

Racing Appeals & Disciplinary Board

Media Release

16 February 2017

Racing Appeals & Disciplinary Board

Date of Hearing: Thursday, 16 February 2017
Venue of Hearing: Victorian Commission for Gambling and Liquor Regulation
49 Elizabeth Street, Richmond, Victoria
Panel: Mr. Shane Marshall (Chairman), Mr. Terry O'Connor (Deputy
Chairman), and Mr. John Hutchison
Name of Person Charged: Mr. Garry Johnson
Town: Chum Creek
Tracks: Cranbourne and Healesville
Dates: 15 June 2016 and 10 July 2016
GAR No: 83 (1A) and 83 (2)(3)

Offences Charged:

- (1) Mr. Garry Johnson administered or caused to be administered a prohibited substance to the greyhound 'Hugh Made Who' at the Cranbourne meeting held on 15 June 2016.
- (2) Mr. Garry Johnson failed to present the greyhound 'Hugh Made Who' free of any prohibited substance for an event at the Cranbourne meeting held on 15 June 2016.
- (3) Mr. Garry Johnson administered or caused to be administered a prohibited substance to the greyhound 'Shakey Benz' at the Healesville meeting held on 10 July 2016.
- (4) Mr. Garry Johnson failed to present the greyhound 'Shakey Benz' free of any prohibited substance for an event at the Healesville meeting held on 10 July 2016.

REPORT:

Following advice from Racing Analytical Services Laboratory, the Stewards of Greyhound Racing Victoria conducted an investigation into the results of the pre-race urine samples taken from the greyhounds 'Hugh Made Who' and 'Shakey Benz' at the Cranbourne meeting held on 15 June 2016 and the Healesville meeting held on 10 July 2016.

Racing Appeals & Disciplinary Board

During the investigation, Stewards received evidence from registered trainer Mr. Garry Johnson, Mr. Paul Zahra (Racing Analytical Services Laboratory) and Dr. Steven Karamatic (GRV Chief Veterinarian).

After considering the evidence, Stewards charged Mr. Johnson with breaches of Greyhounds Australasia Rule 83 (1A) and 83 (2)(3) as detailed above, given that the pre-race urine samples taken from the greyhounds indicated the presence of the prohibited substance arsenic at a mass concentration of greater than 800 nanograms per millilitre.

Under Rule 47.1 of the Greyhound Racing Victoria Local Rules breaches of GAR83 (1A) and GAR83 (2)(3) constitute Serious Offences. As a result on Thursday, 16 February 2017 this matter was heard before the Racing Appeals and Disciplinary Board in the first instance under Greyhound Local Racing Rule 47.3 and Sections 83C(b) and 83M(1) of the Racing Act.

Mr. Garry Johnson represented himself.

Mr. Justin Hooper Barrister instructed by Mr. Marwan El-Asmar GRV Managing Principal Lawyer represented the Stewards Panel.

Following application by Mr. Hooper the Board ordered that charges 1, 2 and 3 be struck out.

Mr. Garry Johnson pleaded guilty to charge 4.

DECISION:

1. Mr. Garry Johnson is a registered greyhound trainer of greyhounds and the trainer of the greyhound, "Shakey Benz". Shakey Benz competed in race 3 at Healesville on 10 July 2016. A pre-race urine sample was taken from the greyhound at the car park of the racetrack. Arsenic was detected in the sample at a mass concentration of greater than 800 nanograms per millilitre.
2. Stewards of Greyhound Racing Victoria ("GRV") have charged Mr. Johnson under Greyhound Australasia Rule ("GAR") 83 (1A) with administering a prohibited substance to a greyhound given arsenic was detected in a sample at greater than 800 nanograms per millilitre. Mr. Johnson has also been charged under GAR83 (2) and (3) with presenting a greyhound for an event while not being free of a prohibited substance. At the hearing, the administration charge was withdrawn and Mr. Johnson pleaded guilty to the presentation charge
3. The evidence of Dr. Karamatic, GRV's Chief Veterinarian, is that arsenic is a naturally occurring trace element that is normally present in greyhounds at low levels as a result of normal dietary intake.
4. On 1 July 2016, a new urinary threshold for arsenic was introduced into the GAR by the addition of GAR83 (11) which provides as follows:-

Racing Appeals & Disciplinary Board

"Arsenic at or below a mass concentration of 800 nanograms per millilitre in a sample of urine taken from a greyhound will not breach the provisions of sub-rule (1A) or (2) of this rule".

