31 May 2024

**DECISION**

**MICHAEL RYAN**

**and**

**RACING VICTORIA**

**Date of hearing:** 20 May 2024

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**Panel:** Judge Marilyn Harbison (Deputy Chairperson), Dr Andrew Gould and Ms Amanda Dickens.

**Appearances:** Mr Marwan El-Asmar instructed by Mr Scott Hunter appeared on behalf of the Stewards.

Mr Michael Ryan represented himself.

 Mr Michael Ryan appeared as a witness.

**Charge:** Australian Racing Rule (“AR”) 252(1) states:

**AR 252** **Possession of medication/substance/preparation in breach of legislation**

(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.

(2) The Stewards may confiscate any medication, substance or preparation referred to in subrule (1), and use it as evidence in any inquiry, hearing or other proceeding under the Rules.

**Particulars:** 1.You are, and were at all relevant times, a trainer licensed by Racing Victoria and a person bound by the Rules of Racing.

 2. On 8 March 2023, Stewards from the Compliance Assurance Team at Racing Victoria attended your licensed premises at 100 Rix Road, Officer, to conduct a race day inspection (the **Inspection**).

 3. During the Inspection, the Stewards located an unlabelled syringe which was found to contain Pregnenolone (the **Substance**).

 4. The Substance was not, at all relevant times, registered in accordance with applicable Commonwealth and State legislation.

**Plea:** Not Guilty

**DECISION**

1. Mr Michael Ryan has been a thoroughbred owner and trainer for approximately 30 years.
2. He is appealing against a conviction and fine imposed on him by the Stewards on 24 January 2024.
3. The charge was laid under Australian Racing Rule 252(1). This Rule states that a person must not have in his possession or on his premises any medication, substance or preparation which has not been registered, labelled, prescribed, dispensed or obtained in accordance with applicable Commonwealth and State legislation. The charge was found proven, and he was fined $1,500.
4. This conviction and penalty came about in the following circumstances. The Stewards attended at Mr Ryan's stables in Officer on 8 March 2023 for a routine race day check of one of his horses. The horse was named ‘Five Ounce’. There was nothing untoward found relating to this horse.
5. Once that check had been completed, the Stewards then proceeded to inspect the medications held by Mr Ryan. There were three fridges in his stables. Mr Ryan pointed out that one of the fridges containing medications in the stable and the Stewards inspected those medications. He handed these to the Stewards. The Stewards noticed that there was also an unlabelled syringe which he had not given them. The syringe contained a yellow liquid. The Stewards asked Mr. Ryan what it was. He said he thought that the syringe contained phenylbutazone, colloquially known as Bute. Bute is an anti-inflammatory medication commonly used on racehorses.
6. The Stewards took the syringe and its contents away for analysis. It was initially analysed by Racing Analysis Services Limited (RASL) – a Melbourne testing laboratory. The result of that analysis was that the syringe was found to contain dehydroepiandrosterone – (DHEA) and also another substance – pregnenolone. There was no Bute found in the sample.
7. The Stewards interviewed Mr Ryan approximately a fortnight later on 19 May 2023. During that interview, he told the Stewards that he still thought that the substance in the syringe was Bute. He said that he'd never heard of either DHEA or pregnenolone, and had no idea where to obtain those substances. He had no explanation as to how the syringe and its contents had come to be in the fridge, or how the substance had come to be drawn up into the syringe, except to say that if it was in the fridge, it must have been given to him by a veterinary surgeon for use on his horses.
8. Subsequently the two veterinary surgeons used by Mr Ryan were interviewed and they confirmed that they had never provided him with either DHEA or Pregnenolone. All four of his horses were subsequently tested by means of hair and blood samples and the sample results for those horses were found to be clear.
9. At the time of the interview on 19 May 2023, Mr Ryan requested that the contents of the syringe, be tested by another laboratory. Therefore, a small portion of the contents of that syringe (5ml) was sent to the Australian Racing Forensic Laboratory (ARFL) which is located in Sydney. That laboratory found pregnenolone in the sample, but not DHEA. There was no Bute found in the sample.
10. DHEA is an endogenous androgen anabolic steroid precursor. It is a prohibited substance under the Rules of Racing. It is not able to be purchased legally in Australia. However, it can be purchased on the black market and is primarily used for bodybuilding in humans and also for racehorses.
11. Pregnenolone is another type of endogenous steroid precursor. It is also not able to be purchased legally in Australia, and is similarly purchased on the black market, again primarily used for bodybuilding in humans and also for racehorses. It is also a prohibited substance under the Rules of Racing.
12. Mr Ryan has appealed his conviction and sentence on the following grounds.
13. Firstly, he points out that he has never had any breach of the Rules of Racing or had a positive test to a banned substance in the 30 years in which he has been working as a trainer in the industry.
14. Secondly, he relies on the fact that all his horses were tested for banned substances at the time of this investigation and all were found to be negative.
15. Thirdly, he relies on the fact that his phone was scanned by the Stewards in a search for any evidence of him procuring the substance DHEA, but the result of that scan was negative.
16. Further, he relies on the fact that it was he himself who led the Stewards to the fridge containing the syringe of DHEA. He points out that he could easily have instead showed the Stewards to one of two closer fridges which did not contain this syringe. He says that this shows his honesty in dealing with the Stewards and his lack of knowledge that there was any banned substance in the syringe.
17. Fourthly, he points out that the Stewards scientific evidence contains an anomaly. When it was bagged and sealed for testing, the accompanying description, signed by the Steward and by Mr Ryan, identified the volume of the substance as being 20 millilitres. However, when it was later processed at the laboratory, before the sealed package was opened it was described by the RASL scientist, Dr Adam Cawley, as having a volume of only 18 millilitres. Mr Ryan said that this discrepancy throws doubt on the accuracy of the test results at the RASL laboratory.
18. Lastly, he points out that when the sample was tested at ARFL, the contents varied. Whilst there was still pregnenolone in the sample, the other substance which had been present initially, namely DHEA, was no longer detected.
19. Mr Ryan submits that, overall given that we are to make our decision on the balance of probabilities, the likelihood of him having a black market substance in his fridge, not using it, sitting it in the middle of his fridge and offering it to the Stewards for inspection is so low that there would need to be some other explanation for the test results, such as an error in processing. He says that when those matters are considered together, with the performance of his horses and the variance in volume of the syringe, it is likely that ‘something else’ caused a false reading when the substance was tested. We should therefore not be satisfied that it is more probable than not that the substance found in the syringe was the banned substance DHEA and/or pregnenolone.
20. We note that this is an appeal against a decision of the Stewards. In hearing this appeal, we are not bound by any assessment of the facts or any determinations of law made by the Stewards. Our task is to decide the matter afresh on the evidence presented before us.
21. In applying those principles, we have taken into account the contents of the Brief of Evidence prepared by the Stewards, the transcripts of the hearings before the Stewards, and the evidence given by Mr Ryan in this appeal. In the context of this case, it is our task to decide whether it is more probable than not that Mr Ryan had on his premises a prohibited substance (being the contents of the syringe).
