

# TASMANIAN RACING APPEAL BOARD

## Appeal No 16 of 2016/2017

<b>Panel:</b>	<b>Tom Cox (Chair) Kate Cuthbertson Rod Lester</b>	<b>Appellant:</b>	<b>Rodney Bragg</b>
<b>Appearances:</b>	<b>Tom Astbury on behalf of the appellant Reid Sanders on behalf of the stewards</b>	<b>Rules:</b>	<b>GAR83(2)(a) &amp; GAR84A(4)(a)</b>
<b>Heard at:</b>	<b>Hobart</b>	<b>Penalty:</b>	<b>12 month disqualification</b>
<b>Date:</b>	<b>25 May 2017</b>	<b>Result:</b>	<b>Varied to a 8 month disqualification</b>

### REASONS FOR DECISION

1. The appellant has held a licence to train greyhounds in Tasmania for the past five years. On 30 May 2016, he presented *Madam Anne* to race in Race 9, the Curtains & Blinds Grade 5 over 515m at Launceston Greyhound Racing Club. A pre-race urine sample was taken from *Madam Anne* which, upon subsequent analysis, was shown to contain Pramiracetam. Confirmatory testing was undertaken on the B sample and confirmed the presence of Pramiracetam.
2. On 15 July 2016, Stewards undertook an inspection of the appellant's kennel. During the course of that inspection, Stewards located a bottle of Testoprop which is an injectable testosterone. An examination of the appellant's treatment book disclosed that he had administered .25ml of Testoprop to four greyhounds in his kennels on 15 June 2016.
3. On 4 April 2017, Stewards conducted an inquiry into the positive swab and the kennel inspection. Following that inquiry, Stewards found the appellant in breach of GAR 83(2)(a) and 84A(4)(a) which reads:

GAR 83(2)(a)

*“The owner, trainer, or person in charge of a greyhound –*

*(a) Nominated to compete in an event;*

*(b) Presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or*

*(c) Presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked shall present the greyhound free of any prohibited substance.*

Section 3 of that rule reads:

*“the owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.”*

GAR84A(4)(a)

*“It shall be an offence for any person to acquire, attempt to acquire, administer or allow to be administered to any greyhound any permanently banned prohibited substance referred to in Rule 79A.”*

4. The appellant pleaded not guilty to the charges at the inquiry. Stewards found him guilty on all charges. In respect of the presentation charge, the appellant was disqualified for a period of six months. In respect of four charges relating to the administration of Testaprop, the appellant was disqualified for a further six months in respect of each charge, but those periods of disqualification were ordered to be served concurrently.
5. In total, the appellant was disqualified for a period of 12 months.
6. The appellant originally appealed to this Board against the finding by Stewards that he was in breach of the above rules and also appealed the severity of the penalty imposed. During the course of the appeal hearing however, the appellant abandoned the appeal grounds relating to his conviction. The appeal proceeded solely to consider the question of the appropriateness of the penalties imposed by Stewards.
7. The particulars in respect of the presentation charge are as follows:

*“That you, Mr Bragg, as the trainer of MADAM ANNE, nominated and presented MADAM ANNE to compete in race 9, the Grade 5/515(2) on the 30<sup>th</sup> May 2016, not free of the prohibited substance Pramiracetam, as evidence by the Analysis of the post-race, pre-race urine sample taken from that greyhound.”*

8. The offence is one of strict liability. Pramiracetam is an unusual substance to find in a racing animal. It was detected in a sample in the low nanograms per millilitre concentration somewhere around the one nanogram per millilitre level. The testing used was not quantitative, and is not designed to provide an accurate indication of the amount of the substance in the sample. The evidence given at the inquiry noted that it was a low concentration, but that was not uncommon for positive results in racing samples.
9. Mr Zahra from Racing Analytical Services Laboratory in Victoria told the inquiry that it was the first Pramiracetam positive that they had seen in an animal. Dr Karamatic, who is the Chief Veterinarian for Greyhound Racing in Victoria gave evidence at the inquiry that Pramiracetam was a prohibited substance under the rules of racing in that it acts on the central nervous system. His evidence was to the effect that the substance can act as a stimulant, but if he was to classify the substance, it was in a class of drugs called Nootropics, so-called “smart drugs”. These drugs are used by people, particularly when sitting exams, to enhance memory and improve mental function. The evidence was that there are no registered human or veterinary products containing Pramiracetam. Dr Karamatic was not aware of its use in greyhounds. The substance could not be classified as actually therapeutic, so it was potentially performance enhancing.

