13 December 2024

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**RAYMOND FLOYD**

**Date of hearing:** 22 November 2024

**Date of decision:** 22 November 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Anthony Pearce appeared on behalf of the Stewards.

Mr Raymond Floyd represented himself.

**Charges and particulars: Charge No. 1 of 6**

Greyhounds Australasia Rule 141(1) which reads as follows:

**Rule 141 Greyhound to be free of prohibited substances**

*(1) The owner, trainer or other person in charge of a greyhound:*

1. *nominated to compete in an Event;*
2. *presented for a satisfactory trial or such other trial as provided for by the Rules; or*
3. *presented for any test or examination for the purpose of a stand-down period being varied or revoked,*

*must present the greyhound free of any prohibited substance.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.

1. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN (VKBIG)*.*

1. OHANA SITDOWN was nominated to compete in Race 8, Warragul Breeders Classic, conducted by the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.

1. On 23rd April 2023, you presented OHANA SITDOWN at the Event not free of any prohibited substance, given that:
	1. A post-race sample of hair was taken from OHANA SITDOWN at the Event;
	2. Testosterone Propionate was detected in sample V626224.

**Charge No. 2 of 6**

Greyhounds Australasia Rule 142(1) which reads as follows:

**Rule 142 Administration of a prohibited substance established in a sample taken from a greyhound in connection with an Event**

1. An offence is committed if a *person*:

1. *administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;*
2. *aids, abets, counsels or procures the administration of or an attempt to administer a prohibited substance to a greyhound; or*
3. *has prior knowledge of a prohibited substance being administered or attempted to be administered to a greyhound,*

*which is established in any sample taken from a greyhound presented for an Event or when subject to any other contingency pursuant to the Rules.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.

1. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN*.*
2. OHANA SITDOWN was nominated to compete in Race 8, Warragul Breeders Classic, conducted by the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
3. You administered, or caused to be administered, to OHANA SITDOWN, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from OHANA SITDOWN in that:
	1. You administered the substance, namely Testosterone Propionate, to OHANA SITDOWN on or around 23 April 2023;
	2. A post-race sample of hair was taken from OHANA SITDOWN at the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
	3. Testosterone Propionate was detected in the Sample.
	4. The presence of Testosterone Propionate detected in the sample could only be caused by the administration of Testosterone Propionate.

**Charge No. 3 of 6**

Greyhounds Australasia Rule 151(1) reads as follows:

**Rule 151 Treatment records to be kept**

1. *The person in charge of a greyhound must keep and retain written records detailing all vaccinations, antiparasitics and treatments administered to the greyhound:*
	1. *from the time the greyhound enters their care until the greyhound leaves their care; and*
	2. *for a minimum of two years*
2. *If requested by a Controlling Body, a Steward, or an authorised person, the record/s of treatment referred to in subrule (1) of this rule must be produced for inspection.*
3. *Each record of treatment kept in accordance with this rule must be made by midnight on the day on which the treatment was given, and, as a minimum requirement, include the following information:*
4. *the name of the greyhound;*
5. *the date and time of administration of the treatment;*
6. *the name of the treatment (brand name or active constituent);*
7. *the route of administration;*
8. *the amount given; and*
9. *the name and signature of the person or persons administering and/or authorising the treatment.*

*For the purpose of subrule (3), “day” means the 24-hour period from 12.00am to 11.59pm on any calendar day.*

1. *An offence is committed if any person in charge of a greyhound at the relevant time fails to comply with any of subrules (1) to (3) of this rule.*
2. *A person who commits an offence under subrule (4) of this rule may be penalised.*
3. *For the purposes of this rule “treatment” includes:*
4. *all Controlled Drugs (Schedule 8);*
5. *all Prescription Animal Remedies and Prescription Only Medicines (Schedule 4);*
6. *any injectable substance not already specified in this rule, notwithstanding the route of administration;*
7. *all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines; and*
8. *all veterinary and other medicines containing other scheduled or unscheduled prohibited substances.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Racing Victoria Rules of Racing.
2. On 27 June 2023, you failed to produce compliant treatment records for inspection, upon request from Investigative Steward Dylan BARTOLO, a person authorised by the Controlling Body, for greyhounds for which you were the responsible person at the relevant time.
3. During a property inspection on 27 June 2023, you produced a black diary which contained six (6) entries from March 1 2023 to 2 June 2023 which you stated were your Treatment Records. During a recorded inquiry on 31 July 2023 you stated that you have never kept individual treatment records in the past 13 years.
4. All treatment(s) administered to greyhounds in your care, custody or ownership are required to be recorded in your treatment records.

**Charge No. 4 of 6**

Greyhounds Australasia Rule 144 (1) (c) and (d) reads as follows:

 **144 *Administration, acquisition or possession* of *permanently banned prohibited substances***

1. An offence is committed if a *person*:

(c) has prior knowledge of a *permanently banned prohibited substance* being *administered* or attempted to be *administered* to a *greyhound*;

(d) acquires, attempts to acquire or *possesses* any *permanently banned prohibited substance*.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN*.*
3. You administered, or caused to be administered, to OHANA SITDOWN, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from OHANA SITDOWN in that:
	1. You administered the substance, namely Testosterone Propionate, to OHANA SITDOWN on or around 23 April 2023;
	2. A post-race sample of hair was taken from OHANA SITDOWN at the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
	3. Testosterone Propionate was detected in the Sample.
	4. The presence of Testosterone Propionate detected in the sample could only be caused by the acquisition and administration of Testosterone Propionate.
	5. The presence of Testosterone Propionate was detected in a 3ml syringe which was seized by Investigative Stewards of the Greyhound Racing Integrity Unit which was found in your possession.

**Charge No. 5 of 6**

Greyhounds Australasia Rule 164(a) reads as follows:

**Rule 164 (a) Offences in relation to investigations and inquiries**

1. *makes a false or misleading statement in relation to or during an investigation, inspection, examination, test or inquiry (or at any other disciplinary process, hearing or appeal proceeding) or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound;*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were at all relevant times the trainer of the greyhound OHANA SITDOWN.
3. On the 27th of June 2023, during the course of a kennel inspection, a 3ml syringe was seized by Investigative Stewards of the Greyhound Racing Integrity Unit which was found in your possession.
4. During the subsequent Inquiry, you made a false and misleading statement in relation to an investigation or inquiry, in that you stated the syringe contained “Ivomec” that was used to inject cows that are owned by your wife’s parents.
5. The syringe contained the permanently banned prohibited substance Testosterone Propionate.
6. The syringe did not contain the substance Ivomec.

**Charge No. 6 of 6**

Greyhounds Australasia Rule **139 (6) and 139 (7)** reads as follows:

**Rule 139 (6) Permanently banned prohibited substances, and certain offences in relation to them**

1. *If any permanently banned prohibited substance is found at any premises used in relation to greyhound racing, any registered person who owns, trains or races or is in charge of a greyhound or greyhounds at those premises is deemed to have the substance or preparation in their possession.*
2. *An offence is committed if a person is deemed to be in possession of a relevant substance or preparation pursuant to subrule (6).*

**Particulars of the Charge being**:

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (**GRV**) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 June 2023, Greyhound Racing Integrity Unit (‘**GRIU’)** Stewards attended your registered kennel address, namely 202 Cobains East Road, Cobains 3851 to conduct a property inspection and conduct Out of Competition (OOCT) swabs.
3. On 27 June 2023 during the property inspection, ‘GRIU’ Investigative Stewards located and seized a syringe which contained Permanently Banned Prohibited Substance, namely ‘Testosterone Propionate’. The syringe was observed to be in your possession which you attempted to conceal as it fell out of your jacket pocket.

