

**DECISION ON AN INTERNAL REVIEW APPLICATION UNDER
SECTION 91 OF THE *GREYHOUND RACING ACT 2017***

Matter for determination	Decision dated 28 September 2021 of the Integrity Hearings Panel, being Alice Stafford, A/Senior Legal Officer, David OShannessy, Chief Inspector and Dean Degan, Senior Steward under section 59 of the <i>Greyhound Racing Act 2017</i> to suspend Mr Ricky Brewer for six weeks, effective immediately.
Internal review decision date	19 October 2021
Internal review decision by	Mr Matthew Tutt Director Compliance, Policy & Legal Mr Wade Birch Director Race Day Operations & Integrity (Chief Steward)
Internal review decision summary	Confirm the decision of 28 September 2021 to suspend Mr Ricky Brewer for six weeks.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Mr Ricky Brewer ("**Mr Brewer**") for internal review under the *Greyhound Racing Act 2017* ("**Act**") of a decision of the Integrity Hearings Panel ("**IHP**"): Alice Stafford, A/Senior Legal Officer, David OShannessy, Chief Inspector, and Senior Steward Dean Degan of the Greyhound Welfare & Integrity Commission ("**Commission**" or "**GWIC**"). That decision was to suspend Mr Brewer's registrations for period of six (6) weeks, effective 28 September 2021.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As we were not substantially involved in making the reviewable decision, we have dealt with this application.
3. Under section 91(7) of the Act, an internal reviewer is empowered to:
 - Confirm the reviewable decision the subject of the application; or
 - Vary the reviewable decision; or
 - Revoke the reviewable decision.

Background

4. On 9 July 2021 Mr Brewer was issued with a Notice of Proposed Disciplinary Action, charging Mr Brewer with a breach of Rule 83(2)(a) of the GWIC Greyhound Racing Rules ("**Rules**") which reads:

Rule 83(2)(a), Rules

- (2) The owner, trainer or person in charge of a greyhound-

(a) nominated to compete in an Event;

....

shall present the greyhound free of any prohibited substance.

- (3) The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.
5. The particulars of the charge were:
1. That Mr Brewer, as a registered Public Trainer, while in charge of the greyhound 'Boaz' ("**Greyhound**"), presented the Greyhound for the purpose of competing in race 12 at the Richmond meeting on 8 May 2021 ("**Event**") in circumstances where the Greyhound was not free of any prohibited substance;
 2. The prohibited substance detected in the sample of urine taken from the Greyhound before the Event was dexamethasone;
 3. Dexamethasone is a prohibited substance under Rule 1 of the Rules.
6. Mr Brewer elected to have the disciplinary process conducted in writing and provided written submissions.
7. On 6 August 2021, Mr Brewer admitted the charge, and his representative provided written submissions on his behalf. Mr Brewer's submissions contained an explanation for the likely source of the positive swab, confirmation that Mr Brewer has reviewed and amended his animal husbandry practices and made reference to prior prohibited substance matters considered by the Commission and the previous Controlling Body.
8. Having considered all the evidence and submissions, on 28 September 2021 the IHP issued a Notice of Disciplinary Action, imposing a suspension of six (6) weeks upon Mr Brewer's registrations.

Findings

9. Upon review of all the evidence and submissions, the IHP, in imposing the penalty that it did, took into account the following factors:
- Mr Brewer's plea of guilty at the earliest opportunity;
 - Mr Brewer's period as a registered trainer, approximately four (4) years;
 - Mr Brewer's lack of any relevant prior disciplinary history;
 - The evidence provided on behalf of Mr Brewer in mitigation of penalty, including in relation to his good character, his comprehensive review of his animal husbandry practices, a reasonable explanation for the source of the prohibited substance, his personal circumstances and his remorse; and
 - Greyhound racing penalty precedents in New South Wales and other jurisdictions.

