3 June 2022

**DECISION**

**RACING VICTORIA**

**and**

**ADRIAN McGREGOR**

**Date of hearing:** 25 May 2022

**Panel:** Judge John Bowman (Chairperson) and Judge Kathryn Kings.

**Appearances:** Ms Melanie Szydzik, instructed by Mr Scott Hunter, appeared on behalf of the Stewards.

Mr Matthew Stirling represented Mr Adrian McGregor.

Mr Adrian McGregor, Mr Marwan El-Asmar and Mr Robert Cram attended the hearing.

**Charges:** Australian Rule of Racing (“AR”) 232(i) states:

A person must not:

(i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

AR 252(1) states:

(1) A person must not have in his or her possession or on his or her premises any medication, substance or preparation which has not been registered, labelled, prescribed, dispensed or obtained in accordance with applicable Commonwealth and State legislation.

AR 104 states:

(1) A trainer must record any medication or treatment administered to any horse in the trainer’s care by midnight on the day on which the administration was given.

(2) For the purpose of subrule (1), each record of administration must include the following information:

(a) the name of the horse;

(b) the date and time of administration of the treatment or medication;

(c) the name of the treatment or medication administered (brand name or active constituent);

(d) the route of administration including by injection, stomach tube, orally, topical application or inhalation;

(e) the amount of medication given (if applicable);

(f) the duration of treatment (if applicable);

(g) the name and signature of the person/s administering and/or authorising the administration of the treatment or medication. (h) the reason for administering the treatment or medication. (3) For the purposes of this rule “treatment” includes:

(a) shock wave therapy;

(b) acupuncture (including laser treatment);

(c) chiropractic treatment;

(d) the use of any electrical stimulation device (including transcutaneous electrical nerve stimulation (TENS));

(e) magnetic field therapy;

(f) ultrasound;

(g) any form of oxygen therapy, including hyperbaric oxygen therapy;

(h) the taking of a blood sample.

(4) For the purposes of this rule “medication” includes:

(a) all Controlled Drugs (Schedule 8) administered by a veterinarian;

(b) all Prescription Animal Remedies (Schedule 4), including those listed in Schedule 1, Part 2, Division 2 to these Australian Rules;

(c) all Prescription Only Medicines (Schedule 4), prescribed and/or dispensed by a veterinarian for off-label use;

(d) all injectable veterinary medicines (intravenous, intramuscular, subcutaneous, intra- articular) not already referred to above;

(e) all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines;

(f) all veterinary and other medicines containing other scheduled and unscheduled prohibited substances;

(g) all alkalinising agents;

(h) all herbal preparations.

(5) All records required to be kept in accordance with this rule must be retained by the trainer for at least 2 years.

(6) When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required under subrule (1).

**Particulars of charges: Charge 1: AR 232(i)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 6 June 2021, Stewards from the Compliance Assurance Team at Racing Victoria attended your stables in Bangholme to conduct a race day inspection of your horse, “Stratum’s Reward”, that was engaged to race at Geelong on that day (the Inspection). During the Inspection, the Stewards located an unused syringe of HY-60 in your medication cabinet.
3. On 6 June 2021, following the Inspection, you attended an interview with the Racing Victoria Stewards (the First Interview), during which you were questioned about the unused syringe of HY-60 in the medication cabinet. In response, you gave the following evidence:

“..I used to buy some products off a bloke in a white van”;

“I’ve had that for – must be 15 or 20 years”.

“Yeah, I couldn't remember [when the product was last used]”; and

“[Stratum’s Reward] had no treatment [this week]”.

1. During the First Interview, the Stewards located a used syringe of HY- 60 in a rubbish bin. When questioned about the item, you gave evidence along the following lines:

You used the syringe containing HY-60 on Approach Discreet “three days ago;” and

It was the “same stuff” that you bought from “that bloke” 15 years ago.

