Beshara
Reasons for Decision***

Mr R Lewis	Chair
Mr B Forrest	Deputy Chair
Mr J Rosenthal	Member

The Charge

Paul Beshara you have pleaded not guilty to a charge laid under AR 178E(1) which is in the following terms:

- (1) *Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.*

The particulars of the charge are as follows:

1. You are, and were at all relevant times, licensed by Racing Victoria as a visiting trainer.
2. You are, and were at all relevant times, the trainer of *Happy Trails*.
3. On 14 September 2013, *Happy Trails* was entered in race 6, The Dato' Tan Chin Nam Stakes (Group 2) over 1600 metres at Moonee Valley (**the race**).
4. In contravention of AR 178E(1), on the morning of 14 September 2013 you administered a medication by way of injection to *Happy Trails* prior to the horse running in the race.

The onus of proving this charge is borne by the Stewards. The charge is serious and, if proved, has serious consequences.

Accordingly, the standard of proof, whether it be in relation to findings of fact proven by direct evidence or to findings of fact by a process of inference and/or acceptance of expert evidence is the *Briginshaw*¹ standard.

Stewards Case

The Stewards allege that on race morning between 10.48 am and 10.54 am Paul Beshara medicated the horse *Happy Trails* by injection. In support of their case the Stewards rely on the evidence of Dion Villella, a member of the Racing Victoria Compliance Assurance Team or “CAT” and in particular his evidence that:

- (a) he was very experienced in examining horses, particularly in relation to the inspection and detection of whether a horse has been medicated on race day, those being fundamental skills required for the performance of his duties;
- (b) at 9 am Villella visually and physically examined the horse’s neck. Upon his examination of the near side jugular vein and adjacent area he found no abnormality and in particular no evidence of a damp area, puncture mark or swelling;
- (c) at 10.55 am Villella again visually and physically examined the horse’s neck during which examination he found a damp area directly over the near side jugular vein. He found no other abnormality; and
- (d) at 11.03 am Villella again visually and physically examined the horse’s neck and discovered a raised area over the near side jugular vein which he believed to be a haematoma. He observed that the previously damp patch had dried or almost dried. He ran his finger up and down the jugular groove but felt no scab. Upon stroking the raised area with his finger fresh blood oozed from the vessel area.

The Stewards also rely upon the evidence of Kane Ashby, head of the CAT, who corroborated Villella’s evidence.

The Stewards also rely upon the evidence of Dr Brian Stewart, a Racing Victoria veterinarian. Dr Stewart, on the basis of his vast experience, supported Villella’s observations and interpretation of the video and photographic evidence insofar as they related to the raised

¹ *Briginshaw v Briginshaw* 1938 (CLR) 336, noting in particular the judgment of Sir Owen Dixon at page 362. See also *Karakatsanis and Karakatsanis v Racing Victoria Limited* (2013) VSC 434, noting in particular the judgment of Justice Kaye and His Honour’s comments at pages 15 and 16.

area on the near side jugular vein, the oozing of blood and the causation of each. Upon a consideration of Paul Beshara's claim that Villella had caused the blood to ooze by scratching a scab which had formed over the jugular vein area as a result of an injection on the morning of the previous day by Dr Church, or by scratching a lesion due to the skin condition for which the horse had been treated, or both, Stewart was of the opinion that the horse had been injected on race morning. Stewart's expert opinion was that Paul Beshara's alternative explanations were, for all intents and purposes, incredible.

The Stewards also submit that the Board should draw the inference that Paul Beshara medicated the horse by injection on race day having regard to the following:

- (a) Paul Beshara's attendance at the horse's box when the float was not due to arrive until 12.40 pm;
- (b) the fact that he emerged from the horse's box at just before 11 am;
- (c) the fact that there was a damp area in the vicinity of the near side jugular vein consistent with a pre or post injection application of an antiseptic or similar substance;
- (d) the fact that Paul Beshara by his own admission had in the past injected horses and thus was capable of injecting the horse and was aware of the risk of infection; and
- (e) the fact that by his own admission Paul Beshara had sufficient time and opportunity to administer an injection.

The Defence Case

Mr Paul Beshara denies that he injected the horse. He did not dispute that he was in the horse's box shortly prior to 11 am but says that he was simply removing manure and checking on the horse.

He admits that there was a damp area on the horse's neck when it was examined just before 11 am but claims not to know how the area became damp. He suggested that it could have been sweat or water and, later on, that it could have been caused by the horse lying down in making contact with urine.

He points to the absence of a syringe or needle or material that could have been used to wipe down the neck despite a search of his clothing, of box 16 and of its immediate vicinity.

He claims that it was Villella who caused the blood to ooze because he scratched the top off a scab or lesion formed as a result of an injection given the previous day or some underlying condition.

