

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

Matters for determination	Decision dated 17 August 2023
Applicant Name	Mr James Goddard
Internal review decision date	12 December 2023
Internal review decision by	Mr Brenton (Alby) Taylor Chief Commissioner, GWIC
Internal review decision summary	Confirm the decision made by the Decision Makers on 17 August 2023

REASONS FOR DECISION

1. These are the reasons for the decision following an application by Mr James Goddard (**Mr Goddard**) for internal review under the *Greyhound Racing Act 2017 (Act)* of a Commission decision. That decision was to find Mr Goddard guilty of a breach of Rule 141(1)(a) of the Greyhound Racing Rules. The disciplinary action imposed was a disqualification of 9-months.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. I confirm I was not involved in making the original decision, and I am a qualified person in accordance with section 91(5) of the Act. I lastly confirm I have dealt with this application for review.
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. Mr Goddard was a registered Owner, Trainer and Breeder within the greyhound racing industry at all material times.
5. On 7 February 2023, Mr Goddard presented the greyhound 'Tom's Mate' (**Greyhound**) to race in race 5 at Wauchope. Following the race, the Greyhound was required to undergo a post-race swab due to finishing first. Upon analysis that swab was found to contain a permanently banned prohibited substance, being 1,4-androstadiene-3, 17-diol, a substance prohibited under Rule 137 of the Greyhound Racing Rules.
6. On 10 August 2023 Mr Goddard was issued with a Notice of Charge and Proposed Disciplinary Action ("**Notice**") charging him with a breach of Rule 141(1)(a). The rule reads:

Rule 141(1)(a), Rules

- (1) The owner, trainer or other person in charge of a greyhound
- a. nominated to compete in an Event;

...

must present the greyhound free of any prohibited substance.

...

- (3) The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence.

7. Mr Goddard attended a hearing on 17 August 2023 with Stewards. At the hearing, Mr Cartwright entered a plea of not guilty to the charge and made oral submissions in respect of that plea.
8. The Stewards formally found Mr Goddard guilty of the charge and determined to impose a period of disqualification of nine (9) months.

Internal Review Application

9. On 29 August 2023 Mr Goddard submitted an application for an internal review of the decision made by the Stewards. Mr Goddard also requested a stay of the decision pending the finalisation of the internal review. Unfortunately, the application for Internal Review only came to the attention of relevant GWIC staff members on or around 28 September 2023.
10. On 4 October 2023, Mr Goddard attended a hearing in respect of the matter with myself and another Commission staff member. During that hearing, Mr Goddard was asked to confirm whether he wished to maintain a plea of not guilty, or whether he wished to plead guilty. Mr Goddard indicated a desire to get further advice in respect of his plea. Accordingly, the hearing on 4 October 2023 was adjourned to allow Mr Goddard the opportunity to obtain advice.
11. On 10 October 2023 I determined to refuse the application for a stay of decision. This refusal is in line with the manner in which the Commission approaches matters involving the detection of a permanently banned prohibited substance.
12. A hearing was scheduled for 19 October 2023 with Mr Goddard. On 17 October 2023 Mr Goddard provided written submissions and documents in respect of the matter and asked for the matter to be finalised on the papers.
13. Among the documents provided on 17 October 2023 were:
 - Written submissions made by NSW Greyhound Breeders, Owners and Trainers Association (**GBOTA**) advocate Ms Geary;
 - A letter addressed to Ms Geary authored by Dr Derek Major dated 12 October 2023, in which Dr Major made a number of claims about the substance detected; and
 - Three scientific articles written in respect of studies conducted on the substance detected.
14. The material authored by Dr Major made scientific claims which were not previously made before the Stewards. To properly consider Dr Major's evidence, I sought further expert evidence from a GWIC veterinarian on the claims made by Dr Major.