1. On 23 September 2021, you were interviewed by Racing Victoria Stewards concerning the results of analysis from items located on 6 June 2021 (the Second Interview), during which you admitted the following:

You used the syringe containing HY-60 on Stratum’s Reward prior to the race; and

You received the HY-60 from a veterinarian by the name of Dr Adam Matthews approximately two weeks to a month prior [to 6 June 2021].

1. On the basis of the evidence, you gave in the Second Interview (as noted in particular 5), you gave evidence during the First Interview (as noted in particulars 3 and 4) that you knew was false and/or misleading and was accordingly in breach of AR 232(i).

**Charge 2: AR 252(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 6 June 2021, Stewards from the Compliance Assurance Team at Racing Victoria attended your stables in Bangholme to conduct a race day inspection of your horse, “Stratum’s Reward”, that was engaged to race at Geelong on that day (the Inspection).
3. During the Inspection, the Stewards located an unused syringe containing a clear substance, with the packaging stating “HY-60, intra-articular injection” (the HY-60).
4. The *Agricultural and Veterinary Chemicals (Administration) Act 1992*, read in conjunction with the *Agricultural and Veterinary Chemicals Code Act 1994*, confers power on the Australian Pesticides & Veterinary Medicines Authority (APVMA), as the Australian Government regulator of agricultural and veterinary chemical products, to evaluate and, where appropriate, register products to be manufactured, imported, supplied, sold or used in Australia.
5. HY-60 is a joint supplement for horses that was, at all relevant times, not registered by APVMA in accordance with the applicable Commonwealth legislation. Accordingly, in having the product on your premises, you were in possession of a medication, substance or preparation that had not been registered in accordance with applicable Commonwealth legislation, and you were therefore in breach of AR 252(1).

**Charge 3: AR 252(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 6 June 2021, Stewards from the Compliance Assurance Team at Racing Victoria attended your stables in Bangholme to conduct a race day inspection of your horse, “Stratum’s Reward”, that was engaged to race at Geelong on that day (the Inspection).
3. During the Inspection, the Stewards located a drawn-up syringe, which was not labelled and contained a yellow liquid (the Substance). You stated the Substance was “Lasix” and had been provided to you by a veterinarian.
4. The Substance, upon analysis, was found to contain Frusemide.
5. The Substance, in accordance with the Poisons Standard instrument (the Poisons Standard), 2 made pursuant to s 52 of the *Therapeutic Goods Act 1989* (Cth), is classified as a Schedule 4 poison. The Schedules contained within the Poisons Standard have been implemented in Victoria through the Poisons Code, as prepared under s 12 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (the Act).
6. Any container holding a ‘poison or controlled substance’ as defined by the Act, including a Schedule 4 poison, must, at the time of sale or supply, be labelled in accordance with the specifications for ‘dispensed medicines’ contained in the Poisons Standard, which has been adopted under s 27A of the Act, and regulation 72 of the *Drugs, Poisons and Controlled Substances Regulations* 2017, which requires that supplementary labels for the sale or supply of a Schedule 4 poison used in the treatment of animals include specific details, including the species, age, breed and sex of the animal, the name of the person who owns or has custody or care of the animal, the date of the making of a record of sale or supply and the directions for the use of the substance.
7. The Substance located during the Inspection, as a Schedule 4 poison that was sold or supplied to you, was not labelled in accordance with applicable state legislation. Accordingly, in having the Substance on your premises, you were in breach of AR 252(1).

**Charge 4: AR 104(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, responsible for the maintenance of the treatment records for any horse in your care.
3. On 6 June 2021, Stewards from the Compliance Assurance Team at Racing Victoria attended your stables in Bangholme to conduct a race day inspection of your horse, “Stratum’s Reward”, during which they inspected your treatment records.
4. You breached AR 104(2):

a. From 13 April 2021 to 23 April 2021, given your treatment records did not contain all the information as required by AR 104(2), including but not limited to: routes of administration and the reason for administering the medication.

b. From 24 April 2021 to 6 June 2021, given your treatment records did not contain any information as required by AR 104(2), including but not limited to: names of medications, times of administration, routes of administration, the amount of medication administered and the reason for administering the medication.

