

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-86	
Name	Jason Schmidt	
Panel	Mr K J O'Brien AM (Chairperson) Ms J Maiden (Panel Member) Mr D Guppy (Panel Member)	
Code	Greyhounds	
Rule	Greyhounds Australasian Rule 141(1)(a) <i>The owner, trainer or other person in charge of a greyhound:</i> <i>(a) Nominated to compete in an Event;</i> <i>Must present the greyhound free of any prohibited substance.</i>	
Penalty Notice number	PN-009603	
Appearances & Representation	Applicant	Self represented
	Respondent	Queensland Racing Integrity Commission Ms A Turner instructed by Mr W Kelly
Hearing Date	13 March 2024	
Decision Date	13 March 2024	
Decision <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(b) the Racing decision is varied to a period of nine months disqualification to be suspended for an operational period of 12 months, during which time the Applicant must not commit any further offences against the requirements of GAR141 and further that the Applicant should in the circumstances be fined the sum of \$2,000.	
Case References	<i>Wallace v Queensland Racing</i> [2007] QDC 168 Queensland Racing Integrity Commission Stewards' Report, Andrew Bobak, 15 July 2022	

Queensland Racing Integrity Commission Stewards' Report, Ken Boody,
16 November 2022

Johannes (Hank) Vanderburg v Greyhound Racing NSW, RATNSW, 25
November 2020

Greyhound Welfare & Integrity Commission Disciplinary Action
Decision NSW, Paul Camilleri, 19 October 2021

Greyhound Welfare & Integrity Commission Disciplinary Action
Decision NSW, David Meiers, 10 March 2023

Greyhound Racing Victoria v Joseph Sultana, VRT, 10 May 2022

Queensland Racing Integrity Commission Stewards' Report, Dennis
Moore, 21 September 2022

Greyhound Racing Victoria v Garry Anders, VRT, 20 April 2022

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Decision NSW, Charlie Gatt, 12 February 2024

Greyhound Welfare & Integrity Commission Disciplinary Action
Decision NSW, Neville Broadbent, 12 February 2024

Greyhound Welfare & Integrity Commission Disciplinary Action
Decision NSW, Ashley Marshall, 19 February 2024

Greyhound Racing Victoria v David Ferguson, VRT, 21 September 2021

Greyhound Racing Victoria v Lachlan Vine, VRT, 7 June 2021

Greyhound Racing Victoria v Braden Finn, VRT, 5 May 2021

Queensland Racing Integrity Commission Stewards' Report, Trent
Thorley, 16 November 2022

Queensland Racing Integrity Commission Stewards' Report, T Nicholls,
3 March 2021

Queensland Racing Integrity Commission Stewards' Report, Anthony
Hoyland, 18 September 2020

