

## DECISION

***Racing Integrity Act 2016, section 252AB***

<b>Review application number</b>	RAP-43	
<b>Name</b>	Clinton Thompson	
<b>Panel</b>	Ms Dianne Condon (Acting Chairperson) Mr Ken Waller (Panel Member) Ms Darren Guppy (Panel Member)	
<b>Code</b>	Greyhounds	
<b>Rule</b>	Australian Rules of Racing 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>	
<b>Penalty Notice number</b>	PN-008528	
<b>Appearances &amp; Representation</b>	Applicant	Self represented
	Respondent	Wade Hadley
<b>Hearing Date</b>	8 August 2023	
<b>Decision Date</b>	10 August 2023	
<b>Decision</b>	Pursuant to 252AH(1)(a) the Racing decision is confirmed.	
<b>Panel Penalty</b>	\$2,000 fine	
<b>Case references</b>	Robert Alan Westworth A30/08/832 (15 May 2020) Racing Penalties Appeal Tribunal Review Decision of Peter Parker (3 July 2023) - NSW Chief Commissioner Greyhound Welfare Integrity Commission in <i>Harper v Racing Appeal Tribunal</i> (1995) 12 WAR 33 <i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336 <i>Baker v QRIC</i> RAP-18 <i>Wallace v Queensland Racing</i> [2007] QDC 168	

## Reasons for Decision

### Background

- [1] The Applicant in this matter, Mr Clinton Thompson, is a licensed greyhound trainer and thoroughbred racing trainer who trains out of a property at Tungamull, near Rockhampton. He trains the greyhound Rybolt.
- [2] On 27 July 2023, Stewards conducted an inquiry into gabapentin being detected in Rybolt's post-race urine samples after competing at Race 9 at Brisbane Greyhound Racing Club ('BGRC') at Albion on 19 April 2023.
- [3] Following that hearing, the Applicant was charged with a breach pursuant to Greyhounds Australasian Rule GAR 141(1)(a) ('Rule') which provides:

**141 Greyhound to be free of prohibited substances**

*"The owner, trainer or other person in charge of a greyhound:*

*(a) nominated to compete in an Event;*

.....

*must present the greyhound free of any prohibited substance.*

- [4] The particulars of charges to which the Applicant entered a plea of not guilty were as follows: -
- That Mr Clinton Thompson, as the trainer of the greyhound Rybolt, did present that greyhound to compete in Race 9 at the Brisbane Greyhound Racing Club on Wednesday 19 April 2023 with a prohibited substance in its system, namely Gabapentin as detected by the Racing Science Centre and confirmed by Racing Analytical Services Limited in the post-race urine sample collected from the greyhound on 19 April 2023.*
- [5] The Applicant was found guilty and a \$2,000 fine imposed by way of Penalty Infringement Notice 8528 dated 27 July 2023.
- [6] On 1 August 2023 the Applicant lodged an Application for Review with the Queensland Racing Appeals Panel seeking a review of the Stewards' decisions concerning the finding of guilt.
- [7] The relevant grounds of the application for review in respect of the charge as outlined by the applicant are:
- "To obtain more evidence to change the outcome of this penalty as in my view contamination has happened as dog was presented clean."*
- "I have never heard of this drug let alone used it. I presented my dog Rybolt free of any substance. With the number of swabs with the same drug in South East Queensland (harness and greyhound) I believe they are being contaminated."*
- [8] Before this Panel, the whole of the materials provided to the Stewards' Inquiry were admitted into evidence and considered by the Panel.

