



GREYHOUND WELFARE & INTEGRITY COMMISSION

DISCIPLINARY ACTION DECISION

- Date of decision:** 13 December 2019
- Decision-makers:** Matthew Tutt, Director Legal Services & Sarah James, Senior Legal Officer
- Name of relevant person:** Mr Morgan Fenwick-Benjes
- Track:** Gosford
- Date:** 23 December 2019
- Rule no.:** Rules 83(2)(a), 86(o), 79A(7) & 84(2) x 10
- Charge(s):**
- (1) Mr Fenwick-Benjes presented the greyhound 'Federal Lilly' ("Greyhound") for the purposes of competing in race 5 at the Gosford meeting on 23 December 2018 in circumstances where the Greyhound was not free of any prohibited substance;
 - (2) Mr Fenwick-Benjes in relation to greyhound racing has done a thing or omitted to do a thing which in the opinion of the Commission is negligent, dishonest, corrupt, fraudulent or improper or constitutes misconduct;
 - (3) Mr Fenwick-Benjes had in his possession at his registered kennels on 14 February 2019 a permanently banned prohibited substance;
 - (4-9) Mr Fenwick-Benjes had in his possession at his registered kennels on 14 February 2019 prohibited substances that were not labelled in accordance with the relevant state or commonwealth legislation;
 - (10) Mr Fenwick-Benjes had in his possession at his registered kennels on 14 February 2019 a prohibited substance that was not registered in accordance with the relevant state or commonwealth legislation;
 - (11-13) Mr Fenwick-Benjes had in his possession at his registered kennels on 14 February 2019 prohibited substances that were not labelled in accordance with the relevant state or commonwealth legislation.
- Permanently banned prohibited substance(s):**
- presentation offence:** Amphetamine

Disciplinary action taken: Charge 1: 4 years disqualification (38 weeks suspended due to period of interim suspension served)

Charge 3: 1-month suspension, back-dated to commencement of interim suspension

Charges 4-13: Formal warning/reprimand

DECISION:

Charge 1:

1. Following receipt of a certificate of analysis from the Racing Analytical Services Laboratory ("**Laboratory**"), the Commission conducted an investigation into the results of a post-race urine sample taken from the greyhound, 'Federal Lilly' ("**Greyhound**") at the Gosford meeting on 23 December 2018.
2. Mr Fenwick-Benjes is a registered greyhound trainer and the registered trainer of the Greyhound. The Greyhound was presented for race 5 at the Gosford meeting on 23 December 2019 ("**Event**"). Following the Event, as the Greyhound place first, a urine sample was taken from the Greyhound.
3. The post-Event swab revealed the presence of amphetamine. Amphetamine is a permanently banned prohibited substance under Rule 79A(2)(xx) and (iv) of the Rules and a category 2 prohibited substance under the NSW greyhound racing penalty guidelines.
4. Further analysis of the sample was conducted by the Australian Racing Forensic Laboratory ("**Confirmatory Laboratory**"), confirming the presence of amphetamine.
5. Following receipt of the Confirmatory Laboratory's certificate and having considered all evidence, including submissions made on Mr Fenwick-Benjes' behalf in reply, pending the finalisation of the Commission's investigation, on 21 March 2019 the Commission interim suspended Mr Fenwick-Benjes pursuant to Rule 92(5)(c) of the Commission's Greyhound Racing Rules ("**Rules**").
6. Following completion of the Commission's investigation, after considering the evidence, the Commission charged Mr Fenwick-Benjes with a breach of Rule 83(2)(a) of the Rules given that the post-race urine sample taken from the Greyhound confirmed the presence of the permanently banned prohibited substance amphetamine.
7. The charge was determined at a hearing heard on 5 December 2019.

Charge 2:

8. During the course of the Commission's inquiry in relation to the detection of the permanently banned prohibited substance, the Commission was provided evidence that Mr Fenwick-Benjes offered another participant a sum of money to take responsibility for the positive swab.

9. After considering the evidence, the Commission charged Mr Fenwick-Benjes with a breach of Rule 86(o) of the Rules.
10. The charge was determined at a hearing heard on 5 December 2019.

