

RACING APPEALS AND **DISCIPLINARY BOARD**

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DECISION

RACING VICTORIA STEWARDS and

NEIL DYER

Date of Hearing: 17 January 2017

Panel: Judge Bowman (Chair).

Ms Simonette Foletti appeared as counsel for the stewards. Appearances:

Mr Peter Jurkovsky appeared as counsel for Mr Dyer.

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 of the charge are that on 8 December 2016, Short Changed was entered to run in Race 1 the Jay Bourke Memorial

Plate (1450m) at Kyneton.

In contravention of AR 178E(1), a medication, 'Diurex' was administered by way of injection intravenously to Short Changed on race day prior to Race 1 (noting that the horse was scratched

from the race).

Plea: Guilty.

Decision: Mr Dyer convicted and suspended for a period of 3 months.

> Pursuant to AR 196(6), the Board orders that the commencement of the period of suspension be deferred until midnight, Friday 20 January 2017 (3 clear days from the date of the Board's decision).

Georgie Gavin

Registrar - Racing Appeals and Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

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RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

and

NEIL DYER

RACING VICTORIA CENTRE, FLEMINGTON

TUESDAY, 17 JANUARY 2017

MS S. FOLETTI appeared on behalf of the RVL Stewards

MR P. JURKOVSKY appeared on behalf of Mr N. Dyer

CHAIRMAN: Mr Neil Dyer, you have pleaded guilty to a charge pursuant to AR 178E(1), in that on 8 December 2016, you administered to the horse Short Changed an intravenous injection of the substance Diurex, you being the trainer of Short Changed and that horse being entered in race 1 at Kyneton on that day.

This offence carries with it a mandatory penalty of disqualification for a minimum period of six months, that is, being pursuant to AR 196(5). That penalty is subject to the operation of Local Rule 73A, in the existence of special circumstances. If such exists, the mandatory penalty may be reduced.

Special circumstances are listed in Local Rule 73A as stated. You rely on three of them, namely, the plea of guilty at an early stage, duress causally linked to the breach of the rule which substantially reduced the culpability, and the interests of justice.

I am not persuaded that whilst you have been under domestic distress associated with a partnership break-up and the sad death of your mother that duress causally related to the injection of Diurex has been established. I say that despite the concluding remarks in the report of Dr Robert Power.

The decision to inject the substance seems to have been a calculated one.

"The interests of justice" is a wide phrase that could apply in any case but I am not of the opinion that it has any great impact in the present matter. However, I do find that your early plea of guilty does constitute a special circumstance.

.Dyer 17/1/17

You did acknowledge guilt on the day of the stewards' investigation, albeit after earlier giving untruthful and misleading answers. However, the plea of guilty at an early stage has saved the Stewards and the industry considerable time and expense.

In short, that special circumstance exists and I am at large on the question of penalty. This case can be distinguished from some of the other cases involving breaches of AR 178E in a number of ways. This was the deliberate injection of the substance on race day by the trainer himself. It was not administered in error by a stablehand or done without the knowledge of the trainer. Yours was a deliberate, somewhat flagrant breach of the rule. As stated, you initially gave some misleading and untruthful answers shortly before admitting your guilt.

I accept that this was not an injection of a performance-enhancing substance. Nevertheless, the deliberate giving of an injection on race day is a particularly bad look and damaging to the image of racing. Whilst specific deterrence may not loom large as a factor, general deterrence is an important consideration. The giving of race-day treatment, including injections, is something that must be penalised, and licensed persons must be made aware that a wilful breach of the rule will attract a substantial penalty.

Your record is good, although there are a couple of previous instances of substance breaches, the more recent being a little more than five years ago. Both these offences attracted significant fines.

.Dyer 17/1/17

I have given the matter of what the penalty should be considerable consideration. This is certainly not a case for a fine. With some misgivings, I have decided to impose a penalty similar to that in the case of Brendan McCarthy. That was also a case involving a race-day injection. Special circumstances were also found in that case. The Board, presided over by Judge Lewis, imposed a period of suspension for a period of three months and I shall do likewise. You are suspended for a period of three months. I understand the maximum period for the removal of horses from the premises is seven days. By consent, it will be three days prior to the commencement of the three-month period of suspension.

.Dyer 17/1/17