**Pleas:** Guilty to all Charges

**DECISION**

Mr Adrian McGregor, you have pleaded guilty to four charges. They could be summarised as being the giving of false evidence to the Stewards – a breach of Australian Rule of Racing (“AR”) 232(i); two breaches of AR 252(1) – possession of an unlabelled and unregistered medication; and a breach of AR 104(1) – the failure to keep proper treatment records.

We say now that we regard the financial penalties proposed by the Stewards in relation to Charges 2, 3 and 4 to be reasonable and appropriate. There was no great challenge to this proposition by Mr Matthew Stirling, on your behalf. Accordingly, this decision focuses largely on Charge 1, the giving of false evidence to the Stewards.

The background facts could be summarised as follows. You are a licensed trainer with stables at Bangholme. On 6 June 2021, a race day on which you had “Stratum’s Reward” running, the Stewards attended at your stables. They found an unused syringe containing HY-60. You claimed that you had purchased it 10 to 15 years earlier from “a bloke in a white van” and could not remember when you had last used it. They then found a used second syringe of HY-60 in a rubbish bin. You said that you had used it on a different horse, “Approach Discreet”, three days earlier, but that it was “the same stuff”, purchased 15 years previously.

Ultimately, when the Stewards interviewed you for the second time on 23 September 2021, some three and a half months later, you admitted that you had lied to them on 6 June 2021. It would seem that originally you had panicked and had allegedly been trying to protect the name of the veterinary surgeon involved. It should be added that Stratum’s Reward, when tested, provided a negative return in any event. You had used the syringe on Stratum’s Reward prior to the race, as opposed to it having no treatment in the week prior to running as initially told to the Stewards. You admit that lies were told to the Stewards on 6 June 2021, even if they were “fools lies”, as submitted by Mr Stirling.

We have taken into account the references of Mr Colin Alderson and Mr Chris Wood, both trainers and gentlemen of high repute and with each of whom you had been employed as an assistant trainer. We also take into account your financial situation. You train a modest number of horses, approximately eight. You had been supplementing your income by doing work as a track work rider, but a leg injury for which there is likely upcoming surgery has put an end to that. Your background generally is one who has had to do it the hard way. We also consider your record to be very good, with only one prior offence in excess of 12 years ago which attracted a financial penalty.

Thus, there are many things in your favour and Mr Stirling outlined them in detail.

However, this was a blatant breach of AR 232(i) and with no attempt to remedy the situation until a second Stewards’ interview three and a half months later and when it must have been apparent that there was, in essence, no way out.

As has been said many times in these false information cases, the work of the Stewards is difficult enough without there being provided with such time consuming falsehoods. Further, this is not a situation where there was a prompt admission of the lies that had been told. The Stewards pursued investigations over a comparatively lengthy period. A correct account at the outset of what had occurred would have saved them a lot of trouble.

We take into account all that Mr Stirling has said on your behalf and the material that has been provided, particularly in relation to your circumstances as a battling trainer with a quite severe leg injury. However, weighing everything up, we are of the opinion that some period of suspension must be served.

In your particular circumstances, on Charge 1, a penalty of four months suspension, as suggested by the Stewards, is imposed, but of that period, two months is suspended for a period of two years. The provisional two months suspension will become operative if you commit a relevant offence in that time. On Charges 2, 3 and 4, we agree with the fines proposed by the Stewards. As stated, there was little to no opposition to them. Accordingly, the fines imposed are as follows:

Charge 2: $750.

Charge 3: $300.

Charge 4: $1,000.

The commencement of the two months suspension is seven days from today’s date, being 1 June 2022.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal