

Case number: NST-E20-264864

Case Title: RL v Equestrian Australia

DETERMINATION

NATIONAL SPORTS TRIBUNAL

General Division

Sitting in the following composition:

Panel Member

Venetia Bennett

in the arbitration between

RL (*Applicant*)

And

Equestrian Australia (*Respondent*)

Represented by Andrew Hamilton, A/g CEO, Equestrian Australia



PARTIES

1. The Applicant is a member of Equestrian Australia. The Respondent, Equestrian Australia, is the governing body for the sport of equestrian in Australia.

INTRODUCTION

2. As the sport's governing body, the Respondent is responsible for administering various policies for the sport of equestrian in Australia. The policies administered by the Respondent relevantly include the "FEI Equine Anti-Doping and Controlled Medication Regulations" (**EADCM Regulations**) which incorporate the "FEI Equine Controlled Medication Rules" (**ECM Rules**), and the "Equestrian Australia Medication Control Policy".
3. The Respondent asserts that the Applicant has committed the following "ECM Rule Violation", which was the subject of a Notification of Equine Controlled Medication Rule Violation - Adverse Analytical Finding dated 8 May 2020 (**Notification**):
 - Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample (Article 2.1 of the ECM Rules).
4. The Notification informed the Applicant that, amongst other things, she could accept the following consequences by electing to have the matter dealt with in accordance with the "Administrative Procedure" set out in Article 8.3 of the ECM Rules:
 - disqualification of the Applicant and the relevant horse from the relevant event, and forfeiture of all prizes and prize money won at the event;
 - a fine of \$1,500; and
 - costs of \$1,300 (which would increase to \$2,600 in the event that the Applicant requested that the horse's B sample be analysed).
5. As she is entitled to do under the EADCM Regulations, by letter dated 23 May 2020, the Applicant did not elect to have the matter dealt with in accordance with the "Administrative Procedure", and instead requested that the Respondent convene a Disciplinary Tribunal to determine the allegations against her.

NST JURISDICTION

6. The NST has jurisdiction under s 23 of the *National Sports Tribunal Act (Cth) 2019* (**NST Act**) to determine this dispute. Section 23 of the *NST Act* provides that if a dispute arises between a person bound by a sporting body's policies and the sporting body, and the person and the sporting body agree in writing to refer the dispute to the General Division of the NST, and either the dispute is of a kind prescribed by the rules or is approved by the CEO in writing as a dispute to which this section applies, the person or the sporting body may apply to the NST for arbitration of the dispute.



7. Whilst aspects of the matter are analogous to the anti-doping framework for athletes in Australia, the dispute is in fact of a disciplinary nature between the Applicant (a person bound by a sporting body's policies) and the Respondent (a sporting body).
8. As a disciplinary dispute, the dispute is of a kind prescribed under r 7 of the National Sports Tribunal Rule 2019 (**NST Rule**) for the purpose of s 23 of the *NST Act*.
9. By application dated August 2020 (received by the NST on 2 September 2020), the parties agreed in writing to refer the matter to the NST.
10. The CEO of the NST appointed Venetia Bennett as the sole Tribunal Member for the purposes of this arbitration. Neither party objected to the composition of the Tribunal.

FACTUAL BACKGROUND

11. Between 5 and 7 December 2019, the Applicant competed at an equestrian event organised by the Respondent in Werribee, Victoria (**Event**). The Event was subject to and governed by the Respondent's policies, including the EADCM Regulations and ECM Rules.
12. At 11.34am on 5 December 2019, the Applicant was notified by a form entitled "Equestrian Australia –Medication Control Notification Form" (**Medication Control Notice**) that a horse for which the Applicant was responsible (the **Horse**) had been selected to give a sample. The Medication Control Notice recorded that Horse had been randomly selected for sampling as the winner of the (**Competition**). The Horse was not ridden by the Applicant in the Competition; it was ridden by a junior rider. The Applicant was identified on the Medication Control Notice as the "representative" of and "person responsible" for the Horse (and for the junior rider).
13. On about 31 January 2020, the Respondent was notified that the Horse had returned positive blood and urine samples for the substance Metformin.
14. By the Notification from Equestrian Australia dated 8 May 2020, the Respondent informed the Applicant that:
 - in accordance with Article 7.1.4 of the ECM Rules, an Adverse Analytical Finding had been made as follows (relevantly):
 - Person Responsible: The Applicant
 - Date of sample: 5 December 2019
 - Controlled Medication: Metformin
 - the ECM Rule violated was Article 2.1 - the presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample;
 - she had 14 days from the date of the Notification to request the analysis of the B Sample, failing which, she may be deemed to have waived her right to request analysis of the B Sample;



