

TASMANIAN RACING APPEAL BOARD

Appeal Number 6 of 2016/17 - DYLAN FORD

Panel:	Mr Tom Cox (Chair) Ms Kate Cuthbertson Mrs Sue Martin	Appellant:	Mr Dylan Ford
Appearances:	Mr Bradley Walters on behalf of the appellant Mr Adrian Crowther on behalf of the stewards	Rule:	Harness Rules (1)190.(1) (2)196A.(1)(ii)
Heard at:	Hobart	Date:	19 December 2016
Penalty:	(1)A 5 month disqualification (2)A 5 month disqualification (To be served concurrently)	Decision:	Dismissed

REASONS FOR DECISION

1. The Appellant, a licenced trainer and driver in the harness racing industry, appeals against the severity of a five month period of disqualification imposed by the stewards following an inquiry into the results of analysis carried out on urine samples taken from GLAMOUR ART following its second placing in Race 11 - "The Luxbet For Those That Know Racing Pace" held at the Launceston Pacing Club race meeting on 28 August 2016. Analysis of those samples indicated the presence of a prohibited substance, Dexamethasone.

2. In the course of the inquiry the appellant pleaded guilty to three breaches of the rules of racing:

(a) AHHR 190B.(1) A trainer shall at all times keep and maintain a log book recording all details of treatment administered to any horse in his or her care.

(b) AHHR 190.(1) A horse shall be presented for a race free of prohibited substances.

(c) AHRR 196A.(1) A person shall not administer or cause to be administered to a horse any prohibited substance (ii) which is detected in any sample taken from such horse prior to or following the running of any race.

3. The stewards proceeded to impose the following penalties:

(a) Charge 1 a fine of \$200.00;

(b) Charge 2 a disqualification for 5 months;

(c) Charge 3 a disqualification of 5 months.

4. The stewards further ordered that the two periods of disqualification be served concurrently.

5. In imposing the penalty the stewards stated:

"We've taken into consideration your submissions relating to penalty. We've taken particular notice of the following factors:

The personal circumstances you've outlined during your penalty submission;

Your guilty pleas to the charges;

That you have held a trainer's licence since December 2013;

That you have no previous offences with presenting a horse to race with a prohibited substance present, although we do note that you have been suspended for five months for a breach of the rules relating to driving whilst a prohibited substance was present in your system;

The negative effect that prohibited substance offences have upon the image and integrity of harness racing;

That any penalty served is an appropriate punishment and an effective deterrent to other industry participants;

We've taken into consideration penalty precedents, both in Tasmania and other jurisdictions."

Background Facts

6. Dexamethasone is an anti-inflammatory and glucocorticoid steroid, administered by injection. One of the commercial products containing Dexamethasone is Dexapent, a prescription only medication that may only be prescribed by a qualified veterinarian. The recommended standard dosage is in the order of 5-7.5 mls.
7. On Wednesday 24 August, four days before race day, Mr Ford administered 15mls of Dexapent to GLAMOUR ART. The bottle of Dexapent was kept in a fridge at Mr Ford's home. It had not been prescribed for GLAMOUR ART, but rather for another horse trained by the appellant, BILLABONG BERTIE. Mr Ford's explanation for administering the substance was as follows:

"My understanding, it probably, on Tuesday she has a (inaudible). She normally ties up, normally, that's why she always gets Enerseen on the Thursday as well. Mainly she ties up and her back joints start to swell just under her bottom joint, she normally gets a bit puffy. She also wears back on track boots 24/7 because of her back joints walking through the sand."

8. The appellant further explained at the inquiry that approximately 18 months ago BILLABONG BERTIE had presented with similar symptoms and, following a veterinary examination, was prescribed Dexapent. The treatment, according to the appellant, worked well for BILLABONG BERTIE. In those circumstances, the appellant determined to administer 15mls of Dexapent to GLAMOUR ART and a horse SU YOU TOO along with Metacam, another anti-inflammatory, although not one which is steroid based.
9. The appellant has acknowledged that he did not consult a veterinarian to determine whether or not it was appropriate to administer Dexapent to GLAMOUR ART, nor had he consulted any veterinarian to determine whether 15mls was an appropriate dose. He believed the withholding period for Dexapent was four days but, again, did not consult a veterinarian to confirm that.
10. At the inquiry the appellant also said that he determined a dosage of 15mls on the basis that "that was the treatment BILLABONG BERTIE used to receive and I thought that was still safe to do so". The bottle of Dexapent was not before the steward's enquiry or before this Board. It remains a matter of conjecture as to whether that was the dosage prescribed to BILLABONG BERTIE. There was

conflicting evidence about this. The appellant also stated during the inquiry that he was not sure of the dosage BILLABONG BERTIE received as he could not recall that far back. What is not disputed is that GLAMOUR ART was not prescribed Dexapent, nor was the horse subjected to examination or any form of review or consideration by a qualified veterinarian before that product was administered.