15. On 29 November 2023 I received expert evidence from GWIC Chief Veterinarian Dr Kuipers.
16. On 8 December 2023 I received a further report from Dr Major, responding to the evidence of Dr Kuipers.
17. Mr Goddard seeks an internal review in respect of both the finding of guilt and, if unsuccessful, in respect of the penalty imposed.
18. As the internal reviewer, I have had regard to all the evidence considered by the Stewards, together with the internal review materials provided by Mr Goddard. The material I have had reference to includes:
 - Notice of charge and proposed disciplinary action following 'B sample' confirmation, and brief of evidence including:
 - Sample Identity Document V783945;
 - Racing Analytical Services Ltd (**Laboratory**) Kit Audit Document 22/5284;
 - Greyhound Sample Collection Operations Sheet and Chain of Custody document dated 4/2/2023;
 - Kennel bay seal record from Wauchope dated 4 February 2023 and copy of seal ;
 - Security bay seal record from Wauchope dated 4 February 2023 and copy of seal;
 - Responsibility of Acceptance form from Wauchope dated 4 February 2023;
 - Laboratory Sample Receipt dated 10 February 2023;
 - Results from race 5 at Wauchope on 4 February 2023;
 - A Sample: Certificate of Analysis from the Laboratory dated 16 March 2023 with cover letter dated 16 March 2023;
 - Letter to Mr Goddard notifying of detection of permanently banned prohibited substance and inquiry dated 17 March 2023;
 - B Sample: Certificate of Analysis from the Racing Science Centre (**Confirmatory Laboratory**) dated 30 June 2023, with covering letter of the Laboratory dated 30 June 2023;
 - Mr Goddard's licence, registration and disciplinary history;
 - Transcript of hearing dated 17 August 2023;
 - Notice of disciplinary action dated 21 August 2023, enclosing a copy of the Disciplinary Action Decision;
 - Application for internal review dated 29 August 2023, with accompanying statement authored by Mr Goddard and Ms Blanch;
 - An email sent by Ms Blanch dated 22 August 2023 in respect of the proposed disciplinary action;
 - Written submissions made in respect of the internal review application by NSW Greyhound Breeders, Owners and Trainers Association (**GBOTA**) advocate Ms Geary;

- A letter addressed to Ms Geary authored by Dr Derek Major dated 12 October 2023, in which Dr Major made a number of claims about the substance detected; and
- Three scientific articles written in respect of studies conducted on the substance detected;
- Veterinary opinion statement of Dr Tony Kuipers dated 15 November 2023; and
- A further letter addressed to Ms Geary authored by Dr Major dated 8 December 2023.

Decision

Relevant considerations

19. The principle of absolute liability is considered in some detail in the Internal Review decision of *Parker*¹. In that decision, it is stated:

[24] “The absolute liability nature of Rule 141 creates a position where an owner or trainer is in automatic violation of the rule when a prohibited substance is found in a greyhound’s sample. There is no need to prove intention, knowledge, negligence or any other variety of fault in order to establish a breach of Rule 141.”

20. The Racing Appeals Tribunal recently commented on this principle in the decision of *Burgin*², stating:

[9] “...the regulator does not have to prove the how, when, why or by what route the prohibited substance came to be present in the racing animal...”

21. As commented on in *Parker*, an owner or trainer may be able to establish how a substance entered the system of the greyhound and, if able to do so, may demonstrate that they were not at fault, or were blameless. This is known as ‘Category Three’ of the McDonough principles, and when established to the satisfaction of a decision maker, the participant may face a nominal penalty, or even no penalty at all.

22. Mr Goddard has attempted to establish how the substance came to be in the greyhound’s system, in an attempt to demonstrate that he was not at fault. He does so through the advancement of Dr Major’s two-page report which, in short, makes the following propositions:

Proposition One

“Boldenone has also been documented, both experimentally and in race day samples, to have been produced by bacterial enzymatic action, from endogenous Testosterone in the urine during storage. In other words, it was never in the animal.”

Proposition Two

“1,4-androstadiene-3,17-dione is also known by the common name Boldione. Boldione is an oxidation product of Boldenone.

It is well documented that endogenous Testosterone can convert to Boldenone and Boldione in stored urine samples.”

¹ Greyhound Welfare & Integrity Commission Internal Review decision of Mr Peter Parker, 3 July 2023.

² Racing Appeals Tribunal decision of Mr Shannon Burgin, 22 November 2023.

23. Dr Major's report was considered and replied to by the Commission's Chief Veterinary Officer, Dr Kuipers. In his statement, Dr Kuipers responded to the above propositions, stating:

"It has been argued by Dr Major that the positive finding of boldione in urine sample V783945 could have arisen from poor storage and microbial contamination resulting in the bio transformation of natural endogenous testosterone and or its metabolites to boldione.

Dr Major has presented literature that biotransformation is possible under highly augmented artificial circumstances in horses involving urine spiked with testosterone or via intramuscular testosterone injections.

Despite the discussed limitations in literature presented by Dr Major, the possibility that steroid biotransformation occurred in urine sample V 783945 cannot be discounted. This possibility is based on the broad acknowledgement that endogenous steroids in urine can be modified via bacterial contamination in other species, including humans. There is however no peer reviewed literature reporting such biotransformation in canines.

It would be highly unlikely that this charge would be defensible if the maintenance of a cold chain (particularly sample freezing) was applied from specimen collection to testing, ensuring sample preservation. Such a strategy would however be logistically challenging. Alternatively, discussions may be undertaken with relevant testing laboratories to mitigate such defences in cases of positive Anabolic Androgenic Steroid samples.

Overall, the likelihood of biotransformation of endogenous testosterone to boldione in urine sample V 783945 is considered to be very low. Of the 16399 racing greyhound urine specimens tested in NSW from 1 July 2021 – 31 June 2023 there has been no boldione or boldenone positive samples, other than sample V 783945. Storage and transportation methods were relatively similar for all samples tested. Across Australasia, of the 71,052 racing greyhound urine samples tested over the same period, there have also been no positive cases of boldione or boldenone. An estimated 60% or more of these samples were from male greyhounds."

24. Dr Major's response of 8 December 2023 reiterated his conclusion that:

"it is highly likely that testosterone in the dog's urine sample was converted by microbial enzymatic activity to Boldenone, and subsequently oxidised to Boldione (1,4-androstadiene-3, 17-dione)."

25. Whilst the argument presented by Dr Major is one that has benefited from closer inspection, I am comforted by the statement of Dr Kuipers in which he commented that the likelihood that the detection of 1, 4-androstadiene-3, 17-dione being found in the sample can be attributed to the biotransformation of endogenous testosterone to be **"very low"** [emphasis added].
26. I am further comforted that in the 16,399 racing greyhound urine specimens tested between 1 July 2021 and 31 June 2023 in NSW, none have returned a positive for either boldenone and/or boldione (that is, 1, 4-androstradiene-3, 17-dione) despite Dr Major's claims that boldenone has been detected in race day samples as produced from endogenous testosterone.
27. In this matter, the relevant test is on the balance of probabilities. I am satisfied on the basis of Dr Kuipers' statement that, on the balance of probabilities, the likelihood of the biotransformation of endogenous testosterone to boldione having occurred in the subject urine sample is very low.

28. Although the principle of absolute liability is severe and exacting, it is the only viable option available to regulators such as GWIC, to combat doping and ensure compliance with the rules of the sport. Doping is a significant challenge for greyhound racing, and extreme measures must be taken to overcome and resolve this problem and ensure the integrity and continuance of the industry.
29. What then flows from this is as follows:
- Mr Goddard presented the greyhound 'Tom's Mate' to compete in race 5 at Wauchope on 4 February 2023 (**the Event**);
 - The Greyhound then competed and placed first;
 - Following the Event, a urine sample was taken from 'Tom's Mate' by a registered official of GWIC, in accordance with standard protocols;
 - The post-Event swab revealed the presence of 1, 4-androstradiene-3, 17-dione; and
 - 1, 4-androstradiene-3, 17-dione is a permanently banned prohibited substance under Rule 139 of the GWIC Greyhound Racing Rules.
30. Accordingly, I find the breach of Rule 141(1)(a) proven.

Penalty

31. The question before me now is whether Mr Goddard is able to provide an explanation as to how the prohibited substance entered the greyhound's system, such that Mr Goddard is able to demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound. Mr Goddard, like so many other participants in his position previously, was unable before the Stewards to explain how the greyhound came to have the permanently banned prohibited substance within its system and he maintains that he cannot explain it.
32. Accordingly, the question then turns to penalty. The GWIC Penalty Guidelines (dated July 2022) provide advice to participants about the penalties that may be imposed where a disciplinary action offence is proven. For prohibited substance penalties, the guidelines distinguish three categories. 1, 4-androstradiene-3, 17-dione is a substance that falls into Category One, which includes substances that are anabolic steroids, and illicit and controlled substances.
33. The Penalty Guidelines outline that a minimum starting point following the detection of a Category One substance of a two (2) year disqualification. I note that the Stewards in this matter determined that the appropriate starting point to be a disqualification of twelve (12) months, stating that they had had regard to "*penalty precedents and [GWICs] penalty guidelines*". With respect to the Stewards, it does not appear that they had regard to the penalty guidelines, as they outline a minimum starting point of two (2) years following the detection of a Category One substance, a marked difference to the penalty they proposed.
34. Nonetheless, I will adopt the starting point put forward by the Stewards of a twelve (12) month disqualification and note that this decision by the Stewards was to Mr Goddard's benefit.

35. The GWIC Penalty Guidelines provide for a reduction of 25% to be applied to the minimum starting point for an early guilty plea. Mr Goddard pleaded not guilty before the Stewards and has maintained that not guilty plea throughout this internal review. Accordingly, he is not entitled to any discount.
36. The purpose of punishment has been considered recently by the High Court in *Australian Building and Construction Commissioner v Pattinson*³ who held that civil penalties imposed by regulators must be entirely protective, with the aim of promoting compliance through general and specific deterrence. This concept was again explored in the Internal Review decision of *Parker*.
37. The submissions made by Mr Goddard establish that he is unable to provide any satisfactory reason as to how the prohibited substance entered the greyhound's system. Moreover, Mr Goddard cannot demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound.
38. On the facts of this matter, Mr Goddard is unable to establish that he is blameless. Accordingly, he must be assessed as a Category Two under the McDonough principles. Even if it is accepted that Mr Goddard is somewhere between Category Two - being 'unable to establish' and Category Three - 'blameless', this does not, in fact, mean that a nominal penalty is appropriate. General deterrence is a factor that must be considered.
39. I turn to the submissions made by Mr Goddard before the stewards, in respect of the financial impact that a disqualification will have upon him. In general, it is my view that, the greater a participant's reliance on any income derived from racing greyhounds, the more safeguards a participant should put in place to protect their income and minimise any risk or threat to that income.
40. What follows from this is, that a professional greyhound trainer, or a person who relies heavily upon the income they derive from their sport, has a significantly greater need to ensure they have taken all possible steps to protect their entitlement to 'race' or compete.
41. I have also considered the remaining subjective factors that Mr Goddard has raised in mitigation of any penalty that might ultimately be imposed upon him. Those factors include Mr Goddard's personal health circumstances and his family circumstances, in particular the impact that the disqualification will have on his young son, who derives a certain level of benefit from his ability to assist his father with the care of the greyhounds.
42. Finally, I then turn to Mr Goddard's disciplinary history. Mr Goddard has been registered in the industry for approximately 25 years with no prior prohibited substance offences. This is to his credit.
43. Having regard to all of the above factors, it is my position that the subjective factors and Mr Goddard's history warrant a three (3) month reduction from the proposed penalty of a twelve (12) month disqualification.

³ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

44. I believe that in the totality of the circumstances an appropriate penalty is a disqualification of nine (9) months.
45. I note that Mr Goddard has been subject to penalty since 22 August 2023. I therefore confirm that Mr Goddard will serve the balance of the original nine (9) month disqualification issued by the Stewards, which is to conclude at 11:59pm on 21 May 2024.
46. In accordance with section 91(7)(a) of the Act and having considered all of the evidence and submissions made by Mr Goddard, I confirm the decision of the Stewards made 17 August 2023 to issue a period of disqualification of nine (9) months.



Brenton (Alby) Taylor, MPPA, Dip Law (LPAB), GDLP, GCAM, GAICD
Chief Commissioner