22. We firstly consider whether there is any significance in the fact that there was a smaller volume in the syringe when it was tested by RASL than when it was first located by the Stewards and bagged for future analysis. The syringe holds a maximum capacity of 30 ml. However, it was not full at the time it was bagged. The Stewards’ report was that the syringe contained 20 ml of substance when bagged. The RASL report was that there were 18 ml in the substance when it was tested.
23. Dr Adam Cawley, the Scientific Manager who conducted the testing at RASL, gave evidence before the Stewards. He said that the estimate of 18 ml which he noted in his report was just an estimate – not an exact record of the volume of the liquid. He said that gradations on a syringe are not calibrated and should not be taken as exact.
24. He said further that the syringe contained an oily substance. When one is observing an oily substance, it is harder to establish where the meniscus of the substance is. The meniscus is a curve in the surface of a substance when it touches another material – in this case, the inside surface of the syringe. He said that an oily substance would have a meniscus of a markedly concave shape. In assessing volume, he would measure from the base of the concave shape. However, it was also possible to measure from the top of the meniscus. This could cause a difference between measurements.
25. Alternatively, Dr Cawley said that it was possible that in transit the stopper of the syringe had been pushed and some substance had come out in the bag. He said that he did not recall any lost sample in the bag when he opened it.
26. Further, he said that there may have been an air bubble in the syringe. An air bubble is more common in an oily substance and the presence of any such bubble may have affected the measurement. We note that the photo of the syringe which was produced in evidence appears to show an air bubble, but we heard no evidence about this either way.
27. Mr Ryan did not present any evidence that the composition of the sample was likely to be affected by the lesser amount tested compared to the amount bagged. There is no evidence of the syringe leaking after it was bagged, or of the contents being contaminated in any way. There is no evidence at all of it being substituted for a different syringe. The continuity evidence was unchallenged. We consider it most likely that the initial estimate of 20 ml is inaccurate. We are not persuaded that this evidence throws any significant doubt upon the testing either by RASL or by the ARFL.
28. Mr Ryan also pointed to the evidence of the difference in results of analysis between the Melbourne and Sydney laboratories. The Sydney laboratory found no evidence of the presence of DHEA in the sample, although it did find that pregnenolone was present.
29. Dr Cawley was also asked about this issue. He had no information as to exactly how the Sydney laboratory had tested for DHEA. He said that the testing of an oily substance, such as the substance in this case, was often difficult, because it was difficult to extract the components of the substance, given its oily nature. He thought that there may have been a sensitivity difference in procedures between the Melbourne and Sydney laboratories, both is respect of the extraction of the components of the substance, and also in the identification of those components, with the Melbourne laboratory using more sensitive techniques.
30. Mr Ryan submitted that this discrepancy undermined the reliability of both samples. He suggested that we should not place any credence in the analysis of either laboratory. He suggests that it is likely that it was a different syringe tested by the Sydney laboratory or that, at the very least, some tampering had taken place with either or both samples.
31. We are not persuaded that the evidence of the laboratories should be disregarded. Clearly the Sydney result throws some doubt on the presence of DHEA in the sample. It was because of this that the Stewards do not seek to rely on the allegation of the presence of DHEA as being part of the elements of this charge.
32. However, there is no credible challenge to the finding of pregnenolone in each sample. There was no real challenge to the chain of custody evidence, or any credible suggestion of tampering with, or the testing of, the wrong syringe.
33. Mr Ryan has a very good record within the industry and this must certainly be taken into account in his favour when assessing the evidence. There is no evidence that he was aware at the time of the inspection that the unidentified syringe was on his premises, or that he knew what it contained.
34. However, lack of knowledge of the presence of the syringe or of the nature of its contents is not an element of this charge. This is a charge relating to the existence on Mr Ryan’s premises of a prohibited substance. It does not concern use of the substance, or even knowledge that the substance was present on the premises. The onus is on the industry participant to ensure that the premises are free of prohibited substances. The obligation is absolute. This is a clear policy decision to send a message to the industry that participants must be scrupulous in ensuring that prohibited substances are never allowed in their stables.
35. We note that Counsel for the Stewards indicated that there would be no issue taken with the fact that the syringe was unlabelled.
36. Even allowing for this concession, it is clear from the evidence that the Stewards found a syringe containing a substance, one of the ingredients of which was a prohibited substance, in Mr Ryan's fridge. We do not accept that the anomalies relied upon by Mr Ryan in the collection and testing of the substance throw any significant doubt on the identification of the substance.
37. At all relevant times Mr Ryan was solely in charge of all of the horses on his property and no one but him was responsible for their medications.
38. In all the circumstances, we find the charge proven.

**PENALTY**

1. We now turn to the question of penalty. Mr Ryan has an excellent record of 30 years participation in the racing industry. However, it is important that participants in the industry are left in no doubt that they must not allow prohibited substances to be stored in their stables. Ignorance of the nature of such a substance will never excuse a trainer of culpability. The public perception of the integrity of the racing industry is undermined by such breaches. This was a clear breach involving a potentially harmful steroid.
2. We fine Mr Ryan the sum of $1,500.

Mark Howard

Registrar, Victorian Racing Tribunal