5. Arsenic meets the definition of "prohibited substance" in GAR 1 because it is a substance capable of affecting a greyhound by its action on the central or peripheral nervous system. It is also a substance listed in Schedules 1 to 9 of the Standard for the Uniform Scheduling of Drugs and Poisons (Commonwealth).
6. According to Dr. Karamatic, arsenic doesn't fit comfortably with GRV's penalty guidelines document. Like many category 1 substances, arsenic containing substances are contained in over the counter medications. However, it is also like a category 3 substance given that arsenic containing products, at certain dosages, may stimulate blood vessel production and at large dosages may be used as a toxic depressant. At sufficient dosages arsenic can be fatal. In the words of Dr. Karamatic, at a urinary concentration of greater than 800 ng/ml arsenic is "capable of affecting the condition or performance of a greyhound".
7. The introduction of GAR83 (11) was preceded by much publicity. Most of it appeared on the websites of Greyhounds Australasia ("GA") and GRV. GA published a notice about the then proposed new GAR 83 (11) in mid December 2015. On 8 January 2016, GRV published a similar notice.
8. Further publicity was contained in the January 2016 edition of the "GRV Informer" which repeated previous advice that trainers should avoid the administration of products containing arsenic without considering veterinary advice.
9. Mr. Johnson told a preliminary inquiry into the positive swab that knew GRV was testing for arsenic. He said he knew about that fact from the GRV website. He said that he tried to keep up to date with rule changes.
10. Mr. Johnson denied administering arsenic containing substances to Shakey Benz. His only explanation for the high reading is that the greyhound had chewed treated pine in his kennel. According to Dr. Karamatic "the chance of a greyhound exceeding 800 ng/ml without the administration of arsenic is greater than 1 in 11,000". Dr. Karamatic gave evidence that the actual figure from a population study is 1 in 11,878. Dr Karamatic also referred in his report to testing of "soil from the rear of the kennels near posts". He noted however that the soil contained "44 mg/kg of arsenic" and said that the posts were burnt treated pine posts and would have resulted in higher soil concentration than soil from the southern run of the kennels.
11. In the preliminary inquiry, Mr. Johnson said he had no explanation for the race day arsenic reading for Shakey Benz of 1410 ng/ml compared with the subsequent out of

Racing Appeals & Disciplinary Board

competition swab which showed a urinary concentration of arsenic at 200 ng/ml. The explanation he later offered was that the greyhound may have chewed "severely" for a week prior to the race. That is, chewed the treated pine bedding in the kennel. Mr. Johnson said he would have to redesign the kennels to get rid of "that CCA treated (pine) ...". CCA stands for Copper Chrome Arsenate.

12. We find Mr. Johnson guilty on the presentation charge. He presented Shakey Benz for an event while not being free of a prohibited substance, being arsenic at a urinary level in excess of 800 ng/ml.
13. We now turn to the question of penalty. Mr. Johnson is a hobby trainer who has held a license for about 10 years and has seven greyhounds in his care. We take into account his guilty plea and good record. We also take into account specific and general deterrence and the maintenance of the integrity of the industry. We further take into account the concept of recency, given that this positive swab occurred 9 days after the insertion of the threshold.
14. As this is our first arsenic penalty matter we took into account carefully the penalty guidelines document issued by GRV. We consider category 3 the appropriate penalty characterisation as arsenic can be both a stimulant and a depressant. The toxicity of arsenic also raises animal welfare issues.
15. We are prepared to consider the real possibility that the treated pine was the cause of the positive swab. However we must bear in mind the seriousness of the prohibited substance. We also bear in mind the submission of Mr. Hooper on behalf of the stewards that arsenic cases are serious matters.
16. We were impressed by Mr. Johnson's honesty and his attempts to change the structure of his kennels. In all the circumstances, and in the interests of justice, we believe the fairest result is to impose a six months' period of disqualification but fully suspend that period pending no further breach of GAR 83 in the next six months. In addition the Board imposes a fine of \$1,000. Further, "Shakey Benz" is disqualified from race 3 at Healesville on 10 July 2016.
17. The Board stresses that there were special factors involved in this matter being the contamination from treated pine and the concept of recency. We also stress Mr. Johnson's co-operation with the stewards, his clean record and guilty plea. Participants in the industry should bear in mind that the Board views arsenic as in the nature of a category 3 prohibited substance and that the concept of recency will have less currency for positive swabs in the future.

.....End.....