- she had the right to request that the matter be heard by the Equestrian Australia Disciplinary Tribunal, and that this right must be exercised in writing to the Acting CEO of Equestrian Australia within 14 days after the date of the Notification;
- she could elect to have the matter dealt with in accordance with the "Administrative Procedure" set out in Article 8.3 of the ECM Rules;
- she may provide a written explanation about the overall circumstances of the case or dispute, within 14 days of the date of the Notification;
- no mandatory Provisional Suspension applied in this case;
- she may voluntarily accept a Provisional Suspension pending the resolution of the matter;
- she may promptly admit the ECM Rule violation and, in accordance with Article 10.10.3 of the ECM Rules, she may request the early commencement of the period of ineligibility;
- she may cooperate and provide substantial assistance in discovering or establishing an ECM Rule violation.

15. In respect of the "Administrative Procedure", the Notification informed the Applicant that:

- if she elected to have a hearing before the Equestrian Australia Disciplinary Tribunal, Article 10 of the ECM Rules would apply at the discretion of the hearing panel, and the Administrative Procedure would not apply;
- if the "Administrative Procedure" applied, the following consequences would be imposed:
 - disqualification of the Applicant and the relevant horse from the relevant event, and forfeiture of all prizes and prize money won at the event;
 - a fine of \$1,500; and
 - costs of \$1,300 (which would increase to \$2,600 in the event that the Applicant requested that the horse's B sample be analysed).

16. By letter to the Acting CEO of Equestrian Australia dated 23 May 2020, the Applicant requested that the Respondent convene a Disciplinary Tribunal to determine the allegations against her.

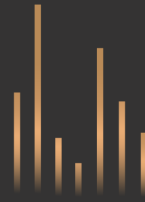
17. In about July 2020, the Respondent enquired with the NST as to whether the NST may be able to deal with the matter. The Tribunal understands that the enquiry by the Respondent to the NST was made in order to meet the Applicant's request to convene a Disciplinary Tribunal to determine the allegations against her. The parties subsequently agreed by written application dated August 2020 to refer the matter to the NST.

18. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties it refers in this Determination only to the submissions and evidence it considers necessary to explain its reasoning.



PROCEEDINGS BEFORE THE NST

19. After receiving the parties' application to hear the dispute, the NST conducted a preliminary conference and issued directions as to the provision of the parties' submissions. The parties agreed to the Terms of the Arbitration, and accepted that the matter would be conducted in accordance with and governed by the *NST Act*, the NST Rule and the NST (Practice and Procedure) Determination 2020 as provided for by s 29 of the *NST Act*.
20. The Applicant filed her submissions on about 27 October 2020. The Respondent filed its submissions on about 5 November 2020, and the Applicant filed short submissions in reply on about 23 November 2020.
21. The matter was heard (virtually) on 4 December 2020. No witnesses were called by the parties. Neither party engaged legal representation for the hearing.
22. At the hearing on 4 December 2020, the Tribunal informed the parties that it would be assisted by hearing evidence from an equine veterinarian with respect to various matters. The Tribunal requested that the NST appoint an expert under s 68(1)(b) of the *NST Act* to give evidence on matters including the following:
 - What is Metformin most commonly used for?
 - Are there any alternative substances that are not identified by FEI as Prohibited Substances (In Competition)?
 - If applicable, do these / does this substance/s offer the same benefits to horses?
 - What is laminitis?
 - How is it caused?
 - How is it treated?
 - Can it be treated pre-emptively to prevent onset of symptoms?
 - What is the usual dose of Metformin used to treat (and, if different, to pre-emptively treat) laminitis?
 - For how long does Metformin stay in the bloodstream / urine of a horse?
 - Is there is an identified "withholding period"?
 - What likely effect would a dose of Metformin given in full (4 tablets, twice daily) on 24 November and reduced by 1 tablet per dose each day to 1 tablet, twice daily on 27 November likely have for a horse by 5 December?
 - Is a dose of Metformin given in full (4 tablets, twice daily) on 24 November and reduced by 1 tablet per dose each day to 1 tablet, twice daily on 27 November likely to affect a horse's performance on 5 December?