**Pleas:** Guilty to Charge 1

Not Guilty to Charges 2, 3, 5 and 6

 Charge 4 was withdrawn

**DECISION**

1. On 4 October 2024, after a contested hearing over four days in July and August of this year, we found Mr Floyd guilty of four charges.
2. The first charge is a charge alleging that he presented his dog, Ohana Sitdown, on 23 April 2023 at Warragul, when testosterone propionate was present in the dog.
3. The second charge is a charge that he administered that substance to the dog.
4. The third and fourth charges were withdrawn by the Stewards.
5. The fifth charge is that he made a false or misleading statement to the Stewards in relation to a syringe in his possession.
6. The sixth charge is a charge that a permanently banned substance, testosterone propionate, was found at his premises and that he was in possession of it.
7. The facts surrounding each of these charges are set out in our decision 4 October 2024 and we shall not repeat them.
8. The matter was listed for a sentencing hearing on 22 November 2024.
9. Before considering the appropriate sentence, we record that there is a matter relevant to sentence which we raised.
10. After the decision on liability was handed down, Mr Floyd sent many emails to the registry protesting the decision and identifying matters which he thought should have been decided differently. It is not appropriate for this Tribunal to enter into discussion of any of the matters raised by him in these emails, with one exception.
11. This exception relates to our description of the circumstances in which Mr Floyd and his wife came to learn that traces of the drug lincomycin had been found in a syringe in Mr Floyd's possession. Mr Floyd, in his email exchange, asserts that he did not know of the laboratory finding of lincomycin until well after he had told the Stewards that the syringe contained lincomix, a proprietary form of lincomycin. The significance of this is that we wish to make it clear that the timing of his statements to the Stewards regarding the presence of lincomix in the syringe is not relied on by the Stewards as constituting a false or misleading statement in charge 5. In their submissions on liability, the Stewards relied only on statements made by Mr Floyd regarding the presence of Ivomec in the syringe, not the circumstances surrounding the presence of lincomycin in the syringe.
12. For the avoidance of doubt, we note that although Mr Floyd’s representations to the Stewards about the presence of lincomix are referred to in the judgment, they have not been included by this Tribunal as false or misleading statements in sentencing him today.
13. We have been provided with written submissions on sentencing by the Stewards and also by Mr Floyd.
14. We agree with the submission of the Stewards that sentencing for presentation offences must be based on general deterrence, so as to ensure a level playing field and to protect the reputation of the industry.
15. This is particularly the case here, where the prohibited substance is also a permanently banned prohibited substance. Many presentation offences involve ingestion of substances which must not be used in the lead up to race day, but are safe, or even necessary, to use at other times. Examples are over the counter medications and feed supplements. In this case the substance, testosterone propionate, has no legitimate role in greyhound husbandry. In saying this, we note that a product containing testosterone, called Testoprop, has in the past been used for birth control in greyhounds. This product has been banned within the industry for some time. Although he gave evidence that he had formerly used this product, Mr Floyd did not suggest that he had accidentally or otherwise used this product on his dog.
16. In this case, the particular form of testosterone is not naturally occurring and cannot be ingested orally. It must be injected into the bloodstream. It cannot be accidentally or negligently absorbed – through the skin of the handler, for instance, or from the surrounding environment, or through the dog chewing on a post. We agree with the stewards that the injection of this substance requires the active participation of Mr Floyd, in contrast to many cases where persons who are prosecuted for presentation offences have had no knowledge of the existence of the substance in their dog and often cannot trace its origin.
17. We agree also that the sentence for the administration offence, which we characterise as the most serious offence before us today, must reflect our finding that Mr Floyd intentionally injected testosterone propionate into his dog in order to give that dog an unfair advantage in the race.
18. In our approach to charges 1 and 2, we are clearly influenced by our finding on charge 5 that Mr Floyd deliberately made a false or misleading statement to Stewards on 27 June 2023 as to what was in the syringe which he was carrying on that day. Our finding of guilt on charge 5 reinforces our perception of Mr Floyd's guilty mind at the time that he committed the first two offences.
