

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

Matter for determination	Decision dated 30 May 2023 of decision makers Sam Woolaston, Steward, Peter Phillips, Steward and Kevin Adams, Senior Steward
Internal review decision date	25 July 2023
Internal review decision by	Mr Brenton (Alby) Taylor Chief Commissioner, GWIC
Internal review decision summary	Vary the penalty imposed to that of a \$1,000.00 fine, wholly and conditionally suspended for a period of 24 months.

REASONS FOR DECISION

1. These are the reasons for the decision following an application by Mr Garry Parsons (**Mr Parsons**) for internal review under the *Greyhound Racing Act 2017 (Act)* of a Commission decision. That decision was to find Mr Parsons guilty of a breach of Rule 141(1)(a) of the Greyhound Racing Rules. The disciplinary action imposed was a fine of \$1,000.00.
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 Parsons is registered as an Owner Trainer and Breeder within the greyhound racing industry.
5. On 2 March 2023 Mr Parsons presented the greyhound 'Elegant Miss' (**Greyhound**) to race at Temora. Prior to competing, the Greyhound was selected for a random pre-race swab. Upon analysis that swab was found to contain a prohibited substance, being levamisole. Levamisole is a prohibited substance, pursuant to Rule 137 of the Greyhound Racing Rules.

6. On 16 May 2023, Mr Parsons 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. The Notice proposed a penalty of a four (4) month suspension and invited Mr Parsons to attend a hearing to enter a plea and make submissions in relation to the charge.
8. Mr Parsons attended a hearing on 30 May 2023 with Stewards in company with a representative. At the hearing, Mr Parsons entered a plea of guilty to the charge, and made written and oral submissions in respect of that plea.
9. The Stewards formally found Mr Parsons guilty of the charge and determined to impose a fine of \$1,000.00.

Internal Review Application

10. On 6 June 2023, Mr Parsons made an application for an internal review of the decision made by the Stewards. Mr Parsons also requested a stay of the decision pending the finalisation of the internal review.
11. Mr Parsons seeks an internal review in respect of the penalty imposed. The internal review has been conducted on the papers.
12. 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 Parsons representative. The material I have had reference to includes:
- Notice of Charge and Proposed Disciplinary Action dated 16 May 2023, together with a Brief of Evidence;
 - Written submissions made by Mr Parsons representative dated 25 May 2023;
 - Transcript of the hearing conducted between Stewards, Mr Parsons and his representative on 30 May 2023;
 - Notice of Disciplinary Action dated 31 May 2023;
 - Disciplinary Action Decision dated 30 May 2023;
 - Fine dated 31 May 2023;

- Application for Internal Review dated 6 June 2023;
- Written submissions made by Mr Parsons representative dated 6 June 2023;
- Written reference of Mr John Hill dated 1 June 2023;
- Written reference of Ms Donna Widdows dated 1 June 2023; and
- The Commission's Penalty Guidelines; and
- The registration and disciplinary history of Mr Parsons.

Decision

Relevant considerations

13. A breach of Rule 141 (as outlined at [6] above) is an absolute liability offence. In competitive sport, both human and animal, various substances are prohibited to ensure a fair playing field, protect the health and welfare of athletes (including canine athletes), and to protect the sanctity of the sporting contest.
14. In human sport, it is well recognised that the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen will constitute an antidoping rule violation, and it is an athlete's personal duty to ensure that no prohibited substance enters their body. In the case of greyhound racing, this duty of course falls to the owner or trainer who presents the dog to race. It is thus, the owner or trainer who is responsible for a breach of the Greyhound Racing Rules if any prohibited substance, or its metabolites or markers are found to be present in their greyhound's bodily specimens when the greyhound is presented to race, 'in competition'.¹
15. 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.
16. The justification for this approach is that when a prohibited substance is present in a canine athlete's body, that greyhound may have an unfair advantage against "clean" greyhounds. Of course, the reverse circumstance applies where a prohibited or banned substance is introduced into the greyhound's system to inhibit a greyhound's performance, either to improve the chances for another greyhound to win, or to improve the betting odds of the 'doped' greyhound in a future race, where it then enters the competition 'clean' from any inhibiting substance. In both circumstances, the question of how the substance may have entered the greyhound's body then becomes irrelevant.

¹ Or the detection of any permanently banned prohibited substances whether detected in or out of competition: see Rule 139 of the Greyhound Racing Rules.

17. The concept of absolute and strict liability offences has long been the subject of discussion and conjecture in human sport and was considered by the Court of Arbitration of Sport in *Quigley v UIT*² which provided the rationale that:

“[14] It is true that a strict liability test is likely in some sense to be unfair in an individual case...where the athlete may have taken a medication as the result of mislabelling or faulty advice for which he or she is not responsible...but it is also in some sense unfair for an athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of competition be altered due to the unfairness. Just as the competition will not be postponed to await an athlete’s recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption...”

18. In human sport it has long been recognised that in cases involving anti-doping rule violations it will be very difficult, if not impossible, to prove that the athlete involved acted with fault or negligence. Athletes would simply say that they have no knowledge or insight into how the substance got into their bodies. If this was to be accepted as an excuse or explanation, then these athletes would go unpunished, rendering anti-doping rules unenforceable and useless.
19. The principle of absolute liability creates a situation or a positive obligation whereby athletes must do everything possible to make sure they are clear of prohibited and banned substances in accordance with the anti-doping rules of their sport. To put it simply, the onus is upon an athlete to know the rules of their sport and he or she must implement necessary measures to make sure that they do not allow prohibited substances to enter their bodies. When considering this obligation in the context of greyhound racing, it is clear that the obligation rests with the greyhound’s owner or trainer.
20. Having said that, a doping rule violation does not automatically lead to a punishment or sanction. It may be the case that an athlete will be able to avoid or reduce a sanction, if he or she can establish to the satisfaction of a decision maker how the substance entered their system and can demonstrate that they were not at fault or, in certain circumstances, did not intend to enhance or inhibit their sporting performance. In greyhound racing, a participant who is able to establish blamelessness is said to fall into Category Three of the McDonough principles, and may face a nominal penalty, or even no penalty at all. Again in greyhound racing, establishing such facts falls to the person charged with the breach, usually the trainer of the greyhound. Where an owner or trainer can provide no insight as to how the violation occurred, then no concession can be provided for matters of unknown circumstance. This is the most common occurrence, whereby there is no evidence of administration, but no ability to establish blamelessness. This is classified as Category Two of the McDonough principles.
21. Although the concept 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

² *USA Shooting & Q. v Union Internationale de Tir (UIT)*, Arbitration CAS 94/129.

measures must be taken to overcome and resolve this problem and ensure the integrity and continuance of the industry.

22. What then flows from this is as follows:

- Mr Parsons presented the greyhound 'Elegant Miss' to compete in race 7 at Temora on 2 March 2023 (**the Event**).
- Prior to the Event, a urine sample was taken from 'Elegant Miss' by a registered official of GWIC in accordance with standard protocols;
- The Greyhound then competed and placed second;
- The pre-Event swab revealed the presence of levamisole.
- Levamisole is a prohibited substance under Rule 137 of the GWIC Greyhound Racing Rules.
- At a hearing conducted by GWIC Officials on the 30 May 2023, Mr Parsons and his representative entered a plea of guilty and made verbal submissions and tendered written submissions.

Penalty

23. With Mr Parsons having entered a plea of guilty, and as this violation is an absolute liability offence, the question then turns to whether the participant is able to provide a satisfactory reason as to how the prohibited substance entered the greyhound's system, such that Mr Parsons is able to demonstrate that he was not at fault or significant fault or in the totality of the circumstances did not intend to enhance or inhibit the sporting performance of the greyhound.
24. In addition to his plea of guilty, I note that Mr Parsons has admitted to administering a worming medication containing levamisole. This admission is outlined in the submissions of Mr Parsons' representative.
25. I do not accept the submission that "*Mr Parsons has never knowingly administered any type of medication that contained any banned substance.*" The fact that this is an absolute liability offence rebuts any claim or defence of ignorance. As a greyhound racing industry participant, there is clearly a positive onus upon Mr Parsons to both educate himself and to ensure that whatever medication, supplements, or food products he provides to greyhounds under his care does not contain either banned or prohibited substances which may result in a breach of the Rules. Indeed, there is a requirement to make relevant enquiries, particularly regarding the administration of medication, routine or otherwise, prior to administering such medications.
26. I note in this regard, Mr Parsons' submission in respect of his usual withholding period when administering the worming medication in an attempt to mitigate risk. However, the