## **Culpability**

[9] In its entirety GAR 141 (commonly known as the presentation rule) provides:

### ***141 Greyhound to be free of prohibited substances***

*(1) The owner, trainer or other person in charge of a greyhound:*

*(a) nominated to compete in an Event;*

*(b) presented for a satisfactory trial or such other trial as provided for by the Rules; or*

*(c) presented for any test or examination for the purpose of a stand-down period being varied or revoked,*

*must present the greyhound free of any prohibited substance.*

*(2) It will not be a breach of subrule (1) of this rule if there is established in a sample a prohibited substance at or below a level stated in rule 140.*

*(3) The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence.*

*(4) A greyhound presented for an Event in circumstances where subrule (1) of this rule has been breached must be disqualified from the relevant Event and from receiving any benefit derived from the relevant trial, test or examination.*

*(5) Where an Event is being or has been conducted as a Series, if upon a single analysis a prohibited substance is detected in a sample taken from a greyhound:*

*(a) the greyhound must be disqualified from the Event at which the sample was taken and will not be eligible to compete in any further Event in the Series; and*

*(b) if the greyhound has competed in any further Event of the Series the greyhound must be disqualified retrospectively from the Event.*

[10] The elements of the breach under Rule 141(1)(a) accordingly can be expressed as fourfold:

- A greyhound
- nominated to compete in an Event
- by the owner, trainer or other person in charge
- was not presented free of a prohibited substance, namely gabapentin.

## **Evidence before the stewards**

[11] Rybolt's urine sample number 536190 was initially tested by Queensland Racing Integrity Commission's (QRIC) Racing Science Centre (RSC) and then confirmatory testing undertaken by Racing Analytical Services Ltd (RASL), with each laboratory producing a certificate of exhibit identifying that gabapentin was detected in the sample. Associated chain of custody documents concerning the urine sample is relied on by the respondent.

[12] The certificate of exhibit evidence is summarised as follows:

Exhibit no.	Laboratory	Test	Certificate no.	Signatory	Date
5	RSC	Initial	RSC23-126	Dr Shawn Stanley	12.06.23
11	RASL	Confirmatory	RS23/10187	David Batty	29.06.23

[13] Neither of the certificates of exhibit nominated levels of gabapentin detected. Exhibit 5 identifies the sample was analysed as received with the seals intact. Exhibit 11 identifies the samples (urine and control) arrived in good condition with seals intact.

[14] Before the Stewards a Veterinary Certificate dated 18 June 2023 of Dr Sally Colgan, Head of Veterinary Services, QRIC was relied upon, identified as pertaining to recent other greyhounds' urine samples.<sup>1</sup> This certificate outlined:

- (a) Gabapentin (and pregabalin) are used to treat neuropathic pain (pain caused by an abnormality of, or damage to, the nerves) and epilepsy in humans. Gabapentin is marketed under the brand name Neurontin, as well as various generic brands.
- (b) Gabapentin and pregabalin are used off-label in dogs to treat neuropathic pain, pain arising from osteoarthritis, seizures and anxiety. Side effects of these drugs in dogs include sedation & ataxia. Gabapentin may also cause an increase in appetite.
- (c) Gabapentin (and pregabalin) are classed as a Schedule 4 substance (Prescription Only Medicine or Prescription Animal Remedy) according to the Standard for the Uniform Scheduling of Medicines and Poisons No. 35 (The Standard).
- (d) Gabapentin is a prohibited substance under the GAR.
- (e) Gabapentin and pregabalin are rapidly absorbed and rapidly eliminated in dogs. Relevantly:
  - i. Gabapentin given as single oral doses 10 and 20 mg/kg in greyhounds demonstrated half-lives of 3.3h and 3.4 h respectively and
  - ii. Studies of pregabalin in beagles has shown that the drug is not cumulative.

[15] An audio recording of an interview with the Applicant was before the Stewards, as taken during an inspection of his property on 15 June 2023 by QRIC officers. On this occasion the applicant stated that he doesn't use anything on Rybolt nor did he in April 2023 and that the dog "*just goes*". He said that apart from using a laser his vet (Bridget) does the rest. He said the dog hasn't been sick and he's never heard of gabapentin until the positive swab was brought to his attention. As to care of his greyhounds on race day, he said he cleans their eyes with saline after racing and uses shampoo. He also said to the respondent's officers that his wife is "*paranoid about what we do*".