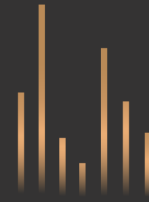
23. The NST appointed Dr Emma McConnell, a Registered Equine Medicine Specialist and Senior Lecturer at Murdoch University.
24. On 14 December 2020, the Tribunal convened a second hearing to hear expert evidence from Dr McConnell and hear closing submissions from the parties. Shortly prior to the hearing, the NST circulated a short written expert opinion prepared by Dr McConnell in respect of the matters put to her. During the hearing, Dr McConnell answered further questions from the Tribunal and the parties. Dr McConnell clarified an aspect of her written opinion by email dated 5 January 2021.
25. Following Dr McConnell's evidence, the parties made short, oral closing submissions, before the matter was adjourned to allow the Tribunal to reach a written determination.

APPLICABLE RULES

26. The Applicant is a Member of Equestrian Australia, and was a participant in the Event. It is not in dispute that the Applicant was at the relevant time of the Event subject to the EADCM Regulations and the ECM Rules.
27. The EADCM Regulations have been adopted by FEI (and by the Respondent as the Australian sporting body affiliated with FEI) in the spirit of the World Anti-Doping Code. To this end, the EADCM Regulations state that the intention of the Regulations is "to preserve what is intrinsically valuable about sport", including (amongst others) "ethics, fair play and honesty", "health" and "respect for rules and laws". The EADCM Regulations further state that "Doping is fundamentally contrary to the spirit of sport".
28. The EADCM Regulations contain both the FEI Anti-Doping Rules and the ECM Rules. The EADCM Regulations effectively draw a distinction between "Banned Substances" and "Banned Methods" (which are addressed in the FEI Anti-Doping Rules) and "Controlled Medication Substances" and "Controlled Medication Methods", which are subject to the ECM Rules. Both Banned Substances and Controlled Medication Substances are referred to as "Prohibited Substances".
29. Banned Substances are prohibited at all times. Controlled Medication Substances are prohibited In-Competition.
30. The FEI lists Metformin in the Equine Prohibited Substances List as a Prohibited Substance – Controlled Medication. The applicable rules of the EADCM Regulations to this dispute are therefore the ECM Rules.

ECM Rules

31. The ECM Rules provide at their introduction:
 1. *These ECM Rules have been adopted in recognition of the following fundamental imperatives of equestrian sport:*

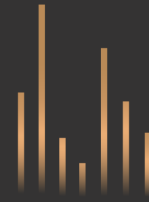


- ...It is therefore the FEI's responsibility ... to ensure that, at every stage of the governance, regulation, administration and practice of the sport, the welfare of the Horse is paramount.
 - ...
 - In particular, all treatments must be given in the best health and welfare interests of the Horse, and not for any other reasons.
 - ...
 - Every treatment must be fully justifiable based on the medical condition of the Horse receiving the treatment.
 - ...
2. These ECM Rules are to be interpreted and applied (including where an issue arises that is not expressly provided for in these ECM Rules) by reference to the need to follow the FEI Medication Code and protect and advance the fundamental imperatives described above. This purposive interpretation and application will take precedence over any strict legal or technical interpretations that may otherwise be proposed.
32. The Respondent asserts that the Applicant has committed an ECM Rule Violation under Article 2.1. Article 2.1 of the ECM Rules creates an ECM Rule Violation of "Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample", and provides (relevantly, emphasis added):

Article 2.1.1 *It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1.*

Article 2.1.2 *Sufficient proof of a Rule violation under Article 2.1 is established by any of the following where there is no valid Veterinary Form: (i) presence of a Controlled Medication Substance and/or its Metabolites or Markers in the Horse's A Sample where the Person Responsible waives analysis of the B Sample and the B Sample is not analysed; (ii) or, where the Horse's B Sample is analysed and the analysis of the Horse's B Sample confirms the presence of the Controlled Medication Substance and/or its Metabolites or Markers found in the Horse's A Sample during an Event. An Adverse Analytical Finding may be established by a positive blood or urine Sample.*

