

11 October 2024

DECISION

GREYHOUND RACING VICTORIA

and

MICHAEL GIBBONS

Date of hearing:	8 October 2024
Date of decision:	8 October 2024
Panel:	Judge Marilyn Harbison (Deputy Chairperson) and Mr Josh Bornstein.
Appearances:	Ms Yana Podolskaya appeared on behalf of the Stewards. Mr Michael Gibbons represented himself.
Charges and particulars:	<u>Charge No. 1 of 2</u>

Greyhounds Australasia Rule 141(1) reads as follows:

Rule 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.

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound "Storm Key".

3. “Storm Key” was nominated to compete in Race 12, COAST FM & 3YB, Grade 5, conducted by the Warrnambool Greyhound Racing Club at Warrnambool on 5 October 2023 (**the Event**).
4. On 5 October 2023, you presented “Storm Key” at the Event not free of any prohibited substance, given that:
 - (a) A pre-race sample of urine was taken from “Storm Key” at the Event (**the Sample**);
 - (b) Betamethasone was detected in the Sample.

Charge No. 2 of 2

Greyhounds Australasia Rule 151(1) reads as follows:

Rule 151 Treatment records to be kept

- (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.*
- (3) *Each record of treatment kept in accordance with this rule must be made by midnight on the day on which the treatment was given, and, as a minimum requirement, include the following information:*
 - (a) *the name of the greyhound;*
 - (b) *the date and time of administration of the treatment;*
 - (c) *the name of the treatment (brand name or active constituent);*
 - (d) *the route of administration;*
 - (e) *the amount given; and*
 - (f) *the name and signature of the person or persons administering and/or authorising the treatment.*

For the purpose of subrule (3), “day” means the 24-hour period from 12.00am to 11.59pm on any calendar day.
- (4) *An offence is committed if any person in charge of a greyhound at the relevant time fails to comply with any of subrules (1) to (3) of this rule.*

(5) A person who commits an offence under subrule (4) of this rule may be penalised.

(6) For the purposes of this rule "treatment" includes:

(a) all Controlled Drugs (Schedule 8);

(b) all Prescription Animal Remedies and Prescription Only Medicines (Schedule 4);

(c) any injectable substance not already specified in this rule, notwithstanding the route of administration;

(d) all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines; and

(e) all veterinary and other medicines containing other scheduled or unscheduled prohibited substances.

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were at all relevant times the Trainer of the greyhound "Storm Key".
3. On or around 1 October 2023, you administered a treatment, namely the substance "Simparica TRIO" to "Storm Key" **(the Treatment)**.
4. The Treatment was not recorded in your treatment records when you produced them to GRV Senior Steward Max Hayden-Evans upon his request.
5. The Treatment is required to be recorded in your treatment records.

Pleas: Guilty to both Charges.

DECISION

1. Mr Michael Gibbons is charged with two offences. The first is that he presented Storm Key to race on 5 October 2023 at Warrnambool not free of a prohibited substance. The substance that was detected was betamethasone.
2. The second charge is that he administered a treatment, namely Simparica Trio-to Storm Key, and did not record that treatment in his treatment records.
3. He has pleaded guilty to each charge.
4. Mr Gibbons has been a trainer since 2001. His kennels are located at Lara.

