

8 February 2024

DECISION

GREYHOUND RACING VICTORIA

and

KENNETH KUBIK

- Date of hearing:** 6 February 2024
- Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Ms Heidi Keighran.
- Appearances:** Ms Amara Hughes, instructed by Mr Anthony Pearce, appeared on behalf of the Stewards.
Mr Kenneth Kubik represented himself.
- Charges:** Greyhounds Australasia Rule (“GAR”) 141(1)(a) states:
(1) 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.
- GAR 139(3)(a) states:
(3) When a sample taken from a greyhound being trained by a trainer or in the care of a registered person has been established to contain a permanently banned prohibited substance:
(a) the trainer and any other person who was in charge of the relevant greyhound at the relevant time shall be guilty of an offence.
- GAR 151(1)(2) states:
(1) The person in charge of a greyhound must keep and retain written records detailing all vaccinations, antiparasitics and treatments administered to the greyhound:
(a) from the time the greyhound enters their care until the greyhound leaves their care; and
(b) for a minimum of two years.

(2) If requested by a Controlling Body, a Steward, or an authorised person, the record/s of treatment referred to in subrule (1) of this rule must be produced for inspection.

Particulars:

Charge 1: GAR 141(1)(a)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 3934) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. You were, at all relevant times, the trainer of greyhound "Global Charm" (VJPJT).

3. Global Charm (VJPJT) was nominated to compete in Race 4, RACERS FUNCTION CENTRE, Tier 3 – Grade 7, conducted by the Shepparton Greyhound Racing Club at Shepparton on 16th of February 2023.

4. On 16 February 2023, you presented Global Charm (VJPJT) at the event not free of any prohibited substance given that:

a. A post-race sample of urine was taken from Global Charm at the event (the Sample);

b. Tapentadol was detected in the sample.

Charge 2: GAR 139(3)(a)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 3934) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. You were at all relevant times the trainer and person in charge of greyhound "Bright Black" (VJJEN).

3. An out of competition test sample was taken from Bright Black (VJJEN) at your registered kennel address in Seymour, Victoria, on 29 March 2023.

4. Tapentadol was detected in the Sample.
5. Tapentadol is a permanently banned prohibited substance.

Charge 3: GAR 151(1)(2)

1. You are and were at all relevant times a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 3934) and a person bound by the Greyhound Australasia Rules and Local Racing Rules.
2. On 29 March 2023, you were required to produce treatment records for the greyhound "Global Charm" (VJPJT).
3. You did not keep treatment records for Global Charm (VJPJT).

Pleas: Guilty

DECISION

1. Mr Kenneth Kubik is the owner and trainer of a greyhound named "Global Charm". The greyhound competed in Race 4 at Shepparton on 16 February 2023 and won the race.
2. After the race, the Stewards took a sample from the greyhound. The sample contained a permanently banned prohibited substance, namely tapentadol.
3. When the Stewards attended at Mr Kubik's kennels on 29 March 2023 to advise him of the result of the swab, they also swabbed another greyhound called "Bright Black". The swab from this greyhound also ultimately was found to contain tapentadol. When the Stewards sought the treatment records of Global Charm, Mr Kubik was unable to produce them.
4. Mr Kubik has thus been charged with three offences. Charge 1 is in respect of the presentation of Global Charm at the race not free of a prohibited substance. Charge 2 is an out of competition offence in respect of the finding of the same prohibited substance in the greyhound Bright Black at the kennels. Charge 3 is a charge of failing to produce treatment records for the greyhound Global Charm on 29 March 2023.
5. Mr Kubik originally announced an intention to plead Not Guilty to these charges. He did so because he did not intend to drug the dogs. He was also aggrieved because he felt that

the Stewards had acted without compassion when they visited his home and kennels on 29 March. He had received a devastating cancer diagnosis that same day. He told us at the hearing that since that time, the Stewards have been very supportive, and he now accepts that, in relation to the first two charges, neither of these charges requires the Stewards to prove any intention to drug the dogs. It is sufficient that the drugs are found in their system.

6. At the time of the Stewards visit, he identified the source of the drug that was found in both greyhounds. He had been prescribed, and was using, medication for a severe arthritic condition. This medication, Palexia, contains tapentadol. It appears from the scientific evidence before us that the substance may well have been absorbed by each of the dogs whilst Mr Kubik was feeding them. He was not taking precautions, such as the use of rubber gloves, when handling dog food, as the rubber produces an allergic reaction to his hands.
7. Tapentadol is a permanently banned substance under the Rules. This places it in a more serious category than the presence of a therapeutic substance. There are no veterinary products which contain this drug. However, there are nine products for humans which do contain it. It is an addictive opioid and can induce an artificially pain free state in a dog when ingested. It is therefore capable of a positive effect on the performance of a greyhound, although at higher dose rates it can act as a sedative.
8. The Stewards have reminded us that there have been several notices to the industry warning of the dangers of passing on human medications to greyhounds through feeding.
9. Since he has been charged, Mr Kubik has changed his medication in order to ensure that this never happens again. This is a great cost to him as it means that he has no effective remedy for his severe arthritis. The medication he uses is only partially effective and he is in constant pain from his hands and back. He has no one else to help him with looking after his dogs. He also now uses a Mixmaster to mix the feed to ensure that his hands do not come into contact with the food being fed to his greyhounds.
10. In assessing a penalty, we take into account that he has been in the industry since 1972. Although he has a history of some relatively minor infractions of the Rules, he has had no prior offences relating to prohibited substances. We treat him as having an excellent record overall.
11. Mr Kubik is 72 years old. He lives alone on the age pension. He has four racing greyhounds which he trains himself. He gave full and very frank answers to the Stewards when they arrived unannounced on 29 March 2023. He is in poor health and presented us with detailed medical reports outlining his condition.

12. Mr Kubik explained he did not produce treatment records in relation to Global Charm on 29 March 2023 as he could not locate them at the time. He did subsequently produce the records. We accept his explanation that his failure to do so was because he had just arrived home with a diagnosis of cancer and was caught off guard by the presence of the Stewards.
 13. The Stewards presented us with a table of cases regarding similar presentation offences regarding permanently banned substances, and we have utilised this information in coming to our decision on penalty. The Stewards also relied on the case of Mr Christopher Glen as authority for the proposition that, unless exceptional circumstances apply, a wholly suspended sentence should not be ordered in the case of ingestion of permanently banned substances.
 14. We have not found it necessary to consider this proposition in detail, as it is our view that a short period of suspension is appropriate in the circumstances of this case. Each case must be viewed on its own merits. In this case, no precautions were taken at all prior to the first positive swab.
 15. We impose the following penalties:

Charge 1: 12 months suspension, with 10 months suspended for 24 months. In addition, we impose a fine of \$1,500, with \$1,000 suspended for 24 months.

Charge 2: 12 months suspension, with 10 months suspended for 24 months. In addition, we impose a fine of \$1,500, with \$1,000 suspended for 24 months.

Charge 3: \$200 fine.
 16. We order that the penalty on Charge 2 be served concurrently with the penalty imposed on Charge 1, given that Charge 2 arises out of essentially the same course of conduct.
 17. In addition, Global Charm is disqualified from Race 4 at Shepparton on 16 February 2023 and the finishing order is amended accordingly.
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Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal