

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT:

PETER JOHN HEPPLER

APPLICATION NO:

A30/08/792

PANEL:

**MR D MOSSENSON (CHAIRPERSON)
MR R NASH (MEMBER)
MR W CHESNUTT (MEMBER)**

DATE OF HEARINGS:

**7 FEBRUARY 2017 and
18 MAY 2017**

DATE OF DETERMINATION: 19 September 2017

IN THE MATTER OF an appeal by PETER JOHN HEPPLER against the severity of the penalties of \$1,500, twelve months disqualification and two years disqualification imposed by the Racing and Wagering Western Australia (RWWA) Stewards of Greyhound Racing on 24 October 2016, for breaches of Rules 79A(7), 84A(4)(a) and 83(1) respectively of the RWWA Rules of Greyhound Racing.

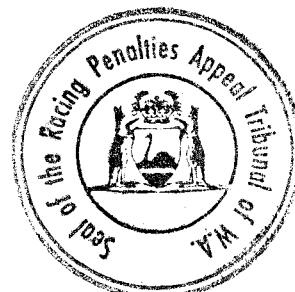
Mr T F Percy QC represented Mr Hepple.

Mr RJ Davies QC represented the RWWA Stewards of Greyhound Racing.

1. By unanimous decision of this Tribunal, the appeal by Mr Peter John Hepple against the penalty under Greyhound Racing Rule 83(1) is upheld.
2. The two year disqualification penalty imposed by the stewards is varied to a twelve month disqualification to be served concurrently with the twelve month disqualification penalty imposed under Rule 84A(4)(a).
3. The fine of \$1,500 imposed for breach of Rule 79A(7) is suspended or refunded if already paid on the condition that Mr Hepple does not re-offend by having any permanently banned prohibited substance in his possession again for two years from the commencement of the disqualifications, namely 17 October 2016.



DAN MOSSENSON, CHAIRMAN



RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR D MOSSENSON

APPELLANT: PETER JOHN HEPPLER

APPLICATION NO: A30/08/792

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MR R NASH (MEMBER)
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Mr T F Percy QC represented Mr Hepple.

Mr RJ Davies QC represented the RWWA Stewards of Greyhound Racing.

BACKGROUND

- 1 Mr Hepple, a public trainer of longstanding, was charged with three breaches of the RWWA Rules of Greyhound Racing by the RWWA Stewards of Greyhound Racing.
- 2 The first charge related to the permanently banned prohibited substance Fertagyl which contains gonadotrophin releasing hormone which was found in Mr Hepple's possession on 15 September 2016. The second charge was that of administration of the same

substance to the greyhound QUESTAR on multiple occasions, being 21 April 2016, 5 May 2016, 19 May 2016, 2 June 2016 and 16 June 2016. The third charge was also that of administration of the same substance to the greyhound DUN AND DUNNER on 2 October 2015, prior to it racing on 5 October 2015, for the purpose of affecting its performance in that event.

- 3 Mr Hepple pleaded guilty to all three charges. A fine of \$1,500 was imposed in relation to the first charge, disqualification for twelve months for the second charge and disqualification for two years for the third charge. The disqualifications were ordered to be served concurrently. The disqualifications were backdated to commence as of 17 October 2016, being the date when Mr Hepple was stood down by the Stewards pending the outcome of the inquiry.
- 4 Despite having pleaded guilty to all charges, Mr Hepple appealed to the Tribunal on the basis that "The penalty imposed was manifestly excessive in all the circumstances of the case".
- 5 When the matter first came on before the Tribunal, some additional documentary evidence was presented on behalf of the appellant recording that the greyhound "RED" had been injected with Fertagyl at the Swan Veterinary Hospital on 2 October 2015 by Dr George Huber. The reference to "RED" in fact related to the greyhound DUN AND DUNNER. In light of this revelation, an adjournment which was sought on behalf of Mr Hepple was granted.
- 6 At the reconvened appeal hearing, statements from both Mr Hepple and Dr Huber were tendered and both witnesses were cross-examined.

STEWARDS' REASONS

- 7 The Stewards conducted a fairly lengthy inquiry into this matter on 17 October 2016 after which they prepared detailed written reasons regarding the respective penalties. Their reasons comprise some 68 numbered paragraphs extending over 15 pages. The Stewards' observations, analysis of the facts, conclusions and findings which are set out in those reasons are summarised as follows:

- 7.1 During the course of a routine unannounced inspection on 15 September 2016 of Mr Hepple's kennels at his training premises, administration of Fertagyl to two greyhounds was noted to have been recorded in Mr Hepple's treatment register. In addition, some Fertagyl was actually located on the premises.
- 7.2 Fertagyl is a permanently banned prohibited substance under the RWWA Rules of Greyhound Racing.
- 7.3 Mr Hepple had not denied administering Fertagyl to QUESTAR on a number of occasions as particularised in the second charge prior to it racing. The treatment records established administration had occurred in relation to the third charge. The motivation for the administration was to improve performance rather than a matter of welfare.
- 7.4 Dr Medd, the racing industry veterinarian, had described the benefits of administering the substance as enduring beyond the immediate effects which were experienced shortly after the administration.
- 7.5 Despite the fact that Rule 79A had been in existence since 2011, and it had been accompanied by numerous notices issued since through the industry official communication channels, Mr Hepple was unaware that Fertagyl was captured under the provisions of Rule 79A. The fact that this had escaped Mr Hepple's attention was not due to lack of official communication to the industry, but rather a gross lack of diligence on his behalf. Licensed trainers are expected to maintain an appropriate working knowledge of the Rules, especially in relation to prohibited substances which they are acquiring for the first time.
- 7.6 Mr Hepple had a long and significant involvement in the greyhound industry. It was his livelihood and he trained a large number of greyhounds. He did have some financial commitments, was aged 70 years and would be unlikely to be able to pursue other forms of employment. Mr Hepple had been involved in some charitable endeavours whilst participating in the industry.

- 7.7 As Mr Hepple was not entirely cooperative and forthcoming on the day of the inspection, this did not afford him mitigation. However, mitigation for the immediate pleas of guilt to the charges was applied, despite the fact that there was a clear demonstration of a significant and concerning lack of appreciation as to the standards expected of a licensed person. Further, Mr Hepple had repeatedly engaged in conduct below the standard expected of a licensed person during his racing career. Mr Hepple was not a first offender in relation to prohibited substances.
- 7.8 The fact that the substance in question was not used for a welfare reason but rather to gain an advantage which was not otherwise available, flew in the face of the motivation of rule makers who strive to ensure a level playing field.
- 7.9 The Fertagyl which was discovered at the premises was obtained from the on-track veterinarian Dr P Lawton. "It was obtained legally and provided by prescription." The label on the container stated "for kennel dogs" rather than specifying any particular named greyhound. The circumstances regarding prior knowledge of the substance required close analysis. Mr Hepple had asked Dr Lawton for the substance by name, rather than it having been recommended to him. It was doubtful that Mr Hepple had made Dr Lawton aware of all of the relevant information, including the fact that the greyhound to which it was administered had been castrated. The greyhound had not been examined. Apart from knowing the substance was "unswabbable", which meant that it was undetectable, Mr Hepple suggested he knew little else of it.
- 7.10 Dr Lawton gave a significantly different version of the events to that of Mr Hepple. It was his evidence that Mr Hepple had approached him in relation to some 10 – 12 month old pups at his property and discussed their lack of development due to undescended testicles. Whilst Dr Lawton neither realised nor was aware of the status of the substance under the Rules, he also was unaware that it was intended to be used by Mr Hepple in a castrated racing

greyhound. It would have made no sense for Dr Lawton to prescribe the substance for a castrated greyhound.

- 7.11 Dr Lawton's evidence was preferred to Mr Hepple's as it was far more logical. Mr Hepple's credibility as a witness of truth evaporated entirely in relation to his treatment records in respect of DUN AND DUNNER which had administered to it the same substance in October 2015, some three days prior to racing. Dr Lawton's versions of events was supported by the evidence. There was a lack of candour in relation to the product which diminished Mr Hepple's credibility. In the early stages Mr Hepple's self serving assertions were not based on truth. Mr Hepple was not a witness of truth and Dr Lawton's evidence was preferred as to how he came to prescribe Fertagyl.
- 7.12 One notable aspect in favour of Mr Hepple was the fact that the detection of all offences arose from the meticulous records which were kept in his treatment books. This supported a finding that the offences were not due to a deliberate attempt to subvert the Greyhound Rules of Racing, but rather both from ignorance and a disturbing lack of knowledge and professionalism which mitigated the penalty which might otherwise have applied.
- 7.13 Despite the actions being self-serving and designed to elicit a competitive advantage, the offence was devoid of nefarious intent. It was a case of extreme recklessness and/or negligence, coupled with related attempts to limit the damage once exposed. There was not just a lack of diligence in relation to complying with the Rules, but also a lack of honesty as to the true state of knowledge combined with illogical justifications as to its use. This was not a case of complete innocence and naivety in placing trust in the hands of an on-track veterinarian, who had also unwittingly prescribed Fertagyl after first being made fully aware of its proposed use. Rather, this was a case where, with the benefit of prior use and knowledge, Mr Hepple sought out the substance by providing at best an incomplete picture to the vet who only prescribed the substance for kennel dogs.

- 7.14 Dr Lawton was charged in relation to prescribing the substance and was penalised in the same manner as Mr Hepple.
- 7.15 Mr Hepple misrepresented his experience with the substance until he was challenged. His only saving grace which prevented harsher penalties was the recording of the administrations within the treatment book which reflected that he had no idea that what he was doing was wrong. This lack of awareness in a licensed person of Mr Hepple's experience and status was unacceptable.
- 7.16 In assessing penalty, the Stewards stated they must take into account the nature of the offences within the context of the state of the industry. Greyhound racing is dependent on public confidence for its financial viability at a time when the industry is under unprecedented scrutiny as to its future existence.
- 7.17 After taking into account all relevant factors and past offences, as well as the principle of totality which arises in the case of multiple charges, a fine of \$1,500 was deemed to be appropriate on the first charge.
- 7.18 As to the charges of administration, the Stewards considered past cases including presentation cases involving routine prohibited substances where lengthy periods of disqualification had been applied. The Thoroughbred Code reflects the seriousness of the situation by prescribing a disqualification of not less than two years for administering or attempting to administer permanently banned prohibitive substances. Such substances should not be administered to greyhounds at any time. Licensed persons have a duty to ensure when injecting greyhounds that they are not using any banned prohibited substances. The Stewards considered a disqualification of twelve months to be appropriate in relation to the second charge.
- 7.19 The third charge was the most serious as it included the element of administration for the purpose of affecting the performance of DUN AND DUNNER. The offending substance was injected only three days prior to its race in the belief that it was "unswabbable". This was an attempt to cheat the

system by injecting a substance believed to be unswabbable to affect the greyhound's performance. Hence it was a deliberate and conscious decision which no respectable veterinarian would recommend, as it was an obvious attempt to subvert the Rules of Racing. A two year disqualification was imposed.

- 7.20 By way of conclusion, the Stewards took into account the principle of totality and the fact that Mr Hepple had been stood down at the inquiry conducted on 17 October. Whilst it was open on the Rules to make all or part of the periods of disqualification cumulative, the Stewards concluded that they should be served concurrently and the periods of disqualification were backdated to commence as of 17 October 2016.

FIRST HEARING

- 8 The first hearing before the Tribunal was a very short affair. The appellant produced some documentary evidence from Swan Veterinary Hospital showing that Dr George Huber had injected Fertagyl to the greyhound "RED" on 2 October 2015.
- 9 This resulted in the appellant being granted an adjournment to enable witnesses to be called and for the grounds of appeal to be amended.

AMENDED GROUNDS OF APPEAL

- 10 The amended grounds of appeal read:

- "1 *The penalty imposed on Count Two was manifestly excessive having regard to the following factors:*
- (a) *The Stewards accepted that the offence was devoid of any sinister intent.*
 - (b) *The appellant had ceased using the prohibited substance long before the dog competed in any race.*
 - (c) *The Stewards accepted that it had not been established on the evidence that the administration of the substance had been aimed at improving the dog's performance.*

- (d) *The substance was legitimately acquired on prescription from a registered greyhound racing veterinarian, Dr Lawton, who himself was unaware of the prohibited nature of the substance.*
- (e) *The Stewards accepted that the substance was unlikely to have had any effect on the dog.*
- (f) *The Stewards accepted that the offence was committed in ignorance of the rules rather than in intentional contravention of them.*
- (g) *The veterinary surgeon did not alert the appellant to the fact that the substance was prohibited.*

2 *The penalty imposed on Count Three was manifestly excessive having regard to the following factors:*

- (a) *The level of the prohibited substance was never ascertained.*
- (b) *The Stewards accepted that the offence was committed out of ignorance rather than out of any intentional breach of the Rules.*
- (c) *The Stewards accepted that the veterinary surgeon did not alert the appellant to the fact that the substance was prohibited.*
- (d) *The new evidence referred to in Ground 5 of this appeal.*

3 *The Stewards erred by imposing a separate penalty on Count One in addition to the penalty imposed on Count Two, having regard to the following factors:*

- (a) *The commission of Count Two was inextricably linked to the offending in Count One and a global penalty was appropriate to the ultimate disposition of the two related charges.*
- (b) *The offence was committed in ignorance of the rules rather than in intentional contravention of them.*
- (c) *The substance was legitimately acquired on prescription from a registered greyhound racing veterinarian, Dr Lawton, who himself was unaware of the published nature of the substance.*

- 4 *The overall effective penalty imposed even after allowing for the concurrence of the penalties on Counts Two and Three was manifestly excessive.*
- 5 *There has been a substantial miscarriage of justice, such that a different and lesser penalty should now be imposed on the appellant on Count 3 by reason of the new evidence of Dr George Huber and the appellant, which establishes:*
- (a) *The administration took place 3 days before the race in question and it would not have affected the performance of the greyhound.*
- (b) *Dr Huber suggested that Fertagyl be administered to the greyhound in question. It was not suggested by the appellant.*
- (c) *The substance was administered by Dr Huber rather than the appellant.*
- (d) *Dr Huber, an experienced greyhound veterinarian, was not aware that the substance was prohibited."*

THE CONTINUATION HEARING

- 11 Following the initial hearing, both Mr Hepple and Dr Huber produced written statements and they were cross-examined at the continuation hearing.
- 12 In my assessment there was nothing which emerged from the fresh evidence which cast doubt on the conclusions which the Stewards had reached regarding Mr Hepple's lack of credibility in relation to the conflict with Dr Lawton's testimony.

GENERAL COMMENTS

- 13 This matter is clearly a very serious affair. I am satisfied the two administration offences do need to be dealt with by way of disqualification, particularly in view of the ongoing tenuous circumstances which confront the greyhound racing industry. Greyhound racing continues to be under the spotlight and its very existence is being questioned in various quarters. This fact should reinforce the need for all greyhound industry participants to rigorously comply with the Rules. Mr Hepple however, despite his prominent and responsible role as a licensed trainer, clearly failed to do so. Mr Hepple was oblivious to

the fact that the substance in question was strictly outlawed. The Stewards were justified in taking these factors into account in meting out the punishment.

14 Another reason why Mr Hepple's offending conduct is the cause for such great concern and requires tough punishment is the fact that a permanently banned prohibited substance was involved. Even worse than the fact that the excluded substance was found in the refrigerator at licensed premises, was the fact that this product had been administered to two racing greyhounds. Fertagyl, like all other permanently banned substances, can have no role in the racing industry. Licensed trainers must not be in any way associated or involved with such a substance. Consequently, after due inquiry, the Stewards dealt with this offender by imposing both a fine and periods of disqualification. It would have been derelict of their duty had the Stewards treated the guilty trainer less harshly by only imposing fines and/or suspensions.

15 From the outset this matter has exhibited many unusual or odd features that are noteworthy. As has already been made quite clear, the offending substance was involved in three different sets of circumstances resulting in three separate offences. The one relating to the licensed person being in the possession was the least serious. The second involved administration of the substance by the trainer concerned. The third, also involved administration of it by the trainer, at least until the appeal began. Although both the second and third misdeeds only came to light from the trainer's records and resulted in the pleas of guilty, as it transpired Mr Hepple had wrongly admitted having injected the greyhound involved in the third offence. As has been stated earlier, although the fresh evidence before the Tribunal established the trainer did not in fact personally undertake the administration in the case of the third offence, under the Rules, the particular offence is also committed if the trainer caused the substance to be administered.

16 Rule 83 which addresses racing greyhounds being free of prohibited substances states:

"(1) A person who -

(a) administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;

- (b) *aids, abets, counsels or procures any person to administer a prohibited substance to a greyhound; or*
- (c) *has prior knowledge of a prohibited substance being administered to a greyhound*

for the purposes of preventing it from starting in an Event, affecting its condition, behaviour or performance in any Event or when subject to any other contingency provided for pursuant to these Rules, shall be guilty of an offence.

(1A) *A person who -*

- (a) *administers, attempts to administer or cause to be administered a prohibited substance to a greyhound;*
- (b) *aids, abets, counsels or procures any person to administer a prohibited substance to a greyhound; or*
- (c) *has prior knowledge of a prohibited substance being administered to a greyhound*

which is detected in any sample taken from such greyhound that has been presented for an Event or when subject to any other contingency provided for pursuant to these Rules, shall be guilty of an offence."

17 The relevant part of the Rule which deals with keeping of treatment records (Rule 84A) states:

"(4)(a) It shall be an offence for any person to acquire, attempt to acquire, administer or allow to be administered, any Permanently Banned Prohibited Substance referred to in Rule 79A."