Reasons for Decision

- [1] The Applicant in this matter is Mr Jason Schmidt. Mr Schmidt is a registered greyhound trainer and breeder. On the 7 December 2023, the Applicant presented one of his greyhounds, Red Cloud to compete in race 10 on the Ipswich Greyhound Racing Club programme.
- [2] A post-race urine sample taken from the dog was found to contain the permanently banned prohibited substances Codeine, Morphine and Norcodine.¹ On the 24 January 2024 the presence of those substances in the sample was confirmed by the Racing Analytical Services Laboratory².
- [3] Greyhound Stewards subsequently conducted an Inquiry into the matter and on the 27 February 2024 the Applicant was charged with an offence against Greyhounds Australasia Racing Rule 141(1)(a), which requires that the owner, trainer or other person in charge of a greyhound nominated to compete in an event must present the Greyhound free of any prohibited substance. Failure to do so renders the person guilty of an offence.³
- [4] Following the Inquiry, the Applicant pleaded guilty to the charge, and a penalty of nine months disqualification of licence was imposed. Pursuant to section 252AB (1) of the *Racing Integrity Act 2016* the Applicant now seeks a review of that decision.
- [5] The Applicant contends that the penalty was excessive having regard to his long history in the industry, his good disciplinary record, the number of greyhounds he trains, the absence of any moral culpability in his offending, the adverse mental health issues he has suffered and the significant financial impacts that would flow from the disqualification order. It contends also that the penalty imposed is excessive having regard to other comparable decisions.⁴
- [6] In determining a penalty for the Applicant, the Stewards firstly made reference to the “starting position” under the Queensland Racing Integrity Commission Greyhound Racing Penalty Guidelines, for a first offence of this nature, that being a disqualification period of 12 months. Because of his plea of guilty this was then reduced by 25% to a period of nine months disqualification.
- [7] The Stewards referred to the Applicant’s “significant time in the greyhound racing industry, being approximately 15 years as a trainer, approximately 30 years within the industry”.⁵
- [8] In proceeding to then impose the nine months disqualification, the Stewards said:
- “We've also taken into consideration your disciplinary history, noting you have no prior breaches of any nature and in fact, only have one quite minor matter on your history. Your good character together with your forthright evidence and cooperation throughout this inquiry, your personal circumstances, specifically that you derive your income solely from the greyhound racing industry, the number of greyhounds in your care and custody being approximately 100 at this stage.”⁶
- Stewards have also considered though the nature of the permanently banned prohibited substances, which is codeine, morphine and narceine noting they're permanently banned prohibited substances across all codes of racing and a clear message therefore needs to be sent

¹ Racing Science Centre Certificate of Analysis RSC24-064

² Racing Analytical Services Limited Certificate of Analysis RS2400767

³ Greyhounds Australasia Rule 141(3)

⁴ Applicant’s submissions 5 March 2024

⁵ Transcript of Stewards Inquiry 27 February 2024, lines 1442 - 1444

⁶ Transcript of Stewards Inquiry 27 February 2024, lines 1445 - 1451

to the industry that these substances will be - not be tolerated within the industry. The need to maintain the integrity of greyhound racing and to ensure that a level playing field for all participants.”⁷

“The Stewards had to consider both the specific deterrence to you, Mr. Schmidt, which we had to say was at the lower end because we do not believe that you will be reoffending in respect of this matter, particularly considering you weren't aware of the source of these substances and also, as a general deterrent to the wider industry. We considered some relevant penalty precedents and also, the Queensland Racing Integrity Commission Greyhound Racing Penalty Guidelines, together with the Human Rights Act.”⁸

Discussion

- [9] The Applicant has maintained throughout that he has no knowledge of how his dog acquired the prohibited substances or how they came to be present in the urine sample. The one possible source of contamination identified by the Applicant and by his partner Ms Van Tienhoven is a former, perhaps disgruntled, employee.
- [10] There is evidence to support the inference that that person may have, whether intentionally or otherwise⁹, provided the prohibited substances or substances to Red Cloud. This issue was first raised by the Applicant in a spontaneous, and convincing, response when informed for the first time of the sample results at the kennel inspection on 11 January 2024. The information was made known to the Stewards in January 2024. There is some support for the Applicant's suggestion to be found in the Affidavit of Ms Barbara Van Tienhoven¹⁰ and there is the “over the top enthusiasm to take the dog to the races”¹¹ that was displayed by the person nominated by the Applicant. Beyond that there is no evidence which would cast any doubt on the Applicant's assertion that he simply has no knowledge of the source of the contamination.¹² Certainly it is not suggested that he was in any way responsible for it.
- [11] A thorough kennel inspection on the 7 December 2023 revealed no suspicious substances, and the condition of the Applicant's kennels has been described by the Stewards as “immaculate”¹³. They observed, “you clearly look after your greyhounds, everything is in order, you don't have any discrepancies on your records whatsoever”.¹⁴
- [12] Even though he cannot identify precisely the source of the banned substances, and notwithstanding the already high quality of his kennels, the Applicant has since moved to make further precautions with his animal husbandry in respect of his greyhounds we are informed by ensuring that all food is prepared by himself by limiting human access to his dogs and moving to install security cameras.
- [13] Greyhounds Australasia Rule 141 clearly places a heavy responsibility on those in charge of greyhounds presented to compete in an event. A breach of the rule is not dependent upon proof that

⁷ Transcript of Stewards Inquiry 27 February 2024, lines 1452 - 1458

⁸ Transcript of Stewards Inquiry 27 February 2024, lines 1459 - 1466

⁹ Transcript of Stewards Inquiry 27 February 2024, lines 384-386

¹⁰ Affidavit Barbara Van Tienhoven sworn 24 January 2024

¹¹ Transcript of Stewards Inquiry 27 February, lines 490-506 and 537-539

¹² Transcript of Stewards Inquiry 27 February 2024, lines 358-383, 497-512 and 537-542

¹³ Transcript of Stewards Inquiry 27 February 2024, lines 1285

¹⁴ Transcript of Stewards Inquiry 27 February 2024, lines 1285-1287

the relevant person actually administered the prohibited substance, or even that he or she was aware of the prohibited substance.

[14] However, there are degrees of culpability or blameworthiness involved. In considering a not dissimilar provision of the Australian Thoroughbred Racing Rules, AR178,¹⁵ in *Wallace v Queensland Racing* his Honor Judge McGill observed:

“There is a difference between a case where there is evidence to show a specific mitigating circumstance, and simply an absence of evidence of an explanation, either mitigating or aggravating depend upon the extent to which it shows an absence or presence of blameworthiness on the part of the trainer. Cases where the trainer was able to show a specific explanation which did not involve any blameworthiness on his part are really examples of the situation where the trainer has for the purpose of penalty been able to show a mitigating circumstance. It may well be appropriate for such cases to be treated more leniently than what might be described as the ordinary case, where there is no explanation for the elevated reading, and therefore no indication as to whether or not there is any personal blameworthiness on the part of the trainer.

Obviously the third category of case would be one where there was some explanation which did show moral blameworthiness on the part of the trainer, which I would expect would justify a more severe penalty.”¹⁶

[15] This grading of degrees of “blameworthiness” suggested by Judge McGill is essentially the same as that suggested by His Honour Judge Williams in *McDonough v Harness Racing Victoria*.¹⁷ In that case, His Honour considered that presentation cases such as this generally fall into one of three categories. The first is one in which the Tribunal could establish positive culpability on the part of the person responsible, perhaps the trainer. The second, perhaps the most common, is one in which on the evidence available the Tribunal is left in the position of having no real idea as to how the prohibited substance entered the system of the animal involved. This would include the situation in which the Tribunal is not prepared to accept an explanation offered by the trainer or other person responsible. The third category of case is one in which the trainer or other person being dealt with provides an explanation which is accepted by the Tribunal, and which demonstrates no culpability on his or her part. This third category of case provides the lowest level of culpability.

[16] In this case, the Applicant is not able to identify precisely the source of the contamination. In some cases that may be possible, but there will be cases such as this when an individual is unable to provide a specific detailed explanation as to when or how a contaminating incident may have occurred yet can provide a likely explanation which is supported by uncontradicted evidence. A mere statement that another individual might be responsible would not be sufficient to bring the matter within the third category suggested by Judge Williams, but in this case, it is not simply a matter of conjecture or speculation.

[17] Given the matters to which we have referred, and in the absence of any contradictory evidence, the explanation proffered by the Applicant is neither unlikely nor inherently improbable.

¹⁵ Australian Rules of Racing as at 1 March 2019 (new rules) AR 240(2)

¹⁶ *Wallace v Queensland Racing* [2007] QDC 168, paragraph 69

¹⁷ *McDonough v Harness Racing Victoria* [2008] VCAT 6

In considering the issue of culpability, the Panel regards this case as falling more comfortably within the third of the categories suggested by Judge Williams.

[18] In imposing a penalty for a breach of the Greyhound Racing Rules, the Penalty Guidelines require that a number of circumstances should be taken into account these include the need to:

- ensure acceptable standards of animal welfare in the industry;
- ensure a level playing field for all participants and the betting public;
- maintain community trust and public confidence in the integrity of the greyhound racing;
- deter the individual from committing similar offences;
- deter others in the industry from committing similar offences;
- to demonstrate to the industry that the relevant conduct is not acceptable; and
- to ensure that any punishment imposed is appropriate and proportionate, taking into account the specific circumstances of the individual and of the offence committed.

