

APPEAL PANEL OF RACING NEW SOUTH WALES

THE APPEAL OF DR KEVIN SQUIRE

Appeal Panel: **Mr L. Vellis - Convenor; Mrs C. Richards; Mrs S. Skeggs**

Representatives: **Appellant - Mr G.M. O'Neill, Solicitor**
Racing NSW - Mr Marc Van Gestel, Chairman of Stewards

Date of Hearing: **20 November 2020**

Date of Reasons and Orders: **2 December 2020**

REASONS FOR DECISION

Introduction

1. At a Stewards' hearing conducted on 25 September 2020, which veterinarian Dr Kevin Squire (who is the holder of a Racing NSW Veterinary Permit) did not attend, the Stewards heard a charge under AR 227(a) (**Charge 1**) of the Australian Rules of Racing (**Rules**) in Dr Squire's absence, taking into consideration correspondence received from Dr Squire on 31 August 2020, 22 September 2020 and 24 September 2020, through his legal representative Mr G.M. O'Neill.
2. Dr Squire was found guilty of Charge 1, with the Stewards satisfied that Dr Squire prescribed and dispensed injectable Altrenogest (in the form of Ovu-Mate Injection) to licensed trainer Mrs Julie Pratten on 1 January 2020, to use such substance in a thoroughbred horse, with such advice in contravention of advice published by Racing New South Wales, which led to Mrs Pratten breaching AR 240(2) as a result of the detection of the prohibited substances trendione and epitrenbolone (both anabolic steroids) in a prerace urine sample taken from her horse, Rahaan, prior to it racing at the Ballina Races on 17 January 2020.
3. AR 227(a) is in the following terms:

"Without limiting any other powers, a PRA or the Stewards may penalise any person who:

 - (a) commits any breach of the Rules, or engages in conduct or negligence which has led or could have led to a breach of the Rules."
4. The Stewards also issued a further charge against Dr Squire under AR 232(h) (Charge 2) on the basis that Dr Squire did fail to appear at a Stewards hearing on 25 September 2020 when requested to do so.

5. AR 232(h) is in the following terms:

"A person must not:

...

(h) refuse or fail to attend or give evidence at an interview, investigation, inquiry, hearing or appeal when directed or requested to do so by a PRA, the Stewards or a person authorised by a PRA or the Stewards."
6. Dr Squire was found guilty of Charge 2.
7. The penalty imposed by the Stewards was:
 - (a) Breach of AR 227(a): 9 months suspension of Dr Squire's Racing NSW Veterinary Permit; and
 - (b) Breach of AR 232(h): 6 months suspension of Dr Squire's Racing NSW Veterinary Permit.
8. Acting under AR 283(4), the Stewards determined that 3 months of the suspension under AR 232(h) be served concurrently with the penalty under AR 227(a), and accordingly Dr Squire's Racing NSW Veterinary Permit was to be suspended for 12 months.
9. AR 283(4) is in the following terms:

"Unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension imposed under subrules (1) to (3) is to be served cumulatively to any other suspension or disqualification."

Appeal

10. Dr Squire appealed to the Panel against the findings of the Stewards that he had breached AR 227(a) and AR 232(h).
11. Dr Squire also appealed against the severity of the penalty imposed upon him.
12. Dr Squire was represented on appeal, with leave, by Mr G.M. O'Neill. The Stewards were represented in the Appeal by Mr Marc Van Gestel, the Chairman of Stewards for Racing New South Wales.
13. The Appeal Book was tendered in the Appeal as Exhibit A.

Facts

Charge 1

14. Dr Squire was approached by Mrs Pratten to obtain the oral form of Ovu-Mate Altrenogest.

15. Dr Squire did not have the oral product at the time, assured Mrs Pratten that he had had no problems with the injectable form and prescribed and dispensed injectable Altrenogest (in the form of Ovu-Mate Injection). However, Dr Squire did tell Mrs Pratten to give the product 5 clear days from race day. Instead, Mrs Pratten injected Rahaan with the product 2 days out from the Ballina race meeting.
16. The prohibited substances found in the urine sample of Rahaan are anabolic steroids (trendione and epitrenbolone). They are classified as List A prohibited substance under the Rules. Anabolic steroids have for some years now been banned from use in racehorses.
17. There was no suggestion in the Appeal that Dr Squire had any dishonest motives. On the contrary, the Panel accepts that Dr Squire prescribed and dispensed Ovu-Mate Injection to Mrs Pratten in a genuine belief that he was assisting with the regulation and control of the breeding cycle of Rahaan and was also seeking to ensure the health and safety of Mrs Pratten and others that were to come into contact with Rahaan.
18. It is accepted by the Panel that Ovu-Mate Altrenogest is prescribed to fillies and mares to have a calming effect when horses are "in season". The evidence is this serves a safety purpose for horses, riders and handlers.
19. Unfortunately, a risk of contamination of the injectable Altrenogest products was known to racing authorities. As a consequence, warnings were published about the use of such products in the Racing New South Wales Magazine, and on the Racing New South Wales website: see Exhibit 14(a)-(c) in the Appeal Book.
20. Information concerning this was also provided by Racing New South Wales to Veterinary Associations and the Trainers' Association: see Exhibit 18 in the Appeal Book.

Charge 2

21. Dr Squire was aware of the date of the Stewards hearing scheduled for 25 September 2020, as evidenced in correspondence provided by Dr Squire to Mr Van Gestel on 31 August 2020, 22 September 2020 and 24 September 2020, through his legal representative Mr G.M. O'Neill: see Exhibit 20 in the Appeal Book.
22. Dr Squire (through his legal representative Mr G.M. O'Neill) informed Mr Van Gestel in correspondence on 24 September 2020 that he would not be appearing at the Stewards hearing on 25 September 2020 on the basis that Dr Squire had already provided all of his evidence.

Submissions by Mr O'Neill

23. Mr O'Neill contended that Dr Squire was not guilty of a breach of AR 227(a) on the basis that Dr Squire had not been directly notified by Racing New South Wales that he should not use injectable Altrenogest

products for racehorses, and was otherwise not aware of the position with respect to injectable Altrenogest products.

24. It was also submitted by Mr O'Neill that Dr Squire was not guilty of a breach of AR 227(a) as even though Dr Squire did not dispute that he prescribed and dispensed the Ovu-Mate Injection to Mrs Pratten, he had instructed Mrs Pratten that such product should not be used unless it was given 5 clear days from race day. As such instructions were not adhered to by Mrs Pratten, Mr O'Neill submitted that Dr Squire was not at fault.
25. Another submission made by Mr O'Neill was that Dr Squire prescribed and dispensed Ovu-Mate Injection to Mrs Pratten for the health and safety of the horse, riders and handlers, which is consistent with his obligations as a veterinarian.
26. Mr O'Neill also submitted that the nature of the warning issued by the Stewards/Racing New South Wales was a "should not" warning rather than a "must not" warning and that this created ambiguity in relation to the use of injectable Altrenogest products.
27. In addition, Dr Squire submitted that no veterinarian could be found guilty of a breach of AR 227(a) on the basis that each and every veterinarian would be susceptible to being found guilty, as once prescribed and dispensed, it is beyond the control of the veterinarian as to how a particular product was used by those to whom it was prescribed and dispensed, which could potentially be used in a manner contrary to the Rules.
28. With respect to Charge 2, Mr O'Neill contended that Dr Squire had given all the evidence he proposed to provide to the Stewards and had been helpful in assisting with relevant matters, and therefore his non-attendance at the Stewards hearing was not a breach of AR 232(h).
29. In addition, Mr O'Neill submitted that the penalties imposed by the Stewards were manifestly excessive. Of course, there is no need for this to be proven: only to convince the Panel to impose a lesser penalty. In Mr O'Neill's view the starting point of a 12-month suspension that was imposed by Stewards was well beyond what was appropriate. In particular, Mr O'Neill pointed to these matters:
 - (a) the lack of any dishonest intent;
 - (b) the medicinal and health and safety reasons behind prescribing and dispensing Ovu-Mate Injection to Mrs Pratten;
 - (c) Dr Squire's 44 years as a veterinarian without any breaches of the Rules;
 - (d) the important role played by Dr Squire in the Northern Rivers region of New South Wales as a result of the relatively small number of veterinary surgeons that service racehorses in such region; and

(e) the assistance provided by Dr Squire to Stewards prior to the Stewards hearing on 25 September 2020 that he did not attend.