[16] No evidence of gabapentin or gabapentin related products were located at the property inspection on 15 June 2023. Stewards acknowledged to the applicant in the subsequent Steward's Inquiry that a comprehensive inspection was undertaken on this date and that nothing of concern was found.

[17] Before the steward's inquiry on 27 July 2023, the applicant gave evidence in summary that:

- (a) that he holds licenses to train thoroughbreds & greyhounds;

<sup>1</sup> Exhibit 17 - relating to dogs trained by Graham Hall and Leanne Hall

- (b) that he has about 50 greyhounds on his property with his wife, who is also a greyhound trainer;
- (c) he has always been the trainer of Rybolt and that Rybolt has been a handy dog for him in winning races;
- (d) Rybolt was the only dog he took that day to the BGRC on 19 April 2023 and he was kennelled early, before race 1 at about 2:15pm;
- (e) he put Rybolt in the kennel himself- that his individual kennel seemed clean and was locked with a clip, but the kennel block was not locked;
- (f) he took Rybolt out for swabbing, locking him in the swabbing room after race 12. The applicant confirmed he signed the swabbing paperwork at 6:46pm<sup>2</sup> and that he had no issue with the sampling process;
- (g) he had never heard of gabapentin before being advised of the positive sample and that there was nothing at his place connected with that product; and
- (h) he checked with his vet subsequently that she didn't use anything on Rybolt that would return a positive result; and
- (i) that he had requested a level of the drug found to be provided, but that was not available.

[18] The Applicant repeatedly denied before the Stewards that he administered gabapentin or anything to Rybolt and repeatedly insisted that he brought a clean dog to Albion Park on 19 April 2023. His evidence was that he, his wife and his vet are very careful about what is used in connection with Rybolt and all their dogs and that if there is ever a problem, they take the dog to the vet.

[19] With respect to the positive result to gabapentin, the Applicant said to the Stewards that he couldn't explain what had happened, advancing that there had been recent cases of unexplained contamination with gabapentin in greyhounds in South-East Queensland; also that in 2020 there had been a case of a kennel attendant being paid to contaminate a dog which resulted in a trainer's disqualification. The applicant also agitated before the stewards that he couldn't prove anything in his defence as kennel footage from 19 April 2023 had been coincidentally erased just prior to him being notified of the positive sample.

[20] Before the panel the Applicant repeated the evidence he gave to the Stewards including his insistence that he brought a clean dog to BGRC on 19 April 2023 and his contentions around the possibility of environmental contamination as being responsible for the positive result. The Applicant confirmed that he had no issues with the sampling process and that he accepted that gabapentin was detected in Rybolt in accordance with the certificate evidence. He also confirmed that he has always been the trainer of Rybolt including on 19 April 2023 when he presented him to race.

[21] Under cross-examination the Applicant was questioned in detail about the processing of greyhounds for racing at Albion Park from arrival, including weighing, vet checking, kennelling and post-race sampling. Regarding his actions on 19 April 2023 the Applicant added to his evidence before the stewards that his was the first dog in the kennel block for race 9. He confirmed that as to the individual cage he put Rybolt in, he had a quick look around the bottom of the cage to make sure it was clean. He confirmed he did

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<sup>2</sup> Exhibit 3

not see anything unusual. He also stated the cage was shut and a clip put on it, but that this could be undone.

[22] Relevantly, the applicant confirmed that he did everything himself and that no attendant ever touched Rybolt nor took control of him at any time on 19 April 2023. He confirmed that at all times he had care and control of Rybolt other than when he was kennelled waiting for his race; and that he was the only person who touched him on the day aside from the vet during his pre-kennelling inspection.

[23] The Applicant specifically admitted to the Panel that he does not allege any attendants in this case were responsible for a contamination, but that he was looking for an explanation as to how the positive result was returned given he is at a loss; and that the deleting of any footage was an untimely coincidence and very unhelpful in being able to offer evidence that may support his assertion regarding environmental contamination.

[24] The Applicant also gave evidence to the Panel that none of his dogs had been injured around the March-April 2023 nor had been veterinary treated any of them, including with gabapentin related products. He also confirmed the same in relation to the two yearlings he has on his 25 acre property, which he said are kept some way away from the kennels. The Applicant again confirmed he doesn't use allied health professionals for the dogs and that if there is ever a problem, they are taken to the vet.

[25] The applicant also confirmed that having looked into it, no other residents or visitors to his property were prescribed gabapentin, pregabalin or related brand-name medicines.

### **Further Evidence**

[26] On the hearing of the Application for Review the Panel heard evidence from Dr Shawn Stanley who holds a Ph.D in pharmaceutical chemistry and is the General Manager, Analytical Services, Racing Science Centre and specialist in equine drug testing. He signed the Exhibit 5 certificate of analysis and filed an affidavit sworn on 7 August 2023.

[27] Dr Stanley's relevant evidence to the panel on the detection of gabapentin in Rybolt was in summary:

- a) Gabapentin is a prohibited substance in accordance with GAR 137(a) being a substance capable at any time of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the mammalian body systems listed under the rule, including the mammalian nervous system.<sup>3</sup>
- b) That gabapentin is used in humans to treat neuropathic pain and is also used as an anti-convulsant in humans<sup>4</sup> and that it also has veterinary applications.<sup>5</sup>
- c) That gabapentin goes through the mammalian system unchanged and is rapidly eliminated due to its short half-life; and accordingly it would not be able to be detected in urine within a couple of days;
- d) Rybolt's urine sample taken on 19 April 2023 was screened for a range of substances and that Gabapentin was detected.<sup>6</sup>

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<sup>3</sup> Affidavit of Dr Shawn Stanley dated 7 August 2023 paragraphs 7-8

<sup>4</sup> Ibid paragraph 9

<sup>5</sup> Dr Stanley also said that gabapentin and pregabalin are in the same drug family but are different compounds.

<sup>6</sup> Affidavit of Dr Shawn Stanley dated 7 August 2023 paragraph 6

- e) That the level detected in Rybolt's sample was in the low range and Dr Stanley accordingly considers the sample as being taken 24 to 36 hours after the dog's treatment with a gabapentin product.

- [28] Dr Stanley also opined that being a substance acting on the nervous system, gabapentin has the dual benefits in greyhounds of calming nervous animals ("taking the edge off" in Dr Stanley's words) and also then potentially masking pain from injury. Dr Stanley said he considered accordingly that gabapentin could be beneficial to race performance in greyhounds, depending on when it was administered.
- [29] In response to the Applicant's assertion that his dog may have licked urine or another contaminant in the kennel or surrounds at Albion Park, Dr Stanley opined that such a short exposure would be 'very unlikely' to be the cause of the positive sample. Rather, he said it would be more likely to be a possible cause if there had been an extended exposure to a contaminant in the same area like a kennel block.
- [30] Dr Stanley further gave evidence that gabapentin has previously been reported in racing samples collected in Australia and overseas; and there has been an upward trend in the detection of the substance in greyhound racing samples received by the RSC since the start of 2023. Dr Stanley confirmed there have been 7 in Queensland and 3 in Victoria and that there can be multiple reasons for this, including cross-contamination from another dog under treatment and contamination in the food chain through abattoir processes.