The internal review application

10. On 28 September 2021, Mr Brewer's representative lodged an application for internal review as well as a stay application.
11. The stay application was not opposed by the Commission and as such, the decision of 28 September 2021 has been subject to a stay since that date.
12. The internal review was conducted via telephone in accordance with Mr Brewer's request.
13. The main submission of the internal review application goes to the severity of the penalty imposed.
14. Mr Brewer submits that the penalty imposed does not take into consideration the full weight of the previous precedents, including other category 5 prohibited substances, of which dexamethasone is one of.
15. Mr Brewer submitted that the penalty is manifestly disproportionate to other category 5 penalties with no reasons given as to why this is the case. Mr Brewer submitted that the penalty imposed is such that it will have a substantial impact both financially and mentally upon him and his family, as well as impacting his ability to continue to care for the greyhounds in his care.
16. Mr Brewer also submitted that his submission as to the likely source of the prohibited substance was not given the appropriate weight that it should have and submitted that the IHP failed to consider the McDonough Principles, which were most recently referred to in the matter of Racing Appeals Tribunal matter of *Oldfield*¹.

Decision

17. Mr Brewer's representative refers to the McDonough Principles, which were set out in *Oldfield*:

[17] There has been some lessening of that stance by reason of the application of what are now known as the McDonough principles post the decision of Justice Garde in *Kavanagh v Racing Victoria Limited* [2018] VCAT 291. The effect of that is that it is now more a duty to focus upon the actual conduct of the presenter – in this case the appellant, a trainer – and put it into one of three categories. Although, as the Tribunal expressed as recently as *Atkins v RNSW, RAT NSW*, 9.6.2021, those categories do not necessarily cover the field.

[18] Those categories are when there has been clear and positive evidence of the administration of a drug which was in circumstances perhaps associated with carelessness and the like, which would be the most serious category.

[19] The second category is where, at the end of the day, the Tribunal is not able to determine the source of the prohibited substance or accept an appellant's explanation. 20. And, thirdly, where it is able to be established by the appellant, in this case, that the appellant was blameless.

¹ Racing Appeals Tribunal and Mr Peter Oldfield, 18 June 2021.

That is, there was nothing the appellant did that could be criticised. In which case, in those latter category 3 matters, it is possible that no penalty at all might be imposed or, if there is to be a penalty, it might be nominal.

[20] And, thirdly, where it is able to be established by the appellant, in this case, that the appellant was blameless. That is, there was nothing the appellant did that could be criticised. In which case, in those latter category 3 matters, it is possible that no penalty at all might be imposed or, if there is to be a penalty, it might be nominal.

18. Mr Brewer's representative submitted that Mr Brewer's circumstances places the matter within the third limb of the McDonough Principles and submitted that Mr Brewer is blameless, and that any penalty imposed should therefore be nominal. The internal reviewers do not accept that Mr Brewer is totally blameless. As a greyhound trainer, there is a great degree of responsibility required to ensure that your greyhounds are not exposed to the possibility of environmental contaminations such as being handled by a person who takes medications that contain prohibited substances. Whilst the reviewers find that Mr Brewer's culpability is towards the lower end, he is still responsible for who he allows to come into contact with his greyhounds. In Mr Brewer's case, the fact that the person handling the greyhound was on medication that contained the prohibited substance goes a long way to explaining how the substance came to be present in the greyhound. It does not, however, mean that Mr Brewer is blameless.
19. Mr Brewer's representative made reference to a number of matters previously decided by GWIC, including other dexamethasone matters as well as other category 5 prohibited substance matters.
20. Mr Brewer submitted that a more appropriate penalty would be a fine rather than a period of suspension.
21. When considering whether the penalty imposed by the IHP is appropriate, we have had reference, as they did, to a number of previous decisions made by the Commission.
22. In the 21 February 2020 decision of *Rice*,² the Commission imposed a 4-week suspension. Mr Rice, like Mr Brewer, pleaded guilty at the earliest opportunity, had no relevant prior disciplinary history, and had made submissions as to the likely source of the positive result. Mr Rice was distinguished by his then approximately 37 years in the industry.
23. In the 24 February 2020 decision of *Hodges*,³ the Commission imposed a 6-week suspension. Mr Hodges, like Mr Brewer, pleaded guilty at the earliest opportunity, had no relevant prior disciplinary history and had made submissions as to the likely source of the

² Greyhound Welfare and Integrity Commission matter of Mr Trevor Rice, 21 February 2020.

³ Greyhound Welfare and Integrity Commission matter of Mr Michael Hodges, 24 April 2020.

positive result. Mr Hodges was distinguished by his then approximately 19 years in the industry.

24. In the 24 November 2020 decision of *Howarth*,⁴ the Commission imposed an 8-week suspension. Mr Howarth, like Mr Brewer, pleaded guilty at the earliest opportunity, had no relevant prior disciplinary history and had made submissions as to the likely source of the positive result, noting a review of and amendment to his animal husbandry practices. Mr Howarth had, at that time, been involved in the industry approximately 12 years.
25. In the 16 July 2021 decision of *Tyler*,⁵ the Commission imposed a 4-week suspension for the charge under Rule 83(2)(a). Mr Tyler, like Mr Brewer, pleaded guilty at the earliest opportunity, had no relevant prior disciplinary history and made submissions as the likely source of the positive result. Mr Tyler was distinguished by his approximately 40 years in the industry.
26. As mentioned above, Mr Brewer pleaded guilty at the earliest opportunity and has no prior disciplinary history. The reviewers find that this is a case where consistency is called for and note that ensuring consistency in penalties for like matters is important. It provides both individual participants, and the broader industry, with a degree of certainty as to what they should expect should they find themselves in the same position. The Commission has imposed periods of suspension for all matters involving a positive swab detecting dexamethasone. To impose a penalty less than a suspension would be inconsistent.
27. Further, Mr Brewer conducted a review of his animal husbandry procedures following notification of the positive sample result. This review revealed the likely source of the positive result. Mr Brewer's representative provided significant detail as to this review and we are satisfied as to his submissions on the likely source. Mr Brewer has since amended his animal husbandry procedures as a result of the information uncovered.
28. However, when considering whether the penalty imposed by the IHP is appropriate, we must have regard to both Mr Brewer's facts and circumstances and to other penalties given in matters with similar facts and circumstances. Similarly, to the decisions referenced above, Mr Brewer pleaded guilty at the earliest opportunity, and has no prior disciplinary history. However, Mr Brewer has only held a trainer registration for a period of approximately four years. Mr Brewer's representative submits that Mr Brewer has trained a large number of greyhounds and has been swabbed a significant number of times over that period, and that Mr Brewer's record over the four-year period is significant in its own right.
29. We accept the submission that Mr Brewer's involvement as a trainer in the industry since 2018 has been significant. The references provided by industry participants reflect that.

⁴ Greyhound Welfare and Integrity Commission matter of Mr David Howarth, 24 November 2020.

⁵ Greyhound Welfare and Integrity Commission matter of Mr Rob Tyler, 16 July 2021.

30. However, we do not accept that Mr Brewer can be ultimately characterised as ‘blameless’ under the third limb of the McDonough Principles, nor that a fine would be appropriate when the circumstances and submissions made by Mr Brewer and his representative reflect those made in similar dexamethasone matters decided by the Commission. Ultimately, Mr Brewer is responsible for ensuring the greyhounds of which he is the trainer, owner or person in charge, are presented free from prohibited substances. It is his responsibility to ensure effective animal husbandry practices are implemented in order to guarantee this. Based on the submissions made by Mr Brewer’s representative, the Commission is confident that this is now the case.
31. Mr Brewer’s subjective factors are strong, and the full benefit should be afforded to Mr Brewer for them. However, on review, we have considered all the very worthwhile submissions made on Mr Brewer’s behalf but note that these submissions were made with equal force to the IHP in its determination of the matter. We find that the IHP exercised appropriate discretion in coming to the conclusion that a six-week suspension was appropriate.
32. In accordance with section 91(7)(a) of the Act, having reviewed all of the material and having conducted the internal review over the telephone with Mr Brewer as he elected, we confirm the original decision made by the Integrity Hearings Panel on 28 September, being to suspend Mr Brewer’s registrations for a period of 6-weeks.
33. The six-week suspension is to commence at midnight, 25 October 2021.

Mr Matthew Tutt, Director Compliance, Policy and Legal

Mr Wade Birch, Director Race Day Operations and Integrity (Chief Steward)

~~~~~