10. The appellant denies any knowledge of how the substance came to be in *Madam Anne*'s system. As noted, the offence is one of strict liability and the Board is not required to make any finding as to the appellant's state of mind at the time of the offence. The appellant suggested there must have been some environmental contamination. This appears an unlikely explanation given the rarity of the product. It is not a substance frequently used by humans or for the treatment of animals. *Madam Anne* finished second in the race. There was, however, no evidence before the inquiry suggesting any unusual betting or untoward activity in respect of the greyhound and the race result.
11. In relation to the charges under GAR 84A(4)(a), the substance being administered by the appellant to the four greyhounds in his kennels was commonly used to control oestrus in bitches. As of 1 January 2016, the National Rules were changed to deem anabolic androgenic steroids Permanently Banned Prohibited Substances. The Testaprop had originally been prescribed by a vet. It was not made clear which animal the substance was prescribed for. The appellant indicated he was unaware of the change in the rule that prevented the use of testosterone to control oestrus in greyhounds. The evidence showed that information had been distributed by Greyhounds Australasia notifying participants of the rule change. The appellant indicated during the course of the inquiry he wouldn't read anything put out by Greyhounds Australasia.
12. It appears the appellant was not aware of the rule change. The fact that he had made a record of administering the substance to his greyhounds in his treatment book suggests that was the case. There is no suggestion that his greyhounds had been presented in any races with testosterone in their system.
13. In arriving at penalty, Stewards took into account the following factors:
  - in respect of the presentation charge, Stewards considered this to be a serious matter. They noted that any positive swab impacts the integrity of the industry in a negative way. They noted as follows:

*“It tarnishes the industry and brings into question the fairness of racing, indeed, the participants and the betting public have the right to believe that greyhound racing is conducted on a level playing field and positive swabs bring that into question. The nature of the prohibited substance in this matter needs to be considered. It is a human drug and has no place in greyhound racing. It appears that there have been no prior cases in greyhound racing involving pramiracetam. Dr Karamatic has stated pramiracetam is potentially performance enhancing. The origin of this drug is unknown however, you as the trainer, are responsible for the presentation of the greyhounds and they must be presented drug free. In this regard, any penalty must reflect a component of general and specific deterrence. The onus is on you as trainer to present your racing greyhounds free of prohibited substances. Running parallel to this is the matter of animal welfare. The greyhound industry and the broader community expects and demands that the welfare of racing animals across all codes is paramount. The detection of drugs in runners clearly undermines that.”*
  - Stewards took into account the appellant's personal circumstances which were as follows: he is 70 years of age, he has one greyhound and doesn't rely

on greyhound racing for a living. He had a clear record since being licensed in Tasmania five years previously. The appellant had previously been disqualified for 10 years in Victoria, but Stewards indicated that did not form any part of their consideration. His not guilty plea was noted. The time between the detection of the substance and the inquiry was also noted.

14. Taking those matters into account, a six month period of disqualification was imposed.

15. In respect of the breaches of R84A(4) the Stewards noted as follows:

*“Anabolic androgenic steroids are permanently banned prohibited substances, all codes have banned their use, and the possession of an anabolic steroid is an offence. It is a matter of welfare and the broader community demand the welfare of any racing code as paramount. Stewards accept that you have cooperated with them in relation to these matters. You presented your treatment journal which openly recorded the treatment of these greyhounds with Testaprop. You have stated it was an oversight and you were not aware of the new rule. That may be so but Stewards maintain that in itself is no excuse. You have been involved in the industry for 50 years and it is your responsibility to keep abreast of all rules and any changes. The Stewards do consider this to be a serious matter. A clear message needs to be sent to the industry that any breach of this rule is serious and cannot be tolerated. Also, there needs to be a specific deterrent. Such is the seriousness of this matter, the Stewards see a starting point of at least 12 months disqualification. However, in your case, you have been forthright and cooperated with Stewards even though you pleaded not guilty. After due consideration, Stewards are disqualifying you for six months on each charge.”*

16. The Stewards directed that the penalties in respect of the administration of Testaprop be served concurrently with each other but cumulatively to the disqualification imposed in respect of the presentation charge.

17. In relation to penalty, the appellant submitted that he had been back in the industry for 5 years and had 51 winners in that time. Of those, 28 had been swabbed with no adverse consequences. He pursued greyhound racing as a hobby and had no intention of having more than four runners at any one time. Previous penalties in relation to prohibited substance charges in this jurisdiction were referred to as follows:

- *Sherriff* – Appeal No.7 of 2011/2012 – two counts of breaching GAR83(2)(a) involving caffeine. Charge 1 disqualified 3 months; charge 2 disqualified 3 months (wholly suspended).
- *Bullock* - Appeal No.23 of 2012/13 – one count under GAR83(2)(a) involving heptaminol. Disqualification for 6 months reduced to 4 months on appeal.
- *Rossendell* – Appeal No.14 of 2014/15 – one count under GAR83(2)(a) involving heptaminol. Disqualified 4 months.
- *Johnson* – Appeal No.17 of 2014/15 – one count under GAR83(2)(a) involving caffeine. Disqualification for 6 months reduced to 4 months on appeal.

- *Bullock* – Stewards’ inquiry in April 2017 regarding positive swab to arsenic resulted in the imposition of a \$2,000.00 fine and no suspension or disqualification.
  - *Campbell* – Thoroughbred stewards’ inquiry regarding positive swab to lignocain. A fine, but no suspension or disqualification was imposed.
  - *Ganderton* – Appeal No.13 of 2015/16 – two charges under the Thoroughbred Code relating to cobalt. Disqualified for 18 months reduced to 12 months with 6 months suspended on appeal.
18. Stewards submitted that there was no plausible explanation for the presence of the pramiracetam in *Madam Anne*. They submitted the hypothesis that environmental contamination was to blame was not plausible given that the substance is not present in any registered therapeutic product. In respect of the Testaprop charge, Stewards submitted that the applicant had taken notice of withholding advice previously given by Greyhounds Australasia, but had ignored subsequent advice regarding the banning of anabolic androgenic steroids. Stewards submitted the substance had been banned due to welfare issues and that they had no place in racing. In respect of the appellant’s personal circumstances, it was noted he does not derive an income from greyhound racing so the disqualification would not result in any financial hardship to him. Any concerns regarding impact to his lifestyle by not being able to participate in his hobby were not outweighed by the need to uphold the integrity of the industry.

### Decision

19. In all the circumstances, the Board is satisfied that the penalties imposed in this case were excessive. That is not to say that they are not serious offences; they are. In arriving at that decision, the Board takes into account the totality of penalties being imposed upon the appellant, that the Testaprop charges relate to an albeit reckless failure on the part of the appellant to have noted the change in the rules and the penalties imposed in respect of other prohibited substance charges. The penalty imposed must, however, serve as a deterrent to participants to ensure that all care is taken to present their animals free of prohibited substances and to keep abreast of all notifications received from regulatory bodies concerning the rules of racing. In all the circumstances, a penalty of four months’ disqualification is appropriate in respect of the presentation charge. Further, we find that a penalty of four months on each of the administration charges is also appropriate, to be served concurrently with each other but cumulatively to the presentation charge.
20. The appeal as amended having been wholly successful, we order that the appellant have his deposit returned to him pursuant to s.34(2) of the *Racing Regulation Act 2004*. There will be no order as to the costs of transcription.