Article 2.1.3 *Excepting those Controlled Medication Substances for which a quantitative threshold is specifically identified in the Equine Prohibited Substances List or where a valid Veterinary Form has been submitted, the presence of any quantity of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample during an Event shall constitute an ECM Rule violation.*



33. Appendix 1 to the ECM Rules sets out definitions of terms used in the Rules. These definitions include:

Competition. As defined in the FEI General Regulations: 'Refers to each individual class in which Athletes are placed in an order of merit and for which prizes may be awarded'.

Controlled Medication Substance. Any substance, or its Metabolites or Markers, so described in the Equine Prohibited Substances List. Controlled Medication Substances are considered therapeutic and/or commonly used in equine medicine substances, and considered to have:

- (a) the potential to affect performance, and/or
- (b) a potential welfare risk to the Horse.

Controlled Medication Substances are prohibited In-Competition, but may be exceptionally permitted In-Competition when their use has been authorised by the appropriate Veterinary Form.

Disqualification, Disqualify, or Disqualified. A consequence of an EADCM Regulation violation whereby results in a particular Competition or Event are invalidated, with all resulting consequences including forfeiture of any medals, points or prizes.

Event. As defined in the FEI General Regulations: "A complete meeting, 'Show', 'Championship' or 'Games'. Events may be organised for one or more than one Discipline.

Fine. A consequence of an EADCM violation whereby a Person Responsible and/or member of the Support Personnel receives a financial penalty.

Horse. A Horse, pony or other member of the genus *Equus* competing in an FEI discipline. A Horse shall be born from a mare.

In-Competition. The period commencing one (1) hour before the beginning of the first Horse inspection and terminating half an hour after the announcement of the final results of the last Competition at the Event. This period may vary for the Olympic and Paralympic Games, as determined by the applicable rules.

Ineligibility. A consequence of an EADCM Regulations violation whereby the Person Responsible, Horse and/or member of the Support Personnel is barred for a specified period of time from participating in any activities surrounding any Competition or Event or other activity or funding as provided in the applicable rules and, only if so specified in the FEI Tribunal Decision, from participating in or attending any Competition or Event in any capacity including as a spectator. ...

Marker. A compound, group of compounds or biological parameter(s) that indicates the Use of a Prohibited Substance or a Prohibited Method.

Metabolite. Any substance produced by a biotransformation process.

Owner. Person or entity having a property interest in whole or in part of one or more horses.



Person Responsible. ... For all other EADCM Regulation violations [that is, ECM Rule Violations], the Person Responsible shall be the Horse's Owner.

Prohibited Substances. Substances that are not permitted for Use in the competition Horse, either a) during competition (Controlled Medication Substances) or b) at any time (Banned Substances). Prohibited Substances fall into two categories, Banned Substances and Controlled Medication Substances.

34. Pursuant to Article 3.1, the standard of proof shall be whether the ECM Rule Violation is established (by the Respondent) on the balance of probabilities.

Sanction

35. Article 9.1 provides for automatic disqualification of individual results in the event of an ECM Rule Violation. Article 9.1 states (emphasis added):

For cases other than those prosecuted under the Administrative Procedure, a violation of these ECM Rules in connection with a Test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition with all resulting consequences, including forfeiture of any related medals, points and prizes. Where applicable, consequences to teams are detailed in Article 11. Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or eliminate[ion] shall under no circumstances eliminate the automatic Disqualification of Individual Results mandated by this Article 9.

36. A range of further sanctions for ECM Rule Violations is set out in Article 10 of the ECM Rules. The relevant rules provide as follows (emphasis added):

Article 10.1.2 *At Events other than [Olympic Games, Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games]: an ECM Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.4.*

Article 10.1.3 *Notwithstanding the above, for all Events, including but not limited to the Olympic and Paralympic Games, exceptional circumstances may be considered. Generally, and subject to 10.1.4 and 10.1.5 below, all Results from Competitions in which the Person Responsible or Horse participated prior to Sample collection shall be Disqualified unless it can be demonstrated that such Results were not likely to have been affected by the ECM Rule violation.*

Article 10.1.4 *If the Person Responsible establishes that he bears No Fault or Negligence for the ECM Rule violation, the Person Responsible's individual results in other Competitions shall not be Disqualified unless the Person Responsible's results in Competitions other than the Competition in which the ECM Rule violation occurred were likely to have been affected by the Person Responsible's ECM Rule violation.*



Article 10.1.5 *In addition, the Person Responsible's Horse may also be Disqualified from the entire Event with all consequences, including forfeiture of all medals, points, and prizes even if earned while being ridden by someone other than the Person Responsible, if the Horse's results in Competitions other than the Competition in which the ECM Rule violation occurred were likely to have been affected by the ECM Rule violation.*

Article 10.2

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.5 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 [AUD ~\$22,000] and appropriate legal costs shall also be imposed for any Controlled Medication violation.

37. Articles 10.4 and 10.5 provide that a period of Ineligibility may be eliminated or reduced where there is No Fault or Negligence or No Significant Fault or Negligence. Article 10.6 allows for elimination, reduction or suspension of a period of Ineligibility in certain circumstances (which do not apply here), including substantial assistance and admission of an ECM Rule Violation in the absence of other evidence.

38. Article 10.10 addresses the commencement of any period of Ineligibility. In the usual course, a period of Ineligibility will commence on the date of the Tribunal's decision, subject to the provisions of Article 10.10, which provides (relevantly):

Article 10.10.2 *Where there have been substantial delays in the hearing process or other aspects of Medication Control not attributable to the Person Responsible ... alleged to have committed the Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another ECM Rule violation last occurred. All competitive results achieved during the period of Ineligibility including retroactive Ineligibility shall be Disqualified.*

Article 10.10.3 *Where the Person Responsible ... promptly (which for the Person Responsible, in all circumstances, means before the Person Responsible competes again) admits the ECM Rule violation after being confronted with the Rule violation by [Equestrian Australia], the period of Ineligibility may start as early as the date of Sample collection or the date on which another ECM Rule violation last occurred. In each case, however, where this Article is applied, the Person who committed the ECM Rule violation shall serve at least one-half of the period of Ineligibility going forward from the date Ineligibility is imposed or accepted.*

MAIN SUBMISSIONS OF THE PARTIES

39. The Applicant admits that she:

- is a Member of Equestrian Australia and subject to its rules, including the EADCM Regulations and ECM Rules;
- is the "Person Responsible" for the Horse pursuant to the ECM Rules;



- administered Metformin to the Horse prior to the Event, in the following amounts on the following dates:
 - 4 tablets per dose, administered twice daily, between 16 and 24 November 2019; and
 - between 25 and 27 November 2019, the dosage decreased by 1 tablet per dose, administered twice daily (with the effect that on 25 November, the Horse was given 3 tablets twice a day, and on 27 November, the Horse was given 1 tablet twice a day);
 - did not administer Metformin to the Horse between 28 November 2019 and the end of the Event;
 - on the basis of her understanding (from veterinarians) regarding the withholding periods for Metformin, at no time did she expect that Metformin would remain in the Horse's body or system, nor did she expect (or intend) for the Metformin to provide the Horse with any performance benefit at the Event.
40. The Applicant submits that she administered Metformin on the advice of a veterinarian to pre-emptively treat the Horse for (and prevent the onset of) stress-related laminitis arising from transporting the Horse from Western Australia to Victoria for the Event. The Applicant gave evidence that the Horse had suffered from laminitis in November 2018, and that the welfare of the Horse (as opposed to its performance at the Event) was at the forefront of her mind in preparing the Horse for travel to Victoria, including in administering Metformin.
41. The Applicant refers to information that she says she has obtained from numerous veterinarians and associates in the equestrian industry as to the withholding period for Metformin given to Horses to ensure that a positive test is not recorded In-Competition. The information relied on by the Applicant is conflicting, and ranges from 1 day to 72 hours to 7 days. The substance of this conflicting information has been ignored by the Tribunal.
42. The Applicant further submits that the Horse competed at the Event on his own merit (that is, that the Metformin administered to the Horse in the period prior to the Event would not have had any effect on his performance at the Event).
43. The Respondent relies on the strict liability nature of the ECM Rules, and submits that the Certificates of Analysis Nos. ARF19/3455-B and ARF19/3456-B dated 31 January 2020 substantiate a breach of the EADCM Regulations (and ECM Rules).
44. The Respondent submits (by statement from its veterinarian) that the ECM Rules do not provide an avenue for therapeutic use exemptions to be given for Controlled Substances (and particularly, do not permit retrospective therapeutic use exemptions). Instead, a process is outlined in the ECM Rules (and the rules for an Event organised by Equestrian Australia) for emergency use of controlled medications, to be approved by the appointed FEI veterinarian at the Event – a process which the Applicant did not follow.



45. The Respondent did not take issue with the Applicant's evidence regarding the dosage of Metformin administered to the Horse. The Respondent also accepted during the hearing that there is no specified withholding period for Metformin.
46. The Respondent submits that the Applicant's breaches of the ECM Rules are (in the Respondent's eye), very grave, and asks the Tribunal to consider the wider impact the Applicant's behaviour may have on Equestrian Australia, its Members and its culture. In particular, the Respondent suggests that such offences contribute significantly to a harmful environment / culture where rules are allowed to be broken. The Respondent submits that the disciplinary measures imposed upon the Applicant must be reflective of the seriousness of the breaches and the wider consequences on the equestrian sporting community.
47. The Respondent seeks from the Tribunal the following sanctions (which it submits are consistent with comparable matters determined by Equestrian Australia, being case references "ARF18/2508-B & ARF18/2510-B" and "ARF19/1838-B"):
 - disqualification from the Event and forfeiture of all prizes and prized money won at the Event;
 - fine of \$1,500; and
 - costs of \$1,300.
48. The Respondent submits that it has incurred costs associated with the ECM Rule Violations (including the costs of testing, administration and managing the dispute), but explained during the hearing that it has not incurred any external legal costs.
49. The Tribunal notes that the Applicant also submitted that the matter had been significantly delayed (through no fault of her own), and the delay had caused her to suffer significant distress over a lengthy period of time. The Respondent acknowledged that the matter had been delayed, attributing the delay to its internal issues as well as the impact of the COVID-19 pandemic, and acknowledged that the delay would have extended the Applicant's distress.

MERITS

50. As a Member of Equestrian Australia and a competitor at the Event, the Applicant was subject to the EADCM Regulations and ECM Rules. The Applicant has not previously recorded an ECM Rule Violation (or any other breach of the EADCM Regulations).
51. The Applicant has admitted that she administered Metformin to the Horse, and it is common ground that the Applicant committed the ECM Rule Violation. The use of Metformin by the Horse at the Event was not authorised by the "appropriate Veterinary Form". The only issue in dispute is the applicable sanction.
52. As the Applicant did not elect to proceed pursuant to the Administrative Procedure, the ECM Rules (that is, Article 10) apply with respect to sanction. Pursuant to Article 10 of



the ECM Rules, the relevant sanctions for consideration are disqualification, ineligibility, fine and costs.

53. The Applicant has not asserted that she bears No Fault or Negligence (or No Significant Fault or Negligence) for the ECM Rule Violations. As the Applicant admits to having administered Metformin to the Horse, the Tribunal finds that it was not available to the Applicant to argue that she bears No Fault or Negligence or No Significant Fault or Negligence, and accordingly, Articles 10.1.4, 10.4 and 10.5 do not apply.
54. As an overarching consideration with respect to applicable sanction, the Tribunal accepts the Applicant's evidence as to her motivation for administering Metformin to the Horse. Consistent with the principles underlying the ECM Rules, it is apparent to the Tribunal (and the Tribunal accepts) that the Applicant, at every stage prior to and during the Event, had paramount in her mind the health and welfare of the Horse.
55. Consistent with the introductory wording to the ECM Rules, where an issue is not expressly provided for in the ECM Rules, the Tribunal has adopted a purposive interpretation which accounts for its above finding with respect to the Applicant's intentions to provide for the welfare of the Horse.