Commission has specifically addressed such matters in an Industry Practice Guide³, which provides a warning to participants that:

*“Use of worming products containing **Levamisole** in racing greyhounds should be avoided, as **Levamisole** may cause the greyhound to return a positive swab.”* [emphasis added]

27. Nonetheless, Mr Parsons is entitled to credit for his forthright admission in respect of the likely source of the prohibited substance detected in the greyhound. Moreover, Mr Parsons contemporaneous treatment records, for which the stewards commended him on, supports the fact that Mr Parsons can claim that, in the circumstances, he did not intend to enhance or inhibit the sporting performance of the greyhound.
28. There are further submissions as to the quantum of the prohibited substance detected within the greyhounds sample. These submissions are relevant perhaps only to the extent that they support the reason and claims made by Mr Parsons in relation to the timing and reasoning behind administering of the prohibited substance. Having said that, like humans, greyhounds metabolise substances differently. It is conjecture to speculate on the level of substance detected.
29. However as there has been, on this occasion, a reason or explanation offered by the Participant as to what, how and when the greyhound ingested the prohibited substance, I will have regard to these facts and circumstances. Nevertheless, as an absolute liability offence these submissions do not mitigate Mr Parsons’ culpability once the prohibited substance was detected.
30. 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. Levamisole is a substance that falls into Category Three, which includes substances that are painkillers, anaesthetics or other therapeutics.
31. The Penalty Guidelines outline that a minimum starting point following the detection of a Category Three substance is a two (2) month suspension. I note the Penalty Guidelines provide for a reduction of 25% to be applied to the minimum starting point for an early guilty plea. Mr Parsons entered a guilty plea at the first opportunity, and accordingly is entitled to such a discount.
32. I note that the decision makers proposed a starting point of a four (4) month suspension. This starting point originally proposed is not in line with the Penalty Guidelines when consideration is had of levamisole as a Category Three substance. It appears the decision makers initially

³ “Worm and parasite prevention – Industry Practice Guide 5.0” accessed at <https://www.gwic.nsw.gov.au/news-and-updates/news-and-updates2>.

understood levamisole to be a Category Two substance despite, in fact, that levamisole is a Category Three substance.

33. In addition, the Penalty Guidelines provides that a participant who has been registered for more than ten (10) years without any breaches of the Rules relating to prohibited substances will receive a fine for a Category Three breach. Mr Parsons is entitled to rely on this provision, as he has no prior rule violation recorded for any type of similar offence.

34. For that reason, my starting point for penalty is that of a fine.

35. Punishment by definition, is the imposition of an undesirable or unpleasant outcome upon an individual, meted out by an authority as a response and deterrent to a particular action or behaviour that is deemed undesirable or unacceptable. Moreover, the imposition of a penalty upon a person who has offended is justified on a number of bases including:

- (a) to ensure the person is adequately punished for the offence;
- (b) to prevent violations by deterring the person concerned and deterring other persons from committing similar offences;
- (c) to protect the community from the person;
- (d) to promote the rehabilitation of the person;
- (e) to make the person accountable for his or her actions;
- (f) to denounce the conduct of the person; and
- (g) to recognise the harm done to any victim or the community more generally.⁴

36. For the greyhound racing industry, additional bases and considerations are:

- (h) to ensure the integrity of greyhound racing; and
- (i) to provide for the protection and promotion of the welfare of the greyhound.

37. In considering the administration of civil penalties by regulators, the High Court in *Australian Building and Construction Commissioner v Pattinson*⁵ held that the object of civil penalties is entirely protective, in that they are aimed at promoting compliance through general and specific deterrence to promote the public interest in compliance. Indeed, the Court went further stating that a regulator is at liberty to impose the maximum penalty for less serious contraventions, if it is necessary, to deter further contraventions by the contravenor or by other members of the industry. At present the prevalence of greyhounds testing positive to prohibited and banned substances is a matter of significant concern and something which

⁴ *Crimes (Sentencing Procedure) Act 1999* (NSW), s3A.

⁵ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

must be addressed and deterred across the industry. It is with all of these considerations in mind that I further consider penalty in this matter.

38. I turn to the submission in respect of the financial impact a fine will have upon Mr Parsons. It is my view in general that the greater a participant's reliance on any revenue derived from racing greyhounds, the greater the safeguards which a participant should put in place to protect their revenue and minimise any risk or threat to that revenue.
39. A professional driver of a truck or taxi for example, has a higher need to maintain the currency of their driver's licence compared to a citizen who uses their driver's licence solely to commute from place to place. For an ordinary citizen, losing their driver's licence, and the right to drive, will constitute an inconvenience. For a professional driver, as described above, not only will that person suffer a personal inconvenience, but they will also inevitably lose access to whatever revenue or income they derive from operating as a professional driver. For this reason, it is my view that a professional driver should implement best practice to ensure they neither accrue demerit points nor commit any offence which places their driver's licence in jeopardy.
40. Accordingly, a professional greyhound trainer, or a person who relies heavily upon the income they derive from the sport, has a significantly greater need to ensure they have taken all possible steps to protect their entitlement to 'race'. Importantly, Mr Parsons submissions reflect the additional steps he intends to implement in the future to ensure such a breach does not occur.
41. I do not accept the almost contrary view, that a greater need or reliance on being able to participate in greyhound racing, creates a justification for a lesser penalty compared to a participant who is less reliant on the income which flows from racing. To impose any such test, in my view, would be to not impose sanctions across the sport equably across all participants. Accordingly, I reject the suggestion that a lesser penalty is appropriate due to Mr Parsons greater reliance on the sport to support his life and/or lifestyle.
42. In considering this matter I have had regard to the GWIC decision of *King*⁶ and the Racing Appeals Tribunal decision of *Duncan*⁷. In both of these matters a fine of \$2,000.00 was imposed.
43. I next note the references tendered to support Mr Parsons' good character. These references in my view support the assessment that Mr Parsons is a person of good character, and a person who has and continues to make a significant contribution to the greyhound racing industry, especially in his local community.

⁶ Greyhound Welfare & Integrity Commission decision of Mr Walter King, 8 June 2021.

⁷ Racing Appeals Tribunal decision of Mr Terry Duncan, 29 August 2022.

44. Furthermore, I note Mr Parsons good character, of which his references reflect. His contribution to the industry as President of the Young Greyhound Club, as well as the volunteer work he undertakes is another factor that I have considered.
45. Mr Parsons has had a lengthy and largely unblemished career as a owner, trainer and breeder in the greyhound racing industry. He has been licenced as an owner trainer since 2002, a period of some twenty one (21) years, and as a breeder since 2015, approximately eight (8) years. He had a minor matter in 2008 relating to misconduct which was dealt with by way of a small fine. His largely unblemished disciplinary history is a factor that he is entitled to rely upon in mitigation and is something he should be commended for.
46. I note Mr Parsons submissions in respect of his financial capacity. I also have had regard to Mr Parsons submissions in respect of his personal circumstances, including his personal medical circumstances. None of these submissions are outlined here for privacy reasons.
47. Nonetheless, I am satisfied that this matter distinguishes itself in respect of the cumulative nature of Mr Parsons mitigating circumstances as outlined above.
48. Having regard for all these matters, I believe that in the totality of the circumstances an appropriate penalty is, as imposed by the Stewards, a fine of \$1,000.00. However, I vary the decision imposed by the Stewards and determine to wholly suspended this fine for a period of 24 months on the condition that Mr Parsons not breach Rule 141 or any like Rule, in that period. If Mr Parsons breaches such Rule, then the suspended fine of \$1000.00 will be immediately activate and be imposed upon him.
49. In accordance with section 91(7)(b) of the Act and having considered all of the evidence and submissions made by Mr Parsons and on his behalf, I vary the decision of the Stewards made 30 May 2023 and issue a fine of \$1,000.00, wholly and conditionally suspended for a period of 24 months with such conditional suspension to lapse on 24 July 2025.



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