[19] Importantly, the penalty ranges suggested in the guidelines are intended as a guide only and are in no way mandatory. Each case must be determined on its own merits, taking into account any mitigating, aggravating as well as any human rights considerations.

[20] The Guidelines do make reference to a number of factors to be taken into consideration when determining penalty. These include:

- the nature and seriousness of the breach and the circumstances in which it was committed;
- the personal circumstances of the participant;
- the need for general deterrence and personal deterrence;
- and the disciplinary history of the participant.

[21] The Guidelines go on to identify a number of potentially mitigating circumstances including:

- a plea of guilty at the earliest available opportunity;
- cooperation throughout the inquiry;
- admissions made;
- good character.
- personal references;
- a good disciplinary history;
- steps taken to ensure that no similar breaches of the rules will occur in the future; and
- where appropriate, any special circumstances.

[22] The Guidelines also set out a number of so-called aggravating circumstances. These include:

- prior offending;
- the impact on the greyhound concerned;
- the nature of the breach including the degree of culpability and any negligence, intent, recklessness or indifference of the person charged;
- any lack of remorse;
- any failure to cooperate; and
- any evidence of suspicious betting activity and the like.

[23] The Guidelines also refer to the importance of observing the requirements of the *Human Rights Act* 2019. That Act imposes obligations on Stewards to act compatibility with human rights when making a decision. This means that any act or decision should only limit a human right to an extent that is reasonably necessary and demonstrably justifiable. Section 13 of the *Human Rights Act* provides guidance in this regard.

Penalties such as suspension or disqualification can clearly prevent a person from earning a living and the imposition of such penalties can limit a person's right to own property, own a licence and a human right to privacy and reputation. Section 13(2) of the Act sets out a number of factors to which regard should be had in deciding whether a limitation on a person's human right is reasonable and justifiable. These include a consideration of the nature of the human right, and whether there are any less restrictive and reasonably available ways to achieve the purposes of penalty.

[24] So far as Prohibited Substance Penalties are concerned the Guidelines provide that offences are to be treated on an individual basis. Relevant findings and precedent (of any type and in any jurisdiction) may be taken into account in deciding the appropriate level of penalty.

[25] In this case, there are several significant mitigating factors which are applicable to the Applicant.

So far as his personal circumstances are concerned, he has owned and trained greyhounds in Queensland for a lengthy period of time. He has a very good disciplinary record with no offending of this nature being recorded. There is no reason to doubt his assertion that he has always paid high regard to the well-being and welfare of his greyhounds. His property and its surrounds are maintained in exceptional condition. He is also a significant participant in the greyhound industry with around 100 dogs of all ages from pups to racing dogs to brood bitches.

[26] Given the nature of the offence the issue of general deterrence is obviously a matter of considerable importance, though, given the Applicants past record, specific deterrence it's not a factor which looms large here, if it all.

[27] He entered his plea of guilty at the first available opportunity and cooperated throughout with the Stewards and with their inquiry.

[28] Importantly, in this case he has taken steps to ensure, given his assessment of how this breach may have arisen, that no similar such breaches should occur in the future. There are no particular aggravating circumstances that exist here.

[29] The Panel has been referred to a number of so-called comparable decisions¹⁸. The Panel has had the opportunity to consider these decisions, and it is clear that there is a range of penalty outcomes demonstrated by these cases.