The Appellant's Contentions

11. Against this background, the appellant submits that the penalty of five months' disqualification is excessive in all the circumstances. The following matters were put to this Board:

- (a) That the appellant had pleaded guilty to all charges;
- (b) He and his family have been involved in the harness racing industry for all of his life;
- (c) He has been a licenced stable hand since he was 14 years of age and graduated to a driver and trainer's licence. He is now only 21 years of age;
- (d) At the time of the inquiry he was on worker's compensation following a workplace accident which resulted in major surgery to his knee. He had four months off work as a result of that injury and has only returned to that employment two months ago. Of note, this employment was the first he had obtained outside of the racing industry. He was working full-time hours but employed on a casual basis, therefore the security of his employment was an issue;
- (e) The level of Dexamethasone was relatively low (.4 nanograms) over the threshold (.2 nanograms);
- (f) The appellant honestly but mistakenly believed that a four day withholding period was appropriate. The appellant relied on the evidence given by a veterinarian Dr Meeker during the course of the inquiry which was as follows:

Mr Ford: ...With a dosage of 15 mls of Dexapent, how many days would you advise out from race day?

Dr Meeker: At least five.

Mr Ford: And I should be safe with four, depending on the horse?

Dr Meeker: Well, you should be safe with four. I always have been safe with four. But these things change.

- (g) The appellant asserted that the testing for Dexamethasone had become more sensitive recently. Apparently, a notice was issued to the industry some time earlier this year advising that the testing was more sensitive and that there had been an increase in positive results as a consequence. The notice was not before this Board;
- (h) That the appellant's conduct in using a substance prescribed to another horse should be described as "naive" rather than reckless or indifferent. His actions in determining the dosage should be categorised in the same vein;
- (i) The appellant was motivated by acting in the best interests of GLAMOUR ART;
- (j) The appellant also contended that it was common practice within the harness racing industry to use the residue of prescriptions for horses in the treatment of other horses. This was so because of the prohibitive cost of medications and the cost associated with veterinarian attendances and consultations;
- (k) The appellant also contended that the substance was not a "black market" prohibited substance administered with the intention of enhancing performance, rather it was therapeutic agent given to alleviate joint inflammation;
- (l) A number of harness racing participants in Queensland had recently been fined for breaches of the same or similar rules in relation to a different anti-inflammatory agent, Phenylbutazone. Similarly, in Tasmania, a \$2000 fine had recently been handed down in respect of a breach of AR 190(1) in respect of Phenylbutazone and Oxphenbutazone.

The Stewards' Contentions

12. By contrast, the stewards contended that the penalty was appropriate for the following reasons:
 - (a) This was a prescription only medication which should not have been administered to GLAMOUR ART;

- (b) The appellant did not consult a veterinarian or take any advice in determining whether to administer the substance to GLAMOUR ART;
- (c) Assuming the recommended dosage is in the order of 5 to 7.5 mls the Appellant had overdosed GLAMOUR ART by twice the recommended amount. Stewards characterised this as propping up a training regime which allowed GLAMOUR ART to be worked hard in the lead up to the race;
- (d) The appellant had determined to administer Dexapent on Tuesday, but did not administer it until Wednesday. In so doing he acted with reckless indifference to whether or not the horse would present with a prohibited substance;
- (e) The appellant had ample time to consult a veterinarian and in failing to do so had taken upon himself to determine whether or not the horse would present with a prohibited substance. The decision was, as the stewards put it “his decision and his decision alone”;
- (f) To the extent there is any practice by trainers to use left over medications on horses for which the medication is not prescribed, the stewards do not condone such a practice. It is, in their submission a practice that is “fraught” with risk;
- (g) It was acknowledged that in Queensland and Victoria, fines are more regularly handed down for prohibited substance offences, but it was not the case in the remaining Australian jurisdictions.

Decision

13. The use of prohibited substances in racing has a deleterious effect on the integrity of the industry and its perception by the public. This is the case even where therapeutic agents are involved. Whilst the use of such substances may not be directly performance enhancing or apt to manipulate the outcome of a race, there are sound reasons for the application of the presentation and administration rules in such circumstances. The use of such agents close to race date enables trainers to work horses harder than otherwise might be the case. There are significant animal welfare issues that flow from this. Such agents may mask a more serious underlying or chronic issue. This may also have consequences for the safety of participants in racing. A horse carrying an injury may break down during the course of a race resulting in the significant risk of an injury being caused to drivers and other horses.