19. The statement which he made to the Stewards was completely false and was made in the hope that he could deflect the Stewards from inquiring further into the true nature of the substance in the syringe. It may well have been made on the spur of the moment, but Mr Floyd has maintained this position throughout the contested hearing. We accept that this is an aggravating factor.
20. We accept also that the circumstances of charge 6 are more serious than is usual in cases charged under this rule. This offence is committed even if the permanently banned substance involved is found in the kennels with no suggestion of it being actively used. In this case, the syringe was found in Mr Floyd's pocket, a circumstance suggestive of recent use and aggravating the offence.
21. Mr Floyd has been found guilty of charges 2, 5 and 6 after a contested hearing. He was fully entitled to contest the charges and suffers no additional penalty for doing so. The only discount available to him for the entering of a guilty plea applies to the guilty plea to charge 1. We note and apply that discount.
22. Overall, we find the offences which Mr Floyd has committed to be grave. They strike at the heart of the integrity of the greyhound racing industry. We have found that Mr Floyd raced Ohana Sitdown after deliberately administering an injection of a permanently banned drug for the purpose of affecting the dog’s race performance, and that he lied to the Stewards after the event to cover up his wrongdoing.
23. We have carefully considered the submissions of Mr Floyd. Insofar as those submissions relate to the question of liability, they can be of no assistance to him in this penalty hearing.
24. There were, however, some significant mitigatory matters put forward by him which relate to out sentencing task.
25. In sentencing Mr Floyd, we take into account his previous good record in the industry. Mr Floyd has been involved in the industry as a public trainer for 14 years. He is accepted by the Stewards to be a man of otherwise good character.
26. He has no relevant prior offences. He is active and valued within his local community, participating in advisory panels in several sports, and particularly cricket.
27. He has faced physical and mental challenges in recent times, undergoing a recent knee replacement. He has suffered significant trauma during his life. His brother was cruelly murdered when he was a teenager, and he still suffers from trauma relating to this event. He became involved with racing greyhounds in order to assist his rehabilitation.
28. Although he was guarded when asked directly about his financial position during the sentencing hearing, we accept that he has suffered financially by the suspension of his licence since August last year.
29. He describes himself as being extremely concerned about animal welfare. We note the Stewards’ observation of the condition of his kennels and the welfare of the numerous dogs in his care as being of an extremely high standard.
30. We accept also that he cooperated with the Stewards, in that he willingly gave the syringe which is the subject matter of charge 3 to the Stewards when it was requested of him, although clearly our findings on the issues in contention in this hearing are at odds with any suggestion that he should be given any significant credit for that cooperation.
31. In sentencing Mr Floyd, we treat charge 2 as the head sentence, as it is the most serious charge of which he has been convicted. We understand that this is the first time that this Tribunal has sentenced a person for administration of testosterone propionate. On that charge we disqualify him for two years and 6 months.
32. On the first offence, which is the presentation offence, the penalty which we impose is a period of disqualification for 12 months, 6 months of which is to be served cumulatively on charge 2.
33. The third and fourth charges are marked withdrawn.
34. On the fifth offence which is the offence of making a false and misleading statement to the Stewards, the penalty which we impose is a period of disqualification for 12 months, 6 months of which is to be served cumulatively on charge 1 and 2.
35. On the sixth offence which is the offence of possession of a controlled substance, the penalty which we impose is a period of disqualification of 12 months. This penalty is to be served concurrently with the penalty on charge 2.
36. This makes an effective period of disqualification of three and a half years.
37. The periods of disqualification commence from 14 August 2023, that being the date on which Mr Floyd was suspended pending the hearing of these charges.
38. Ohana Sitdown is disqualified from Race 8 at Warragul on 23 April 2023 and the finishing order is amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal