APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED TRAINER GREG KILNER

Appeal Panel:	**Mr L Gyles SC – Principal Member; Mr J Murphy; Ms J Foley**
Representatives:	**Racing NSW - Mr M Cleaver**
	Appellant - Mr J Bryant
Date of Hearing:	**On Paper**

REASONS FOR DECISION

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1. This Appeal arises from the sad circumstances of the euthanasia of a six year old gelding, Kennysing, on 10 August 2024 as a result of a catastrophic injury to its right foreleg when participating in a race at Casino. The gelding was trained by the Appellant Mr Greg Kilner.

2. The Appellant has been working in the Racing Industry both as a jockey and a trainer for about 50 years.

3. Racing NSW Stewards commenced an investigation after the incident and on 4 December 2024 held an inquiry in the Stewards room at Grafton Racecourse. Oral evidence at the inquiry was taken from the Appellant, veterinary Dr Alan Giles, veterinary nurse Ms Gabrielle Ross, veterinary Dr Rose Bensley and Matthew Butler.

4. After consideration of the evidence before the inquiry, the Stewards issued three charges against the Appellant as follows:

   Charge 1: AR229(1)(b) – Improper action in connection with racing; Allowing Kennysing to commence and continue to exercise on or about 11 April 2024 despite having been advised that Kennysing had a poor racing prognosis requiring a spell of between 8 – 12 months as a result of the injury. Additionally, he failed to have Kennysing undergo a veterinary examination prior to resuming racing on 14 July 2024 to determine whether Kennysing was suitable to return to racing.

Charge 2: AR105(1)(b) – Matters that may affect the running of a horse in a race; The details of the charge being prior to gelding returning to races on Sunday 14 July 2024, he did fail to report to the Stewards by nomination time on Tuesday 9 July that Kennysing had suffered a severe superficial digital flexor tendon injury to the right foreleg.

Charge 3: AR104 Trainers must keep treatment records; The details of the charge that between 11 April 2024 and 18 September 2024 he failed to record medication and/or treatment administered to horses in his care in accordance with AR104(2).

5. The Appellant entered pleas of guilty in respect of each of the three charges. The Appellant was then given the opportunity to make submissions on penalty and the Stewards imposed the following sanctions in respect of the three charges:

Charge 1 – 6 months disqualification of licence reduced to 4 months;

Charge 2 – 2 weeks suspension of licence (to be served wholly concurrently with charge 1);

Charge 3 - $1,000 fine. Wholly suspended for a period of 2 years under AR283(5)

6. The Stewards ordered that such penalty would commence on 11 December 2024 and expire on 11 April 2025, on which day the Appellant was required to re-apply for his licence. The Appellant sought a stay of this order, which was granted.

7. The subject of the Appeal is in respect of the severity of the sanctions imposed in respect of charge 1 and 2, and there is no appeal in respect of charge 3.

8. The Panel has been asked by the parties to deal with the Appeal on the papers, that is by reference to the Appeal book and the written submissions provided by the parties.

9. There are essentially three factual issues in contest. First, whether as contended for by the appellant, he was told by his Vet that the horse only required a 3 month spell, second whether, as contended for by the Stewards, he was told that a 9-12 month spell would be necessary and third whether, as contended for by the appellant, he was told by the Vet that the injury was only a strain and was not serious.

10. We have the transcript of the evidence given by the relevant witnesses and will determine these issues by applying the appropriate onus of proof and having regard to the transcript of evidence, the contemporaneous documents, and the objective probabilities.

11. On the first issue, we are not satisfied that the appellant was told that horse only required a 3 month spell. We accept the evidence of the Vet Dr Giles that he believed that the horse would need to be spelled for a minimum of 9-12 months, and even

then may not be able to go back to racing. He gave evidence, which we accept, that 90% of horses with this type of tendon injury are never able to race again. In those circumstances it is inconceivable that he would have told the appellant that a 3 month spell was sufficient.

12. On the second issue, we accept the evidence of Dr Giles that he showed the Appellant the large lesion on the MRI, which he described as "quite a bad lesion". He initially said that he had probably told the Appellant that a 9-12 month spell would be necessary, but later accepted that he couldn't specifically remember doing that, and accepted that the Appellant may have been confused about it. He said that the Appellant wasn't a "new trainer" and had managed tendon injuries before, and possibly thought that he didn't need to be told. In the circumstances, and in the absence of further evidence before this Panel, we are not able to find that the Stewards have satisfied the onus of proof on that issue.

13. On the third issue, we are not satisfied that the appellant was told by the Vet that the injury was only a strain and was not serious. This is again inconceivable having regard to his opinion about the injury which was inconsistent with that. We are also however not satisfied that he was expressly told that the injury was sufficiently serious to require a scan before the horse returned to racing. Dr Giles again accepted that he may not have said that, but he believed that the appellant would have known that anyway.

14. That leaves us with the following findings as to the appellants state of mind and knowledge on these issues when the horse went back to racing a bit less than 5 months after the injury:

    (a) He had **not** been advised by the Vet how long the horse should be spelled for;

    (b) He knew the injury was to the Tendon, and there was a significant lesion, and hence that it serious;

    (c) He had **not** been advised that a scan was not required to clear the horse for racing.

15. At the relevant time, the appellant had been in the industry for many years. He knew horses. He must have known that a tendon injury is serious, particularly where it presents as a significant lesion. He would have known that a horse with that sort of injury may not be able to race again, and that if it did without approval from a Vet there was the risk of another very serious injury.

16. When he decided to race this horse again, he did not vet the horse or obtain a scan. Given that he knew that the horse had a serious tendon injury we find that this plainly unacceptable and a clear breach of the trainer's duty of care to the horse and to

those who were riding it. By his guilty plea, it would appear that the appellant accepts that this criticism is justified.

17. We therefore accept the submission of the Stewards that the gelding should have been examined by the stable vet and subjected to any scans which were considered necessary by him before returning to racing. The failure to do so was objectively very serious. The wellbeing of horses under the care of a trainer, and the safety of any jockey riding them in track work or on race day are paramount considerations for a trainer. These are fundamental and important responsibilities which a trainer has as part of his or her duty of care.

18. If a reasonable and responsible approach had been taken to this geldings return to racing, and a scan had been taken, the significant injury to the tendon which ultimately caused it to be euthanised would have been detected and the gelding would only have returned to racing if that injury had healed sufficiently to be sufficiently sound to be able to withstand race conditions.

19. It also stands against the Appellant that his usual practice in the past had been to vet and scan horses after similar injuries, and his long term Vet says, and we accept, that he believed that the Appellant would follow this practice with this horse.

20. In respect of the penalty, a very important consideration is the protection of the image and integrity of the industry and it is by any way of thinking a terrible look for any racehorse to be euthanised at the end of a race in circumstances where that is a consequence of something that could and should have been picked up by a veterinary examination prior to the horse going on to the track.

21. The Panel agrees that 6 months was a reasonable starting point for the period of disqualification having regard to the seriousness of the conduct. In terms of the discount, the Panel acknowledges and takes into account the early guilty plea and contrition of the Appellant, and his personal circumstances most importantly the need to care for his daughter who was injured in a race fall in July 2022. The effects of that have been significant, compounded by a diagnosis of multiple sclerosis in the last few months. The Panel wishes her the best in her treatment and recovery.

22. Consideration is also given to the financial requirements which the Appellant has including $450 per week on his mortgage and stable expenses per month of $1,000, together with a feed bill of approximately $2,000/month. It is also recognised that the Appellant will be unlikely to obtain work at his age and with his experience during the course of any period of disqualification or suspension.

23. The Panel takes the view that anything short of a disqualification of the Appellant's trainers licence would be inadequate and would be against the weight of authority in similar cases. It would also not properly reflect the seriousness of the breach of the duty of care which the appellant owes to owners and jockeys and the way in

which he prepares his horses for racing, and makes decisions concerning as to whether they should race or not. An important consideration of sentencing is to provide both an individual and a public deterrence and a fine would not, in the view of the Panel, provide a sufficiently strong criticism of the very sad circumstances that occurred.

24. That does not mean that the Panel does not accept the Appellant's evidence that he has a good disciplinary record, and has a genuine care for the horses which he trains. Those matters do not however provide a golden ticket for a trainer to expose horses and jockeys to unacceptable risks of injury in what can be a dangerous and unpredictable activity. A jockey could well have been badly injured as a result of this horse running with an injury. That is a very important consideration.

25. The Panel has been referred to the Appeal of *licensed trainer Mr John McLaughlin* which was handed down on 7 October 2021. The trainer in that Appeal was disqualified for 9 months in circumstances where the horse which he trained suffered a catastrophic fracture during the jump out. The horse as a result was euthanised and the jockey who fell as a consequence of the injury sustained serious injuries. The panel found that the horse should not have been entered into the race having regard to a prior injury without a proper veterinary assessment and the trainer pleaded guilty accepting that he ought to have had the horse thoroughly examined prior to the race and spoken to the jockey who had ridden him before the jump out.

26. The Appellant relies upon this to say that the circumstances were far worse in the sense that the horse did fall and the jockey was injured whereas neither of those things happened in the present Appeal. The Appellant also points to the greater knowledge the trainer had in that case of the seriousness of the prior injury. The Panel accepted that the trainer was a good person and caring of his horses but noted that racing comes with sufficient inherent dangers without the need for those dangers to be magnified by the lack of care taken in that particular case. The fact that a jockey was not injured in this case was by one way of thinking a matter of luck rather than good management.

27. A disqualification for a period of 3 months in the present case is consistent with the reasoning of the Panel in *McLaughlin*, the penalty in the present case being one third of that imposed in the earlier appeal, which did deal with a more serious breach.

28. The Panel's orders are as follows:

    1) The Appeal is allowed in part.

    2) The sanction of a disqualification of 4 months imposed by the Stewards is reduced by the Panel by one month to a period of 3 months.

3) The Appellant's Trainer's Licence is disqualified forthwith, subject to the right of the Stewards to defer the commencement of the period of the disqualification by up to 7 days by operation of AR 283(7), and he can re-apply for his licence 3 months after the commencement of the disqualification period.

4) Half of the Appeal Deposit can be returned.

16 April 2025