14. It is clear that the penalties imposed by various racing bodies for prohibited substance offences vary greatly between the jurisdictions and according to the substances involved. There is a discernible difference in the treatment of such offences in respect of therapeutic agents as opposed to strictly performance enhancing substances. As a consequence, there is no particular tariff that can be readily ascertained by reference to other cases and other jurisdictions. Each matter must turn on its facts.
15. In this case, the relevant matters include that the substance was a therapeutic agent and found in a low quantity, albeit in an amount approximately twice the reportable threshold. The appellant had not previously breached the prohibited substance rules in respect of the presentation of and administration to a horse. It is a case properly characterised as one where he underestimated the withholding period for the substance involved.
16. The evidence clearly showed, however, that Dexamethasone is a powerful anti-inflammatory agent that can have a significant impact on a horse's system particularly if it is not used in accordance with proper veterinary advice. The appellant did not seek any veterinary advice to ascertain if treatment with Dexamethasone was indicated given GLAMOUR ART's presentation. He treated GLAMOUR ART without considering publically available information regarding recommended dosages. He took no steps to ascertain the appropriate withholding period. At best, he relied on information given by a veterinarian in respect of a different horse. During the inquiry, he was unable to specify what dose of Dexamethasone had been prescribed by Dr Meeker for the treatment of BILLABONG BERTIE.
17. The Board was referred to a number of stewards' penalty decisions in respect of breaches of AR 190(1) and 196A(1) both in Tasmania and nationally. It is difficult to draw firm conclusions regarding the appropriate penalty for the breaches with which we are dealing in this case from that material. There is little information provided regarding the circumstances of the breaches and many of the records do not even specify the prohibited substance involved. More assistance may be gained from consideration of decisions of appeal boards.
18. In [Attard](#), Racing Appeals Tribunal NSW decision of 10 October 2014, a disqualification of six months was reduced to five months following the presentation of a horse to a race with the prohibited substances

phenylbutazone and oxyphenbutazone in its system. The appellant had been involved in the industry for 40 years. He had no prior offences for presentation of horses with prohibited substances. In [Gillespie](#), Racing Appeals Tribunal NSW decision of 20 May 2015, a disqualification of 15 months was reduced to 12 months following the presentation of a horse to a race with the prohibited substances phenylbutazone, oxyphenbutazone and gamma-hydroxyphenylbutazone in its system. The appellant in that case had been involved in the industry for 26 years and had a prior presentation offence 15 years earlier. He pleaded not guilty to the charge. That phenylbutazone is a therapeutic agent was noted by the tribunal in that case. In [Forby](#), Racing Appeals Tribunal SA decision RAT 16/14, the Tribunal dismissed an appeal against the severity of the penalty imposed. In that case, the appellant was charged with presentation and administration offences in respect of Dexamethasone. A nine month disqualification was imposed. The Tribunal did not find that the penalty was excessive. There is little by way of detail in that decision regarding the reasoning behind the Tribunal's determination in that case.

19. What is evident from these cases and the records provided by stewards during the course of this appeal is that the penalty imposed in this case was not manifestly excessive. It properly recognises the mitigating factors, particularly that the substance is a therapeutic rather than performance enhancing agent. It also serves to deter the appellant and others from administering substances to their horses in what can only be described as a reckless manner fraught with risk.

Comment

20. It is appropriate that this Board sound a warning to the industry in the event there is a culture, practice or even perception that it is appropriate to administer left over prescription medications to horses for which the medication has not been prescribed. The use of residual prescription medications may be cost effective, but it is otherwise completely unacceptable in our view. To engage in such a practice brings the risk that the substance, whatever it is, may be detrimental to a horse's health and welfare. In turn, riders and drivers may be put at risk of injury, especially in circumstances where the medication may mask an otherwise serious injury. This risk is also compounded in circumstances where appropriate veterinary advice has not been sought. To administer a horse with what is effectively an un-prescribed medication also

increases the probability of a contravention of the rules of racing. Breaches of the rules of racing for offences associated with prohibited substances have a long-lasting detrimental impact on the industry. There is also the unnecessary burden and expense to the industry, particularly to its regulators, that conduct of this type brings, and all because there may be those within the industry who are prepared to “run the risk” of breaching the rules relating to prohibited substances in circumstances in which they have taken it upon themselves to determine what, when and how much of a left over medication sitting in their stables is administered to a horse. If there is a practice to administer residual prescription medications to horses for which the medication was not prescribed, and it results in a breach of the rules of racing, any appellant before this Board should expect little sympathy.

Result

21. The appeal is dismissed and the decision of the stewards in respect of the penalty imposed upon the appellant is affirmed.
22. Pursuant to ss. 34(1A) and (2)(a) of the *Racing Regulation Act 2004*, 50 per cent of the appellant’s appeal deposit is forfeited to Secretary of the Department. Further, pursuant to ss. 34(4A) and (4B)(a) the appellant is ordered to pay to the Secretary of the Department 50 per cent of the cost incurred in preparing the transcript of the stewards’ inquiry.