### **Discussion**

- [31] The Applicant does not contest that gabapentin was detected in Rybolt's urine sample nor that he presented Rybolt to an event at the BGRC as Rybolt's trainer on 19 April 2023.
- [32] Having regard particularly to the evidence of Dr Stanley and Dr Colgan, together with the certificates of analysis and the admissions of the Applicant, the Panel is satisfied that there clear and cogent evidence that supports factual findings that:
- (a) Rybolt, a greyhound, was presented to BGRC for an Event on 19 April 2023 by the Applicant as trainer;
  - (b) gabapentin was present in Rybolt's urine samples collected on 19 April 2023; and
  - (c) that gabapentin is a prohibited substance within the meaning of the GAR.
- [33] The Respondent has submitted authorities which they contend support the position that breach of GAR 141 is an offence of absolute liability,<sup>7</sup> in that proof of intention, knowledge negligence or any other fault is not an element necessary to establish a breach.<sup>8</sup> The Respondent in their submissions turn to the different characterisations between offences of strict liability and absolute liability, also relying on GAR 141(3) to support their contention which provides:
- "The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence."*
- [34] The authority in *Westworth* advanced in support of the respondent's argument of absolute liability relies on an authority examining a precursor rule (which is not otherwise disclosed in the judgment)<sup>9</sup> to the current corresponding rule in the Australian Harness Racing Rules (AHRR). It is relevant to consider that,

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<sup>7</sup> *Robert Alan Westworth* A30/08/832 (15 May 2020) Racing Penalties Appeal Tribunal

<sup>8</sup> *Review Decision of Peter Parker* (3 July 2023) - NSW Chief Commissioner Greyhound Welfare Integrity Commission at [22] & [24]

<sup>9</sup> *Harper v Racing Appeal Tribunal* (1995) 12 WAR 33

unlike GAR 141, the current iteration of the presentation rule in the AHRR (Rule 190) makes express provision regarding absolute liability under AHRR190(4)<sup>10</sup> and as enunciated by the relevant authorities on AHRR 190. Further, the panel considers absent clear reasoning for the conclusion reached as to a construction amounting to one of absolute liability for GAR 141, the internal review decision in *Peter Parker* is not binding on the panel.

[35] Accordingly the Panel considers at its highest breach of GAR 141(1) is one of strict liability, however having regard to the weight of the evidence and findings of fact outlined below, such characterisation makes no material difference to the outcome in the present case.

[36] The Respondent further submits that the Applicant's assertions regarding environmental contamination as unlikely and speculative.<sup>11</sup> During the hearing Mr Hadley for the Respondent submitted from his personal knowledge as the Chief Greyhound Stipendiary Steward, namely:

- (a) The cleaning practices at BGRC prior to Thursday racing – that there is a full commercial clean using high pressure hoses through the kennels following Monday racing and then kennel bays are then locked until the next racing day.
- (b) That Stewards arrive 3 hours before racing each race day and thoroughly inspect every kennel and kennel bay prior to racing and that any kennels that are still wet are dried out. He submitted that each individual cage is shut once the Steward's inspection is complete and the kennel bay door is then locked until the first dog goes in.
- (c) CCTV / video footage from BGRC at Albion – that Stewards watch these live feeds on race days and the CCTV system at the site only covers public areas, swab areas and vet areas etc but not footage of the kennelling bays. Also, that any footage is deleted by the control body (who owns the footage) after 3 months.<sup>12</sup>

[37] Whilst this is not sworn evidence, some of which ideally might come from the control body as the operator of the BGRC, the panel may have regard to these submissions.<sup>13</sup>

[38] Relevantly, the Respondent also submits that gabapentin was not detected in any other samples taken at Albion Park on 19 April 2023.<sup>14</sup>

[39] Notwithstanding, by the Applicant's own admission before the panel:

- (a) he was not alleging contamination action by any of the kennel attendants in this case;
- (b) at all times he had care and control of Rybolt on 19 April 2023 and that no-one else touched him other than the vet;
- (c) that Rybolt's individual kennel seemed clean; and

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<sup>10</sup>“(4) An offence under sub-rule (2) or sub-rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.”

<sup>11</sup> Respondent's submissions dated 7 August 2023 at paragraphs 20, 49 & 74

<sup>12</sup> The respondent acknowledged the applicant's frustration that CCTV at the premier greyhound track in Queensland does not cover the kennel bays; also the timing of when the relevant footage was deleted in this case, being just a day prior to the applicant being advised of Rybolt's positive result.