5. When he was interviewed by the Stewards on 10 November 2023, Mr Gibbons was unable to explain the presence of this substance in his dog. He was aware that knackery meat could contain prohibited substances such as dexamethasone, but was unaware of the existence of the substance for which he had been charged. He said that he was very careful with what he gave the dogs and in particular that he does not feed knackery meat since he and his wife had been charged in the past with offences which could be traced back to his use of knackery meat.
6. The Stewards were unable to find any products at his kennels which contained this drug. Thus, the source of the contamination could thus not be ascertained. Mr Gibbons later told the Stewards that he suspected that it may have been absorbed by the dog at the track, as a large number of dogs were exercised together in the yards. There were other positive samples from the race, but they were not samples of betamethasone. His suspicion does not appear to be accurate.
7. It is important to note here that in the sampling process, RASL made a serious mistake. The laboratory certified that the swab contained dexamethasone. This was incorrect. It appears to have been the result of incorrect labelling in the laboratory. The mistake was only picked up when the reserve sample was sent to the Sydney laboratory to be tested. The Sydney laboratory found no dexamethasone in the reserve sample. The matter was referred back to RASL. This laboratory then retested the sample and found that it contained betamethasone, not dexamethasone.
8. These substances are very similar in their chemical makeup. Betamethasone is an isomer of dexamethasone. Both are prohibited substances under the Rules. Both have almost identical effects.
9. Naturally, Mr Gibbons was very concerned about the mistake made in the laboratory and the prospect that cross contamination within the laboratory or during the sampling process may have compromised the swab. Although we were not provided with much information in this hearing as to how the error came to be made, it appears from the material in the brief that the error in labelling was genuine and has not caused any injustice to Mr Gibbons. However, we join with him in expressing our concern that such a troubling mistake should have been made within the laboratory. The scientific conclusions presented to us in cases such as this are very difficult to challenge, given the financial cost involved. It is vital that testing procedures are followed scrupulously in order to ensure that the decisions of this Tribunal are based on flawless scientific investigation.
10. Betamethasone is an anti-inflammatory medication. It does not appear to be often used for greyhounds, but can be used as a gel or lotion for conditions such as osteoarthritis or muscle injuries. It is not taken orally, but it is sometimes injected into horses and can be

used as an ointment or lotion. Its effect on greyhound performance may be to inhibit sensations of pain and therefore increase the fatigue threshold of a dog.

11. It is also used for humans as a topical treatment for skin diseases. It is sometimes found in knacker meat because it is used in the treatment of lame horses.
12. Mr Gibbons was interviewed again on 7 March 2024. It appears from that interview that he was accustomed to using Simparica Trio Chews to worm his dogs. He had not recorded this treatment in his treatment record book. He described it to the Stewards as just being an oversight on his behalf.
13. In setting a penalty for the presentation offence, we take into account the issue of general deterrence. In other words, we need to deter others from racing dogs with prohibited drugs in their systems. This is a strict liability offence and so it does not require the Stewards to prove that Mr Gibbons knew of the presence of the prohibited substance.
14. However, there are some significant mitigating matters in respect to the first charge. Firstly, this is the first charge brought before this Tribunal which relates to this substance. Once Mr Gibbons was told of the mistake in identification of the substance, he made his own investigations and has volunteered to this Tribunal that the source of this substance appears to be some eczema cream which he was administering to his child at the relevant time. His attitude has been one of complete cooperation and frankness with the Stewards and the Tribunal in respect of this matter. It is not inconceivable that, had this charge been contested, he would have been found not guilty, given the confusion surrounding the initial misidentification.
15. Secondly, he is a man in parlous financial circumstances. He is aged 60 years and has two children aged 8 and 3 years. His wife is a disability carer and works in Melbourne. He lives near his kennels in Lara and is presently keeping approximately 28 greyhounds, of which a significant number are either GAP dogs, retired dogs, or dogs given to him by others who did not wish to keep them. He has no savings.
16. Thirdly, he has no relevant prior convictions.
17. In relation to the second charge which relates to incomplete treatment records, we note that the purpose of a penalty in this instance is to ensure that records are kept up to date, so that the Stewards are able to ascertain exactly what substances are given to greyhounds. We do not accept that Mr Gibbons has any sufficient excuse for not doing so.
18. Taking all these matters into account, the penalties which we impose is as follows.

19. On the first charge, which is the presentation offence, we order that he be fined the sum of \$1,500, but that fine be fully suspended for a period of 12 months to reflect the mitigatory factors which we have set out above.
 20. On the second charge, which is the charge relating to treatment records, we order that he be fined \$300.
 21. We further order that Storm Key be disqualified from Race 12 at Warrnambool on 5 October 2023 and the finishing order is amended accordingly.
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Mark Howard
Registrar, Victorian Racing Tribunal