Charges 3-13:

11. On 14 February 2019, an inspection of Mr Fenwick-Benjes' registered kennels was conducted following notification of the results of the Laboratory's testing. During the course of the inspection, Commission inspectors located in Mr Fenwick-Benjes' possession and seized by the Inspectors:
 - (a) A quantity of Fertagyl – a permanently banned prohibited substance;
 - (b) 1 x 10mL bottle of Decort 20 – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (c) 1 x 100mL bottle of Lincomix – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (d) 1 x 100mL bottle of Linospectin – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (e) 1 x amber vial containing liquid, which later testing revealed to be Lignocaine – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (f) 1 x 3mL syringe containing a small amount of orange liquid, which later testing revealed to be Deoxycorticosterone acetate – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (g) 7 x tablets of Doxylin 100 – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (h) 1 x 20mL bottle of Merolin – not registered with the Australian Pesticides and Veterinary Medicines Authority;
 - (i) A sealed envelope labelled 'Amoxyclav' – a Schedule 4 Prescription Animal Remedy not labelled in accordance with the relevant state and commonwealth legislation;
 - (j) 18 x tablets of Eutroxsig – a Schedule 4 Prescription Only Medicine not labelled in accordance with the relevant state and commonwealth legislation;
 - (k) 1230 x tablets of Oroxine 100ug – a Schedule 4 Prescription Only Medicine not labelled in accordance with the relevant state and commonwealth legislation.
12. After considering the evidence, the Commission charged Mr Fenwick-Benjes with a breach of Rule 79A(7) and 10 breaches of Rule 84(2) of the Rules.
13. The charges were determined at a hearing heard on 5 December 2019.

Hearings

14. On 15 November 2019, this matter was heard in the first instance by the Commission.
15. Mr Fenwick-Benjes was present at the hearing and was legally represented. Mr Fenwick-Benjes entered pleas of not guilty to charges 1, 2, 4 to 13, and reserved his plea in relation to charge 3. Mr Graeme Duggan gave evidence. The matter was adjourned to consider documentary evidence produced on behalf of Mr Fenwick-Benjes.
16. On 5 December 2019, the matter was further heard by the Commission.
17. Mr Fenwick-Benjes was present at the hearing and was legally represented. The Commission amended the particulars of charge 3 reflecting “*a quantity of Fertagyl*” and Mr Fenwick-Benjes entered a plea of guilty to charge 3. Mr Fenwick-Benjes amended his pleas, at this time, to charges 4 to 13 to guilty.
18. Mr Fenwick-Benjes, Mr Graeme Duggan, Dr Michelle Ledger, Chief Veterinary Officer, Mr Paul Zahra, Scientific Manager of the Laboratory and Dr Derek Major, registered veterinarian gave evidence during the hearing.
19. After considering the evidence, the Commission found all charges, save for charge 2 (Rule 86(o)), proven and Mr Fenwick-Benjes formally guilty of charge 1. The Commission found Mr Fenwick-Benjes formally guilty of charge 1 on the following basis:
 - The presentation of the Greyhound by Mr Fenwick-Benjes for the purposes of competing in the Event; and
 - The Certificates of Analysis confirming the detection of amphetamine, a permanently banned prohibited substance.
20. The matter was adjourned on 5 December 2019 for written submissions on proposed penalties to be provided.
21. The Commission, after considering submissions provided on behalf of Mr Fenwick-Benjes, took the following disciplinary action against Mr Fenwick-Benjes:
 - Charge 1 (Rule 83(2)(a): To disqualify Mr Fenwick-Benjes for a period of 4 years, with:
 - (a) 38 weeks and 1 day suspended due to the period of interim suspension served from 21 March 2019; and
 - (b) The remaining period of disqualification to be served, commencing on 13 December 2019 and expiring on 21 March 2023;

 - Charge 3 (Rule 79A(7)): To suspend Mr Fenwick-Benjes’ Owner Trainer registration for a period of 1 month, back-dated to the

commencement of the interim suspension, being on 21 March 2019;

Charges 4-13 (Rule 84(2)): To issue Mr Fenwick-Benjes with a formal reprimand/warning for each offence.

22. In taking this disciplinary action, the Commission considered all evidence, including:

- The objective seriousness of charge 1;
- The objective seriousness of charges 3 to 13, including in relation to the nature of the prohibited substances located on the property and Mr Fenwick-Benjes' explanations for same;
- Mr Fenwick-Benjes' disciplinary history, with three prior presentation offences, resulting in a disqualification period served (partly as a suspension) of some 17 months;
- The short length of time Mr Fenwick-Benjes has held trainer registration in the greyhound racing industry: having first been registered on 3 June 2016 and re-registered on 9 October 2018; a period totalling approximately 14 months in which Mr Fenwick-Benjes could undertake training activities;
- Mr Fenwick-Benjes' late admission of charge 1 (this plea was amended to guilty with submissions on proposed penalties), and admission of charges 3 to 13 not at the earliest opportunity;
- The estimated level of the prohibited substance detected in the sample;
- The period served under an interim suspension being: 21 March 2019 to date;
- The submissions made on Mr Fenwick-Benjes' behalf in mitigation of penalty, including in relation to his personal and financial circumstances;
- Greyhound racing industry penalty guidelines and precedents.

23. In addition, the Greyhound was disqualified from race 5 at the Gosford meeting on 23 December 2018 pursuant to Rule 83(4).

.....End.....

*Amended 2 March 2020.