He disputes Villella's evidence that at 9 am the area in the vicinity of the near side jugular vein showed no abnormal signs. He argues that a scab or other lesion and/or raised area was present but that Villella missed it because he did not physically examine the jugular area as he claimed. Beshara relies on the evidence of Daniel Williams, assistant trainer Anthony Cummings, in that regard.

He also disputes the evidence of Dr Stewart that he physically examined the horse at Moonee Valley relying on the evidence of Happy Trails track rider Ms Chelsea Moss.

Evidence

In the week leading up to the Moonee Valley meeting *Happy Trails* had been stabled at Anthony Cummings' stables in Booran Road, Caulfield.

The horse had developed a skin problem and was treated for that condition by veterinarians. According to Dr Church, a vet engaged by Mr Beshara, the treatment had ceased early in the week. Mr Beshara however has maintained that the condition had not resolved by week's end and, in fact, the horse had been treated for the whole week.

In any event, on Wednesday 11 September Dr Church treated the horse. He inspected the horse's knees, took a blood sample and injected 15 millilitres of Metacam into the near side jugular vein.

Early in the morning of Thursday 12 September, Dr Garth, a partner of Dr Church, attended the horse, scoped it and administered antibiotics. Later that day, Dr Church gave the horse a saline drench, antibiotics and sodium iodide – mucus having been found in the horse's trachea – injected into the near side jugular vein using a 14 gauge catheter at a point he estimated was 20 to 30 centimetres from the angle of the jaw.

Dr Church again attended the horse on the morning of Friday 13 September. He noticed some very slight swelling which he later described as being "slightly noticeable" at or very

close to the site of the injection given the previous day. He believed that the slight swelling was associated with some blood leaking subcutaneously from the jugular vein. Nevertheless, he administered more antibiotic medication by way of injection into the near side jugular vein at or very adjacent to the site of the previous injection and the observed slight swelling.

Dr Church offered the opinion that it was difficult to say how long the swelling would persist because of the variables involved including the volume of medication, the gauge of the needle and the extent to which the horse put his head down after administration.

On Saturday 14 September (race day) at 9 am Stewards Villella and Ashby attended the stables and were accompanied by Daniel Williams. Mr Villella identified the horse in his box using his scanner. He said that he ran his left hand down the near side jugular vein. In his opinion the horse was perfectly normal. In particular, Mr Villella said that he found no evidence of a haematoma or raised area or "anything to report".

Thereafter Villella and Ashby left the stables and later returned, keeping the stables under surveillance and communicating by mobile phone.

At 10.48 am Paul Beshara and his son Leigh attended the stables.

At 10.53 am the Stewards met at the stable entrance. Ashby said that he had seen Leigh Beshara standing 2 to 3 metres inside the stable entrance appearing to be paying attention to the front gate which had been closed. Villella made a similar observation except that he thought Leigh Beshara had been 5 to 10 metres inside the premises. At the view of the stables it was confirmed that Leigh Beshara was standing near the wash bay.

At 10.54 am Villella and Ashby entered the front gate of the stable area. As they entered, they observed Paul Beshara coming from the area where the horse was stabled. Paul Beshara said he had been removing manure from the horse's box.

The parties have agreed that the interval between the time Paul Beshara entered the Cummings stable complex and the time at which he emerged from the rear of the stable area was approximately 6 minutes.

At 10.55 am Villella inspected the horse in box 16 in the presence of Paul Beshara and Ashby.

Villella said that he found a damp patch on the horse localised directly over the near side jugular vein, about one third or less down the jugular groove. He did not observe any raised area, haematoma or areas of concern. He did not notice moisture on any other visible part of the horse.

Paul Beshara informed Villella that the damp area was either sweat or water. At the interview conducted by Chairman of Stewards he said that the dampness may have been the result of the horse lying down where there was horse urine.

Villella, Ashby and Paul Beshara left the horse's box and examined the feed room and tack room. It is common ground that they returned to the horse's box at 11.02.39 am.

In the presence of Paul Beshara, Villella said that he now discovered a raised area in the previously noted damp area (which he said had dried or almost dried) which he believed was a haematoma. He said he ran his finger up and down the near side jugular vein and did not feel any scabs. He said that when he stroked the raised area with the tip of his index finger fresh blood oozed onto the hair directly over the swelling and onto his finger.

Paul Beshara confirmed the presence of the raised area but did not agree that it was a haematoma. He alleged that Villella had scratched the area – described by Beshara as a scab – and dislodged the scab thereby causing the blood to ooze.

