19 December 2019

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR GEORGE SCHEMBRI & MS TAYLAH SCHEMBRI**

**Date of hearing:** 16 December 2019

**Panel:** Judge John Bowman (Chairperson), Hon. Graeme Hicks (Deputy Chairman) and Magistrate John Doherty (Deputy Chairman).

**Appearances:** Ms Amy Wood appeared on behalf of the Stewards.

Mr Bruce McNab represented Mr George Schembri and Ms Taylah Schembri at the hearing.

**Charge:** Australian Harness Racing Rule (AHRR) 241 states a person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.

**Particulars of charges: Mr George Schembri** 14 charges in relation to the forging signature of the ‘Compulsory Drivers Medical Examination’ forms from seasons 2011-2012 to season 2019-2020.

 **Ms Taylah Schembri** 7 charges in relation to the forging signature of the ‘Compulsory Drivers Medical Examination’ forms from seasons 2012-2013 to season 2019-2020.

**Plea:** Not Guilty

**DECISION OF JUDGE BOWMAN**

In this matter Mr George Schembri and Ms Taylah Schembri have pleaded ‘not guilty’ to a total of 21 breaches of Rule 241. The Stewards are alleging that each engaged in conduct that was fraudulent on the basis of the alleged forgery of doctor certificates relating to the state of health of persons applying for their annual renewal of their driving licence.

In summary, Mr Schembri has admitted to the Stewards that he forged the contents of the certificates and the signatures of the medical practitioners and that at least since 2013, he has done this in respect of both his own annual application for renewal of licence and at his daughter’s request. In 2012 he did this solely for himself.

The facts are admitted. The argument on behalf of the Schembri’s is that what occurred was not fraudulent within the meaning of the Rule in that there was no intent to gain any unjust advantage and none was obtained. What could be described as the criminal law approach should be adopted.

It being agreed that this raises a question of law, pursuant to Section 50X of the *Racing Act 1958*. I alone am determining the matter but I would like to thank my colleagues for their assistance. However, the decision is mine.

In my opinion this defence fails. Ms Wood, on behalf of the Stewards, has directed my attention to AHRR309. The interpretation to be preferred is one which promotes the purpose of and would not impede or restrict, the application of the Rule. The purpose is to ensure an independent medical examination report and receive a properly constituted report. Such an approach surely would not favour an interpretation which removed from drivers the necessity to undergo annual medical examinations and allow for the production of the results.

The state of health of drivers is patently a most important matter. If for example a driver collapses as a result of a cardiac condition during a race, the results could be horrendous. The driver could injure himself or herself as well as fellow drivers. There could be animal welfare matters, not to mention the gambling and financial impact of such an occurrence.

For good reason an annual medical examination therefore is compulsory. To forge the contents of the reports and the signatures of the relevant doctors seems to me to be patently fraudulent. To breach the intention of the Rules has the capacity to lead to disastrous consequences.

I am not impressed by the argument that Mr Schembri was forging the documents purely to assist the situation of Ms Schembri in relation to her weight and the distress she may feel concerning it and the comments of others. Whilst that is a sad state of affairs, Mr Schembri commenced forging the documents before the first forgery on Ms Schembri’s behalf. He continued to forge his own documents. He did not just forge his daughter’s certificates. I repeat, for the next 6 years he continued to forge his own documents.

This is clearly fraudulent behaviour within the meaning of the Rule. The argument that no damage was done takes the defence no further. It was straight out forgery and an important document for his and his daughter’s advantage. It was convenient, but apart from being convenient and easy, it also removed the risk of an adverse finding.

In my opinion this was fraudulent behaviour by both Mr Schembri and Ms Schembri in breach of the Rule and I accept and prefer the submissions advanced by Ms Wood.

**PENALTY (Delivered by Judge Hicks on behalf of the Tribunal)**

Mr Schembri, you have pleaded ‘not guilty’ to 14 charges under Australian Harness Racing Rule 241 and Ms Schembri has pleaded ‘not guilty’ to 7 charges under the same Rule. The facts in this case are not in dispute. There is no need to repeat them here as they are outlined in the Chair’s previous ruling earlier today.

We take into account the submissions from Mr McNab on behalf of the two defendants. In particular we take into account that their sole income is derived out of harness racing. We have also taken into consideration hardship that it will cause their families in the event of a disqualification.

As far as the history of Mr Schembri is concerned, he has one prior offence of a similar nature. Ms Schembri has no prior offences whatsoever.

In our opinion, these are serious offences. We have taken specific deterrence into account for both defendants. Mr Schembri had 14 such repeat offences and Ms Schembri had 7 such repeat offences.

In our opinion, general deterrence also has important application in our determination of the appropriate penalty. The most significant aspect is the protection of the industry. The protection of the industry is paramount. It is important that medical examinations of the participants be carried out by a medial practitioner.

As the Chair previously outlined when giving the example of a heart attack, disastrous consequences could follow if that is not done. That could be not only to the participants, it could also go to animal welfare issues.

Because of the pleas of ‘not guilty’, there is no scope for the mitigation of sentencing that can result from pleas of ‘guilty’. We have given careful consideration as to whether the penalty should be a suspension or disqualification. In our opinion the offences are so serious that a disqualification is the only appropriate penalty in all the circumstances.

Mr Schembri will be disqualified for 15 months back dated to 1 September 2019. Ms Schembri will be disqualified for 9 months back dated to 1 September 2019. Each has already been disqualified since that date.

Mark Howard
Registrar, Victorian Racing Tribunal