Rule 79A deems gonadotrophins to be Permanently Banned Prohibited Substances.

18 Had the Stewards dealt with the matter armed with the benefit of the fresh evidence they would have been entitled to so word the particulars of the charge to accurately reflect the position that only emerged in the appeal as to who actually injected DUN AND DUNNER.

For the purposes of the appeal it makes no difference whether Mr Hepple was dealt with as an administration offender, or as a party to such an administration.

- 19 To add to the unique features of the case, despite all of the publicity regarding the permanent banning of Fertagyl, two experienced veterinarians including one who was the on-course vet, were unaware that it had been banned. This coincidence is bizarre and looked at in isolation, means it must have some mitigatory role in relation to the trainer's penalty. Its mitigatory role, however, is diminished by virtue of the fact that both veterinarians were not appropriately briefed by Mr Hepple as to both the circumstances of the two greyhounds involved and the purposes of the administrations. Despite the guilty pleas, on the evidence which they heard, the Stewards concluded that Mr Hepple was not to be believed as to his explanations as to how the substance came to be made available by the veterinarians.

CONCLUSIONS

- 20 I will address the disqualification penalties first and then return to the question of the fine.
- 21 I am not persuaded by the appellant's argument as to the second charge. I am satisfied nothing emerged from the fresh evidence to demonstrate that the Stewards erred in any way in arriving at the one year disqualification penalty imposed on Mr Hepple for having administered the permanently banned prohibited substance to QUESTAR on multiple occasions. The Stewards' analysis of the facts, conclusions and findings have not been shown in any way to have been in error. I believe the one year disqualification penalty was open to the Stewards on the evidence in view of the seriousness of the matter and Mr Hepple's obvious gross failure to act properly in relation to this excluded substance. I would therefor dismiss ground 1.
- 22 Some of the sentencing facts upon which the Stewards proceeded in respect of the third charge have turned out to be incorrect. The new evidence established that Mr Hepple did not in fact inject his dog himself. Further, I am satisfied the Stewards somewhat over emphasised the fact that Mr Hepple's use of the substance was because he believed it was not swabbable. The Stewards inferred he used it for the reason that it was not detectable, regardless of whether it was prohibited or not. I would give Mr Hepple the

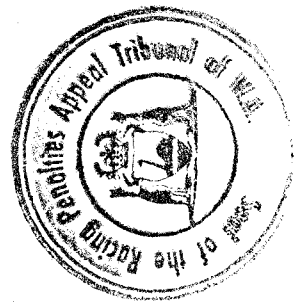
benefit of the doubt and conclude that when he used the words "not swabbable" he meant it was not against the Rules. This point was clarified in Mr Hepple's later evidence. For these reasons, I would allow ground 2.

23 I have also concluded that, in the light of the fresh evidence and other mitigations, the overall effective penalty imposed, even with the concurrency, was in fact manifestly excessive. I would therefore also allow grounds 4 and 5. In upholding these grounds, I would reduce the penalty imposed in relation to the third charge from two years to one year disqualification to be served concurrently with the other term of disqualification.

24 In the light of the two disqualification penalties coupled with the fact that the substance was legitimately obtained from not just any qualified veterinarian, but rather from the course vet, I am persuaded by the propositions which are contained in grounds 3(a) – (c). For this reason, I would suspend the payment of the fine, or order it to be refunded if already paid, but only on the basis that Mr Hepple does not re-offend by having any permanently banned prohibited substance in his possession again for two years from the commencement of the disqualifications, namely 17 October 2016.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT: PETER JOHN HEPPLER

APPLICATION NO: A30/08/792

PANEL: MR D MOSSENSON (CHAIRPERSON)
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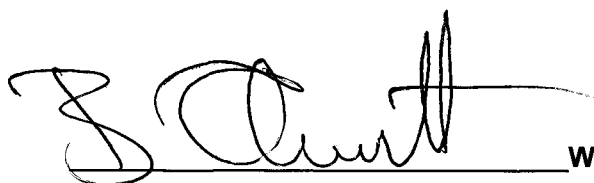
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Mr T F Percy QC represented Mr Hepple.

Mr RJ Davies QC represented the RWWA Stewards of Greyhound Racing.

I have read the draft reasons of Mr D Mossenson, Chairperson.

I agree with those reasons and conclusions and have nothing further to add.



WILLIAM CHESNUTT, MEMBER



RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:

PETER JOHN HEPPL

APPLICATION NO:

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ROBERT NASH, MEMBER