Villella and Ashby, being of the mind that the horse had been recently treated, requested Paul Beshara to empty his pockets, which he did. He was then asked to remove his trousers. Reluctantly, Beshara pulled down his trousers to a degree, but refused to drop them completely.

In the event no syringe or needle was found either on Paul Beshara, in the immediate vicinity of box 16 or the box itself.

Ashby further questioned Paul Beshara as to the reason for being at the stables at approximately 11 am when the float to take the horse to Moonee Valley was not due until 12.40 pm. Paul Beshara explained that the purpose of his attendance (he had stayed overnight at a motel in Chadstone but had come from the nearby stables of Byron Cozamanis) was to check on the horse and to ensure that its yard was clean.

Villella and Ashby reported what had occurred to Mr Bailey, who was at Moonee Valley. Mr Bailey rang Paul Beshara, then still at the stables. When Beshara arrived on course he was

interviewed by Bailey and the horse was examined by Dr Grace Forbes (who took photographs) and Dr Brian Stewart, the Racing Victoria veterinarians.

Dr Stewart did not observe any significant haematoma or swelling in the area of the left jugular groove. He found a mark consistent with a needle mark over the near side jugular vein. He described it as a puncture mark (see photograph 9).

On the assumption that Vilella's evidence of the appearance of the development of a subcutaneous swelling was accurate, Dr Stewart was of the opinion that there had been a very recent puncture of the near jugular vein probably by hypodermic needle.

Dr Stewart thought it was extremely unlikely that a scab was *in situ*, as alleged by Paul Beshara, but even if that were the case, overwhelmingly the presence of a haematoma at the time of the 11.03 am inspection of the appearance of the development of a subcutaneous swelling could only be explained by a recent intrusion into the vein by hypodermic needle.

Dr Stewart also commented on his interpretation of the video. In his opinion Vilella's finger contact with the jugular vein did not cause subcutaneous oedema formation or trauma to the jugular vein causing blood to ooze.

Conclusions

The Board accepts the evidence of Vilella that at 9.00 am there was no abnormality upon his inspection and physical examination of the near side jugular vein of the horse. The matters which lead the Board to come to this conclusion are as follows.

Vilella is an experienced horse person and has inspected and examined thousands of horses throughout his career as a racing Steward. His demonstration of how he held a scanner in his right hand and ran his left hand over the horse's near side jugular area was compelling. The Board accepts that when acting thus Vilella performed the examination deftly and discreetly and in a non-demonstrable way.

Ashby confirmed that he saw Vilella inspect and examine the horse. In regard to this issue the question may be asked why Vilella as a member of CAT would simply scan the horse on race morning and not carry out an inspection and physical examination. Insofar as Daniel Williams denied that Vilella physically examined the horse at 9.00 am the Board rejects that assertion.

The Board finds that in the six minute period prior to 10.55 am at which time Vilella attended the horse in his box accompanied by Ashby and Beshara, Beshara was for some of that time in the horse's box and therefore had the opportunity to inject the horse.

It is common ground that a damp area about half a man's hand in size was found over the near side jugular area. It is also common ground that the horse was a quiet and relaxed animal generally and on this particular day. The Board rejects Beshara's explanation that sweat may have been the cause having regard to the evidence of Ashby that there were no signs of sweating on the near side shoulder or flank. The unlikelihood of sweat being the cause of the damp area was supported by Doctors Stewart and Church.

The Board also rejects Beshara's explanation that a splash of water may have been the cause since the only water in the box was contained in an elevated bucket. There was no credible evidence to support that explanation.

The Board also rejects as fanciful Beshara's explanation that the horse may have laid down in such a way that his jugular area made contact with horse urine notwithstanding that the floor of the box was liberally covered with sawdust of like material.

The Board therefore concludes that the damp area was caused by human agency in the person of Beshara.

The Board finds that Vilella, his suspicions having being aroused upon discovering the damp patch carried out a thorough inspection and examination of the jugular area. The Board accepts his evidence that he found no evidence of a scab or lesion or any other abnormality.

The Board accepts the evidence of Vilella that five and a half minutes later when he again examined the horse's near side jugular vein, he found no evidence of a scab or lesion but a raised area consistent with a hematoma.

The Board accepts Vilella's evidence supported by Ashby that when he applied fingertip pressure in a scraping movement which he demonstrated to the Board, blood oozed from the raised area.

The Board prefers the evidence of Vilella and Ashby to the evidence of Beshara on the issue of whether Vilella's fingernail scratched the area of the near side jugular vein in such a way that he disturbed a scab or lesion causing it to bleed.

In relation to Beshara's evidence the Board has concluded as follows.