¹⁸Queensland Racing Integrity Commission Stewards' Report, Andrew Bobak, 15 July 2022

Queensland Racing Integrity Commission Stewards' Report, Ken Boody, 16 November 2022

Johannes (Hank) Vanderburg v Greyhound Racing NSW, RATNSW, 25 November 2020

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- [30] It is clear that no one particular outcome is inevitable. Such a result would in any event be contrary to the stipulations of the Penalty Guidelines. To make reference to but some of these cases, in the matter of *Thorley*, a period of 12 months disqualification was imposed on a trainer where the permanently banned prohibited substance *Ostarine* was involved. There were three offences involved and Mr Thorley had a prior breach of that same rule in 2017 involving Arsenic.
- [31] In a matter of *Nicholls*, a period of 12 months disqualification with three months to suspended, was imposed for an offence involving the category 1A drug Testosterone.
- [32] In the matter of *Hoyland* there were two charges. In respect of each of them the permanently banned substance Norpethidine was involved, and cumulative sentences of 18 months disqualification were imposed. Importantly, Mr Hoyland had four breaches of the same rule since March 2015.
- [33] On the other hand, in three Queensland cases of *Boody*, *Bobak* (who had a previous breach of relevance) and *Moore* (who also had a previous breach of relevance), all decided in 2022, penalties of disqualification or suspension were imposed but in each case the penalties were suspended. *Bobak* involved Oxycodone and Naloxone, *Boody* and *Moore* involved Apomorphine. In the Victorian case of *Anders*, where the drugs involved were Morphine and Codeine, a four month fully suspended penalty was imposed, though the Tribunal suggested higher penalties might result in the future.
- [34] It is trite to say that all cases are different, but this brief analysis serves to demonstrate that there are a range of potential penalties available for offences of this nature and it should not be thought that one penalty is necessarily inevitable. Suspension, and even disqualification orders are not uncommon though not inevitable, and on occasions such orders are themselves suspended.
- [35] This Panel has already made reference to the requirements of the *Human Rights Act 2019* and the need for those requirements to be considered in determining penalty. The consequences of a disqualification order are set out in GAR178, they are obviously severe and onerous. Beyond the consequences referred to in GAR178(2), which would apply also to a suspension order, a person who receives a disqualification order is not:
- (a) permitted to transact or engage in any business affecting the registration or licencing of *persons* or *greyhounds* within a *Controlling Body*;
 - (b) to enter any enclosure or other part of a *racecourse* or any property occupied or used in connection with a *racecourse*, whether acting as agent or in any other capacity;
 - (c) to enter the *premises of a club*;
 - (d) to have or hold any of the rights or privileges conferred by any licence or registration pursuant to the *Rules*;
 - (e) eligible to otherwise participate in or associate with *greyhound racing* and any *greyhound* which has been *nominated* by the *person* or in the *person's* name, or which the *person* wholly or part which the person wholly or partially owns which is proved to the satisfaction of a

controlling body to be under the *person's* care, custody or in *training* with the *person*, is prohibited from competing in any *Event*; and

- (f) to enter or go to or remain on, at any time, any place where *greyhounds* are bred, whelped, handled, reared, broken in, kept or housed, educated, pre-trained, trained or raced.¹⁹

It is apparent that the consequences of a disqualification order would constitute for this Applicant a loss of livelihood - perhaps even more given the property involved. That is a matter that must be considered by this Panel in arriving at its decision.

- [36] We have made reference to the mitigating circumstances in this case we have referred also to the comparable cases which we consider to be of relevance.
- [37] It is the view of this Panel that in this case, the purposes of penalty can be adequately achieved by a penalty which does not involve a period of actual disqualification. It is the view of this Panel that in the circumstances of this case, a level of disqualification which is appropriately high imposed as a head penalty, would itself mark the seriousness with which these offences are regarded, particularly if that is accompanied by a fine of an appropriate size.
- [38] We consider however that the period of disqualification can be suspended. Such an outcome in this case would be sufficient to achieve the purposes of penalty under the guidelines.
- [39] Pursuant to 252AH(1)(b) of the *Racing Integrity Act 2016*, it is the determination of this Panel that the that the racing decision be varied by ordering that the period of nine months disqualification be suspended for an operational period of 12 months during which the Applicant must not commit any further offences against the requirements of GAR141 and further that the Applicant should be fined the sum of \$2,000.

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¹⁹Greyhounds Australasia Rule 178(3)