



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0097-17
Applicant's Name:	G Keep
PART 2: Decision History	
Original Decision:	Breach of Rule 83(2)(a) of the Greyhound Australasia Rules
Original Decision Makers:	I Brown, E Little, D Broxham
Date of Original Decision:	13 September 2017
Internal Review Decision:	Original decision of charge confirmed
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	20 December 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Gary Keep, was the licensed trainer of KAPPA NU when it presented to race in Race 3 at the Ipswich Greyhound Racing Club on 20 December 2016. The Applicant was subsequently charged under Greyhound Australasia Rule 83(2)(a) when a post-race urine sample collected from KAPPA NU on the aforementioned date was found to contain a prohibited substance, namely hyoscine.</p> <p>Greyhound Australasia Rule 83(2)(a) states:</p> <p><i>"The owner, trainer or person in charge of a greyhound nominated to compete in an event shall present the greyhound free of any prohibited substance."</i></p> <p>Upon receipt of a Certificate of Analysis from both the Racing Science Centre and Racing Analytical Services Ltd, and after considering the evidence presented to Stewards at the inquiry that commenced on 8 May 2017 and concluded on 13 September 2017, the Applicant was found guilty of the offence with no penalty being imposed.</p> <p>The Applicant sought a review of charge and penalty on the basis the stewards failed to allow the Applicant to make a submission as to his character and past involvement in the industry. The submissions included that the stewards had charged the Applicant under an Australian rule yet hyoscine is not a prohibited substance in New South Wales. Further, there were no warnings from officials that plant contamination was a possibility and that the issue of parity was not considered with reference being made to the Queensland Racing Disciplinary Board decisions of <i>Carkeet v Racing Queensland Stewards</i> and <i>Thomas v Racing Queensland Stewards</i>. The Applicant provided several character references to support his good standing and reputation in the greyhound industry. The Applicant was seeking the charge be amended to not guilty and the race prizemoney of \$945.00 be returned.</p>	



PART 4: Reasons for Internal Review Decision

A post-race urine sample collected from KAPPA NU at Ipswich on 20 December 2016 was subsequently analysed by the Racing Science Centre (RSC) and Racing Analytical Services Limited (RASL) which reported the sample was shown to contain hyoscine, a prohibited substance under the Greyhound Australasia Rules. Hyoscine was not detected in the associated control fluid.¹

KAPPA NU was placed first in the respective race.

Dr Karen Caldwell, Acting Manager of Veterinary Services at the Racing Science Centre, provided a Veterinary Certificate which, in summary, stated *“Hyoscine is an alkaloid anticholinergic agent, found naturally in plants belonging to the Solanaceae family such as Datura species (thornapples), Atropa belladonna (Deadly Nightshade) and Duboisia species (corkwoods). Hyoscine can affect the cardiovascular, gastrointestinal, urogenital, respiratory and central nervous systems. Hyoscine may be indicated in the treatment of diarrhoea or conditions involving spasm of the gastrointestinal, biliary or urogenital tracts. Hyoscine may be present in veterinary pharmaceutical products as hyoscine butylbromide (Buscopan, Spasmogestic), hyoscine hydrobromide (Scourban) or hyoscine methobromide (Ensal, Neo-Sulcin, Streptosulcin Forte). Hyoscine is also present in several human products including preparations for treating motion sickness (e.g. Travacalm - as hyoscine hydrobromide) and gastrointestinal spasm (e.g. Setacol, Gastro-Soothe and Buscopan - as hyoscine butylbromide). The presence of hyoscine (as distinct from hyoscine butylbromide or hyoscine methobromide) in a urine sample is most likely the result of either the ingestion of hyoscine containing plant material or the administration of a pharmaceutical preparation containing hyoscine in the form of hyoscine hydrobromide. Depending on the formulation, hyoscine may be either unscheduled or a Schedule 2 (Pharmacy Medicine) or Schedule 4 (Prescription Only Medicine or Prescription Animal Remedy) substance according to the Standard for the Uniform Scheduling of Medicines and Poisons No. 15”*.²

The definition of "Prohibited Substance" under the Greyhound Australasia Rules in part means a substance defined by the following criteria or which falls within any of the groups of substances declared herein unless it is an exempted substance:

- (a) any substance capable of affecting a greyhound by its action on the central or peripheral nervous system or any part of that system such as the autonomic nervous system, cardiovascular system, respiratory system, alimentary digestive system, musculoskeletal system, genitourinary or endocrine system and includes without limitation analgesics, antihistamines, anti-inflammatory agents, blood coagulants, diuretics, hormones and their synthetic counterparts, stimulants, corticosteroids, anabolic steroids, local anaesthetics, muscle relaxants and tranquillisers.

- (e) any substance(s) specified in Schedules 1 to 9 inclusive of the Standard for the Uniform Scheduling of Drugs and Poisons (Commonwealth) as amended from time to time. Hyoscine is not included in the exempted substances.

¹ Exhibit 3 and 10

² Exhibit 4



During the initial steward's inquiry conducted on 8 May 2017, the Applicant was charged under Greyhound Australasian Rule GAR 83(2)(a) which states *"The owner, trainer or person in charge of a greyhound nominated to compete in an event shall present the greyhound free of any prohibited substance."* The Applicant pleaded not guilty to the charge and submitted KAPPA NU had inadvertently ingested a plant material named Atropa Belladonna (Deadly Nightshade) which contained hyoscine and grew along the fence of a yard at the Applicant's property where the greyhound was regularly exercised.

The inquiry was adjourned to ascertain the presence of the alleged plant material at the Applicants property, which subsequently was located and upon analysis confirmed the presence of hyoscine.³ Subsequent to the confirmatory analysis that the stem and leaves of the plant material contained hyoscine, stewards accepted the Applicant's submissions that the findings of hyoscine in the urine sample collected from KAPPA NU was a consequence of inadvertent ingestion of the Atropa Belladonna plant. The stewards found due to the strict liability under Rule 83(2)(a) the Applicant was guilty of the offence, however elected not to impose a penalty. KAPPA NU was subsequently disqualified under the provisions of GAR 83(4) which states:

"A greyhound presented for an Event contrary to sub-rules (1) or (2) shall be disqualified from the Event or any benefit derived from a trial or test."

Sub-section (2) of the rule in part states *"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."*

The Applicant's Internal Review Application in summary states stewards failed to allow the Applicant's character and antecedents submissions in accordance with Rule 92(4)(a), noting an unblemished 44-year history within the greyhound industry. For clarity, Rule 92(4)(a) under the sub-heading 'Conduct of Inquiry' states

"Matters to which the Controlling Body or Stewards must have regard are (a) the character and antecedents of the person charged."

The Applicant's Internal Review Application included submissions that the stewards had charged the Applicant under an Australian rule yet hyoscine is not a prohibited substance in New South Wales. Further, there were no warnings from officials that plant contamination was a possibility and that the issue of parity was not considered with reference being made to the Queensland Racing Disciplinary Board decisions of *Carkeet v Racing Queensland Stewards* and *Thomas v Racing Queensland Stewards*. The Applicant provided several character references to support his good standing and reputation in the greyhound industry.⁴

The aforementioned decisions of the Queensland Racing Disciplinary Board relate to hyoscine appeals in the Harness and Thoroughbred racing industry. In the matter of *Carkeet*, stewards found the trainer guilty of a presentation charge under Australian Harness Racing Rule AHRR 190 (1), (2) and (4) and the horse was disqualified under Rule 195, however no penalty was imposed against the trainer. The appeal was solely against the stewards' decision to record a conviction under AHRR 190 (1), (2) and (4). The Board, in part, found that Rule 256(6) provided a discretion for stewards to not necessarily impose a conviction, although the offence is found proven, in circumstances where there is no evidence of any wrongdoing or culpability and accordingly upheld the appeal.

³ Exhibit 23

⁴ Internal Review Application dated 16 October 2017



In the matter of *Thomas*, stewards found the trainer guilty of a presentation charge under Australian Rule of Racing 178, disqualified the horse and imposed a monetary penalty against the trainer. The appeal in this matter was against the stewards' decision to record a conviction and impose a penalty. The Board, in part, referred to Rule 178 that states "*may be penalised*", which indicates if there is an explanation that is reasonable in the circumstances then stewards could determine that no penalty be recorded and accordingly upheld the appeal. The respective horses in the aforementioned decisions were disqualified from the race in accordance with the relevant rules.

The Applicant's submissions referred to a document which stated hyoscine was not a prohibited substance in Racing New South Wales⁵. The reviewer notes this document lists a category of prohibited substance 'examples' on a Greyhound Racing New South Wales letterhead. The reviewer finds the Greyhound Australasia Rules define 'Prohibited Substance' in part as any substance capable of affecting a greyhound by its action on many of the body systems, including the central nervous system, cardiovascular system, respiratory system. This is consistent with Dr Caldwell's Veterinary Certificate stating hyoscine can effect the aforementioned body parts.⁶ Therefore, the reviewer is satisfied hyoscine is a prohibited substance under the Greyhound Australasia Rules.

The reviewer finds the Applicant's review submissions compelling, in that the substance detected in the sample (hyoscine) was most likely a consequence of inadvertent ingestion of the Atropa Belladonna plant. The reviewer acknowledges the Applicant's argument related to recording a conviction when there is no evidence of any wrongdoing or culpability on his part. Furthermore, there is no doubt the Applicant's reputation and good standing within the greyhound fraternity is unquestioned.

Notwithstanding, hyoscine is a prohibited substance under the Greyhound Australasia Rules. The reviewer finds the Rules the subject of this internal review, namely Rule 83(2)(a) and 83(4), do not provide any discretionary power nor is there any corresponding rule to AHRR 256(6) or ARR 178 in the Greyhound Australasia Rules. Sub-section (3) of Rule 83(2)(a) states:

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

And sub-section (4) of Rule 83 states:

"A greyhound presented for an Event contrary to sub-rules (1) or (2) shall be disqualified from the Event or any benefit derived from a trial or test."

The Rules, as outlined above, fail to provide the reviewer any authority to consider setting aside the original decision of guilt or that of the disqualification of KAPPA NU from the race. The reviewer finds, irrespective of the circumstances of how the substance (hyoscine) found its way into KAPPA NU's system, the Greyhound Australasia Rules provide that the Applicant is guilty of an offence if the greyhound is not presented free of any prohibited substances.

The reviewer is comfortably satisfied that any greyhound presented with a prohibited substance in its system (regardless of the circumstances) is disqualified from the race in accordance with the Greyhound Australasia Rules.

⁵ Exhibit 28

⁶ Exhibit 4



Any findings to the contrary impacts the integrity of the sport in providing a level playing field and that of the connections of greyhounds that presented free of prohibited substances and finished behind KAPPA NU.

In carefully weighing up the evidence, including the Applicant's submissions and relevant rules, the reviewer finds there is no authority to set aside the conviction in this matter and therefore is confined to confirming the original decision.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au