Realising the predicament in which he found himself when being asked to account for the presence of the damp area over the horse's near side jugular vein, Beshara not only offered fanciful reasons for that occurrence but was then faced with the problem of explaining why there was an oozing of blood when Villella palpated the jugular vein. In the knowledge that the horse had been injected by Dr Church the day before, being Friday, Beshara quickly decided to run with the story that a scab had formed following such procedure and then alleged that Villella had scratched the scab off thus causing blood to ooze.

Unfortunately for Beshara the proven facts do not support his story. There was no scab resulting from the Friday injection and even given the remote possibility that a scab had formed expert evidence given by Dr Stewart which was not challenged by Dr Church was that blood oozing from a disrupted scab could not explain the presence of a hematoma.

Once realising that this line of argument was on shaky ground Beshara then argued that a disturbed scab which covered a lesion from a pre-existing skin complaint was the source of the ooze of blood. The only evidence in favour of such a proposition was from Beshara himself. The facts were that treatment for the skin problem had ceased early that week and the photographs and indeed the evidence of Dr Stewart and Villella is quite contrary to his assertion.

In the end the Board is of the opinion that Beshara's explanation for the damp area and the oozing of blood amounts to sheer invention.

Mr James Williams, representing Beshara, submitted that a vital link in the chain of the Stewards' case is missing. That is, a search by the Stewards of the horse's box, adjoining boxes and immediate surrounds failed to turn up equipment and/or material which necessarily would have been used in the administration.

This submission has superficial attraction but is not by any means fatal to the Stewards case.

First, by their own admissions Messrs Villella and Ashby did not carry out a thorough and systematic search of the entire stable complex and were refused a complete search of Beshara's clothing.

Secondly, not only did Beshara have ample time to inject the horse in the window of opportunity of slightly more than six minutes but he also had time to secrete the equipment probably being a syringe and needle and perhaps some soft material in any number of places in the stable complex.

Thirdly, the physical appearance of the near side jugular region of the horse at 9.00 am, 10.55 am, 11.02 am and shortly after 1.20 pm as revealed by the evidence of Messrs Villella and Ashby and Dr Forbes and Dr Stewart together with the latter's unchallenged opinion as to the cause of the administration as well as Beshara's absurd explanation for the presence of the damp patch and his manufactured scab disruption theory overwhelmingly leads to the conclusion that Beshara used a hypodermic needle to inject the horse's jugular vein and used some material to wipe around the site of the injection.

The Board is satisfied that the facts upon which Dr Stewart based his opinion have been proved and accepts Dr Stewart's opinion that the presence of a subcutaneous swelling over the left jugular vein was the result of a very recent puncture of the jugular vein by a hypodermic needle. Dr Church who was called on behalf of Beshara offered no contrary opinion.

Insofar as the evidence of Chelsea Moss challenges the evidence of Dr Stewart and Dr Forbes the Board rejects her evidence regarding her as an unsatisfactory witness.

She refused to accept that Dr Stewart carried out a physical examination of the jugular area at Moonee Valley.

She had no answer to the unchallenged photographic evidence which showed Dr Stewart's thumb situated slightly above the area where he found evidence of a puncture mark.

Ms Moss also insisted that when the horse arrived at Moonee Valley there was evidence of seepage or weeping from the subject area.

The Board rejects this piece of evidence, preferring the evidence of Dr Forbes who said that there was only evidence of dried blood and she produced photographs to support her evidence.

The Board therefore finds the charge proved and will hear submissions on the question of penalty on Monday, 21 October 2013 at 10.30 am.

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR B. FORREST, Deputy Chairman
MR J. ROSENTHAL**

EXTRACT OF PROCEEDINGS

PENALTY

IN THE MATTER OF: HAPPY TRAILS

TRAINER: PAUL BESHARA

MELBOURNE

MONDAY, 21 OCTOBER 2013

DR C. PANNAM QC, with MR D. BROWN appeared on behalf of
the RVL Stewards

MR J. WILLIAMS appeared on behalf of Mr P. Beshara

CHAIRMAN: In this case, Mr Beshara has been found guilty of an offence, being a breach of Australian Rule of Racing 178E. Accordingly, the provisions of Australian Rule 196(5)(ix) apply which provides that a mandatory minimum penalty of six months' disqualification is the penalty unless Mr Beshara is able to establish the existence of a special circumstance which would have the effect of reducing the mandatory penalty.

The only special circumstance available to be argued by him is contained in paragraph (d) of Local Rule 73A. That is, he would have to satisfy the Board that it is in the interests of justice that the mandatory penalty not apply.

Mr Williams has made a number of submissions which would normally be relevant mitigating factors. However, none of the matters raised by Mr Williams constitute a special circumstance. Therefore, the Board has no option but to impose a period of disqualification of six months, but the commencement of the period of disqualification is deferred until midnight, 28 October 2013.