Disqualification

56. The Applicant herself competed with the Horse at the Event. The Horse also competed at the Event, including during the relevant Competition, while being ridden by a different person (a child).
57. Article 9.1 of the ECM Rules is prescriptive in its effect. An ECM Rule Violation automatically results in disqualification of the result obtained in the Competition in which the Horse was tested and in which the Applicant and the Horse competed as a combination (with all resulting consequences including, if applicable, the forfeiture of any related medals, points and prizes). However, the Tribunal understands that the Applicant was not herself riding the Horse in the Competition during which the Horse was selected to give a Sample.
58. In accordance with Article 10.1.2 of the ECM Rules, had the Applicant been awarded any medals, points or prizes at the event while riding a different horse, the (most likely) consequence of the ECM Rule Violation is that the Applicant would have been disqualified, and would have forfeited any medals, points and prizes earned at the Event. The Tribunal understands, however, that the only medals, points or prizes won at the Event by either the Applicant or the Horse were won by the Horse when ridden by a junior rider.
59. There is some discretion under Articles 10.1.3 and 10.1.5 with respect to disqualification in circumstances where the Horse is not ridden by the Person Responsible at the relevant time. Article 10.1.3 permits the Tribunal to consider "exceptional circumstances", stating that "generally, and subject to 10.1.4 and 10.1.5 below, all Results from Competitions in which the ... Horse participated prior to Sample collection



shall be Disqualified unless it can be demonstrated that such Results were not likely to have been affected by the ECM Rule violation".

60. Similarly, Article 10.1.5 of the ECM Rules provides:

In addition, the Person Responsible's Horse may also be Disqualified from the entire Event with all consequences, including forfeiture of all medals, points, and prizes even if earned while being ridden by someone other than the Person Responsible, if the Horse's results in Competitions other than the Competition in which the ECM Rule violation occurred were likely to have been affected by the ECM Rule violation.

61. A key consideration for the Tribunal is therefore whether the Horse's performance and the results obtained by the Horse during the Event, and particularly during the relevant Competition in which the junior rider competed, are likely to have been affected by the ECM Rule Violation – that is, by the administration of Metformin in November 2019.

62. The unequivocal evidence of Dr McConnell is that:

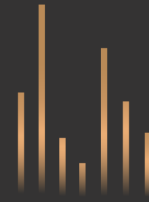
- a horse that had been administered with Metformin at a dose of 4 tablets twice daily and had last been administered Metformin at a dose of 1 tablet in the morning and evening on 27 November 2019, would not, "8 days later" (that is, by 5 December 2019), have experienced any effect from Metformin; and
- a horse's performance on 5 December 2019, is not likely to have been affected by a dosage of Metformin last given on 27 November 2019.

63. Dr McConnell further opined that Metformin is unlikely to affect the performance of a horse even during the period that it is administered with the recommended dose.

64. The clear evidence from Dr McConnell is therefore that the dosage of Metformin given to the Horse in November 2019 would have had no effect on the Horse's performance in the Competition.

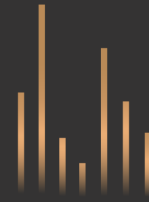
65. The Tribunal requested from the Respondent any comparable cases (whether from Australia or from international application of the ECM Rules) that may assist the Tribunal in considering an appropriate sanction in the circumstances. Whilst the Respondent helpfully provided two comparable decisions made under the ECM Rules (albeit cases where the Administrative Procedure was applied), neither considered the relevant matters pertaining to disqualification in circumstances where a tribunal had been asked to determine the matter, or where the "person responsible" did not ride the horse during the relevant competition.

66. Taking into account the clear evidence of Dr McConnell that the Metformin administered to the Horse in November 2019 is not likely to have affected its performance during the Event, or the Results of the Competition, as well as the guidance provided in the introductory wording to the ECM Rules which directs the Tribunal to adopt a purposive interpretation of the ECM Rules, the Tribunal does not consider disqualification of the Horse from the Event (and the resulting consequences including the forfeiture of any medals, points or prizes – that is, any medals, points or prizes won by the junior rider) to be an appropriate sanction in the circumstances.



Period of ineligibility

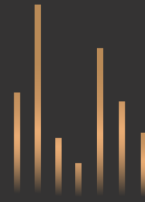
67. Article 10.2 of the ECM Rules provides for a period of ineligibility of 6 months in the event of an ECM Rule Violation under Article 2.1, subject to reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6. Article 10.2 is prescriptive in respect of the Tribunal being required to impose a period of ineligibility for an ECM Rule Violation.
68. Article 10.2 does not, however, prescribe to whom the period of ineligibility applies. The definition of "Ineligibility" says that a period of ineligibility may be imposed on "the Person Responsible, the Horse and/or member of Support Personnel", which suggests that a hearing panel may impose a period of ineligibility on one or more of these individuals, as the circumstances dictate. No guidance is given in the ECM Rules (or EADCM Regulations) as to when it may be appropriate to sanction both the Person Responsible and Horse.
69. In the absence of any direction under the EADCM Regulations or ECM Rules, and in view of Dr McConnell's opinion regarding the effect on the Horse of the Applicant's administration of Metformin, the Tribunal determines that only the Applicant (and not the Horse) be given a period of ineligibility.
70. Consistent with the comments above regarding No Fault or Negligence (and No Significant Fault or Negligence), the Applicant is unable to avail herself of Articles 10.4 or 10.5 of the ECM Rules.
71. In circumstances where it is not open to eliminate or reduce the period of ineligibility (as is the case here), the Tribunal's discretion is limited to specifying the date upon which the period of ineligibility will commence.
72. The Applicant has referred in her written and oral submissions to the Tribunal to the negative impact of the delay in progressing this matter to determination. The Respondent explained the reasons for delay as being a combination of internal administrative issues at Equestrian Australia and the difficulties associated with the COVID-19 pandemic. The Tribunal is satisfied that the delay has been substantial - particularly in relation to the Respondent providing initial notice to the Applicant of the adverse analytical finding, but also in convening a disciplinary tribunal to determine the matter, and that the delay is not attributable to the Applicant. Pursuant to Article 10.10.2, the Tribunal may start the period of ineligibility at an earlier date, commencing as early as the date of Sample collection (in this case, 5 December 2019).
73. Further, it is apparent from the Applicant's letter to the Respondent dated 23 May 2020, that she promptly admitted the ECM Rule Violation after being confronted with the rule violation by Equestrian Australia. Under Article 10.10.3, the Tribunal may therefore start the period of ineligibility at an earlier date, again commencing as early as the date of Sample collection. However, if this article is applied, the Applicant would be required to serve at least one-half of the period of ineligibility going forward from the date that it is imposed (ie, the date of this decision).
74. In view of the substantial delay in progressing this matter, which delay is not attributable to the Applicant, the Tribunal considers it is appropriate for the period of ineligibility to



commence on a date proximate to when the Respondent could have notified the Applicant of the adverse analytical finding. The period of ineligibility will therefore commence on 1 February 2020.

Fine and costs

75. The ECM Rules provide that a Fine of up to CHF 15,000 and "appropriate legal costs" shall also be imposed for any Controlled Medication violation (Article 10.2).
76. Whilst the Tribunal accepts that the Respondent has incurred costs associated with administering the EADCM Regulations and managing the Applicant's case, it has not incurred any "legal costs" in the ordinary sense of those words. If the Respondent had in fact incurred legal costs, the Tribunal would be required to make an order for the Applicant to pay "appropriate" legal costs. In the circumstances, where the Respondent has not in fact incurred any legal costs, the Tribunal is unable to ascertain what "appropriate" legal costs may be. Accordingly, no order for costs is made.
77. Article 10.2 requires the Tribunal to impose a fine on the Applicant. In the absence of any contrary submissions or evidence from the parties, the Tribunal accepts that an appropriate fine in the circumstances is \$1,500, consistent with the previous decisions of Equestrian Australia in comparable matters where the Administrative Procedure had been implemented.



THE TRIBUNAL THEREFORE DETERMINES:

1. *That the Applicant has committed the following ECM Rule Violation (Article 2.1 of the FEI Equine Controlled Medication Rules):*

Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample on 5 December 2019.

2. *That a fine of \$1,500 be imposed.*
3. *That a period of 6 months ineligibility be imposed upon the Applicant, commencing 1 February 2020. During this period, the Applicant is not barred from attending, participating in the organisation of, or preparing horses for any Competition or Event, including as a spectator.*
4. *That any results achieved by the Applicant during the period 1 February 2020 to 31 July 2020 be disqualified with all resulting consequences including the forfeiture of any medals, points or prizes.*

Date: 5 January 2021



Venetia Bennett