<sup>13</sup> Section 252AO(1)(d) *Racing Integrity Act 2016*

<sup>14</sup> Respondent's submissions dated 7 August 2023 at paragraph 16



(d) when questioning Dr Stanley regarding his hypothesis, the applicant didn't notice anything unusual on the day that would suggest to him a contaminant.

- [40] Further is Dr Stanley's opinion evidence that it was likely the sample was taken<sup>15</sup> 24 to 36 hours after the dog's treatment with gabapentin and that a discreet exposure to a contaminant by Rybolt at BGRC at the event was unlikely to produce the positive sample detected.
- [41] As such the Panel is of the view that that there is no evidentiary basis to support the Applicant's contention that environmental contamination was responsible for the positive sample detected in Rybolt on 19 April 2023.
- [42] Accordingly, and having regard to the findings of fact at paragraph [31] the Panel is satisfied on the balance of probabilities on the *Briginshaw*<sup>16</sup> standard that the applicant has contravened GAR 141(1)(a).

### **PENALTY**

- [43] The QRIC Greyhound Racing Penalty Guidelines state that the purpose of a penalty under the rules is to maintain standards of integrity and animal care through the enforcement of the rules of racing, to provide general deterrence to the industry by ensuring that any penalty imposed is sufficient to discourage other participants from breaching the particular rule, and, finally, to provide specific deterrence to the individual.<sup>17</sup>
- [44] The Penalty Guidelines set out a number of factors which may be taken into account. Imposing a penalty involves a balance between the severity of the offence, the need for deterrence, both for the individual and the industry generally and any mitigating factors. All situations need to be assessed according to their individual merits. Considerations listed include the circumstances of the offence itself, the degree of culpability involved in the offending, whether there has been an early plea of guilty for the disciplinary record person involved and also the race status.<sup>18</sup>
- [45] Under the Guidelines QRIC grades categories of prohibited substance breaches under the GAR by seriousness. The applicant's breach was deemed to be the lowest at Category 3, being *Prohibited Substances – Painkillers, Anaesthetics & Other Therapeutics*. The Guidelines then provide starting points of penalties for charges under each category, in the case of a breach of Rule 141 for a first offence, the starting point is \$2,000. The Guide outlines a discount that may be applied of 25% of the penalty for a plea of guilt.
- [46] The respondent's written submissions relies upon the decision of *McGill DCJ in Wallace v Queensland Racing*.<sup>19</sup> In that decision his Honour at [69] said of relative concepts of blameworthiness as to considering penalty:

*In my opinion, however, 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 depending on the extent to which it shows an absence or presence of blameworthiness on the part of the trainer.[8] 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*

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<sup>15</sup> Taken on 19 April 2023 at 6:46pm

<sup>16</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

<sup>37</sup> *Baker v QRIC* RAP-18 at [13]

<sup>18</sup> *Ibid* at [13] – [14]

<sup>19</sup> [2007] QDC 168, [69].

*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.*

- [47] The Panel is of the view in accordance with the findings at paragraph [31] and as per both parties' submissions<sup>20</sup> that this is a case falling into the second category in *Wallace* ('an ordinary case') where there is no explanation for the presence of gabapentin detected in Rybolt and therefore no indication of blameworthiness to sheet home to the applicant.
- [48] In considering penalty the respondent relies on four comparative penalties imposed since April 2023 for breaches of GAR 141(1)(a) where gabapentin was detected in greyhounds in South-East Queensland – *Robynne Black, Chris Bryden, Leanne Hall and Graham Hall*.<sup>21</sup> The four penalty outcomes in those cases can be summarised as: two trainers had \$2,000 fines imposed where there were pleas of not guilty; and the other two had \$1,500 fines imposed due to pleas of guilt before the Stewards. In all cases the trainers did not have a previous breach under the Rule.
- [49] The Panel is not bound by the Penalty Guidelines however regards the categorisation of presentation rule breaches under the GAR as considered in seeking to provide for consistency in the imposition of penalties for such breaches, recognising the importance of deterring breaches of the presentation rule such as to uphold the objects of the Act.<sup>22</sup> Notwithstanding, the imposition of a penalty cannot be distilled to a mathematical equation and requires weighing of all relevant circumstances of the particular case, including factors in mitigation and aggravation.
- [50] The Respondent submits that in each of the four comparatives presented, there was cross-contamination from a dog who was being treated for an injury and therefore those cases fall into the third category described in *Wallace*, where there was some moral blameworthiness on behalf of the trainers. Whilst the relevant Steward's reports do not give account of those circumstances in each case, by way of submission before this Panel the respondent outlined they ranged from innocent cross-contaminations<sup>23</sup> to lapses in kennelling practices such as to cause exposure to gabapentin from one dog under treatment to another dog.<sup>24</sup>
- [51] As such these comparatives are somewhat distinguishable from the present case as to degree of blameworthiness and accordingly in the Panel's view this is a factor in mitigation favouring the Applicant.
- [52] In relation to mitigation the panel also takes into account:
- (a) the applicant has trained greyhounds for two years on a professional background of training thoroughbreds since 1989;
  - (b) his good record in training greyhounds with no prior breaches of GAR 141;
  - (c) greyhound training is the applicant's sole income with his wife which is their retirement plan;

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<sup>20</sup> Respondent's submissions dated 7 August 2023 at paragraph 58

<sup>21</sup> By way of respective Steward's Reports; also Respondent's submissions dated 7 August 2023 at paragraph 70

<sup>22</sup> Section 3 *Racing Integrity Act 2016*

<sup>23</sup> As in *QRIC v Robynne Black*

<sup>24</sup> As in *QRIC v Chris Bryden, QRIC v Leanne Hall and QRIC v Graham Hall*

- (d) his other financial circumstances including:
  - i. he has a mortgage and maintains his property with about 50 dogs and 2 horses; and
  - ii. by operation of GAR 141(5) upon the breach being made out and being a race in a series, Rybolt is disqualified from race 7 on 19 April 2023 (a heat) and the subsequent final of that event which Rybolt also won on 26 April 2023. As such prizemoney totalling \$5,070 is lost by the Applicant.

[53] Aggravating factors the Panel has regard to:

- (a) his plea of not guilty requiring a full hearing;
- (b) that gabapentin may operate to enhance a greyhound's performance depending on time of administration in accordance with the evidence of Dr Stanley;
- (c) that he has had a previous charge for a prohibited substance while training thoroughbreds; and
- (d) that the breach occurred at the State's premier greyhound track, Albion Park, which is well attended, advertised with betting occurring throughout the country.

[54] Further as to aggravation, and whilst the Respondent submits that personal deterrence is not a factor of weight in this case given the applicant has no previous breaches,<sup>25</sup> they advance the current prevalence of greyhounds testing positive to prohibited and banned substances is of considerable concern and pertinent to matters of general deterrence.<sup>26</sup> The Panel considers the recent comparative cases before it which all concern gabapentin bear that submission out.

[55] It has already been noted that the Applicant's case is distinguishable from those comparative cases as to blameworthiness and therefore the panel considers matters of general deterrence also bear slightly less weight in the present case when considered against those.

[56] Balanced against this is the seriousness of the charge in maintaining the integrity of the industry; and having regard to the Penalty Guidelines the Applicant obtains no benefit he otherwise may have from a plea of guilt.<sup>27</sup>

[57] Taking all the matters into consideration, pursuant to Section 252AH(1)(a), the Panel confirms the racing decision made by the Stewards of the finding of guilt and the \$2,000 fine imposed.

### **Orders**

[58] The decision of the Panel is to confirm the racing decision and the \$2,000 fine imposed.

[racingappealspanel.qld.gov.au](http://racingappealspanel.qld.gov.au)

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<sup>25</sup> Respondent's submissions dated 7 August 2023 at paragraph 57

<sup>26</sup> Ibid at paragraphs 56-58

<sup>27</sup> As in *QRIC v Chris Bryden* and *QRIC v Robynne Black*