30. Mr O'Neill was of the view that a fine would be a more appropriate penalty rather than a suspension in the event that the Appeal with respect to Charge 1 and Charge 2 was dismissed.

Submissions by Mr Van Gestel

31. Mr Van Gestel submitted that the Appellant prescribed and dispensed Ovu-Mate Injection, which was contrary to the warnings given by Stewards/Racing New South Wales about the risks associated with the injectable version of such products.

32. Mr Van Gestel further submitted that it is Dr Squire's sole professional responsibility to remain up to date with warnings and directives issued by Racing New South Wales. Mr Van Gestel submitted that Dr Squire should have been aware of the warnings given by Stewards/Racing New South Wales about the risks associated with the injectable version of such products.

33. Mr Van Gestel also submitted that Dr Squire may have actually been aware that injectable Altrenogest products such as Ovu-Mate Injection were not to be used, and referenced the queries raised by Mrs Pratten when requesting the oral version and again when Dr Squire prescribed the injectable form of Altrenogest.

34. It was submitted by Mr Van Gestel that Dr Squire prescribing and dispensing Ovu-Mate Injection to Mrs Pratten engaged in conduct or negligence which led to a breach of the Rules by Mrs Pratten.

35. With respect to Charge 2, Mr Van Gestel submitted that Dr Squire was guilty of this charge by virtue of his non-attendance at the Stewards hearing on 25 September 2020, with the correspondence between Mr Van Gestel and Mr O'Neill evidence of Dr Squire's knowledge of the date and time of the hearing.

36. Mr Van Gestel also noted the critical role cooperation by industry participants played in the role of the Stewards in protecting the integrity and upholding the image of the sport and submitted that non-attendance at a Stewards hearing was an objectively serious breach of the Rules.

37. Mr Van Gestel further submitted that the offending should be viewed as serious and that a fine would not be an appropriate penalty for either charge if the Appeal were to be dismissed. He emphasised the warnings given by Stewards/Racing New South Wales about the potential for contamination of injectable products. Having warned industry participants not to use these products, and that contamination by anabolic steroids was possible, he submitted that the actions of the Appellant in prescribing and dispensing Ovu-Mate Injection was negligence or conduct, that led to a breach of the Rules.

Determination

38. With respect to Charge 1, the warning given by Stewards/Racing New South Wales was that injectable Altrenogest products could be contaminated with steroids. Veterinarians registered by racing authorities or issued permits by such racing authorities are expected to keep up to date with these kinds of warnings issued by those racing authorities. It is also expected that they should heed these warnings. If they even contemplate not following such warnings, then they should contact the Stewards to discuss why, and what risks might be involved in not following such warnings.
39. While Dr Squire may not have been satisfied with the form and content of the warnings issued by Stewards/Racing New South Wales, it is nonetheless his professional responsibility to remain up to date with such warnings and ensure his conduct is consistent with such warnings and the Rules when treating racehorses. Whether Dr Squire was actually aware that he should not be prescribing or dispensing Ovu-Mate Injection is not necessary to make out a breach of AR 227(a). Dr Squire should have been aware this was the case as part of his professional responsibility to keep himself updated of such matters.
40. In circumstances where Dr Squire has admitted prescribing and dispensing Ovu-Mate Injection to Mrs Pratten, despite the warnings issued by Stewards/Racing New South Wales (which Dr Squire was responsible for apprising himself of and following), and then Mrs Pratten has subsequently used such product (albeit inconsistently with the instructions of Dr Squire) and this has resulted in the presence of anabolic steroids in a pre-race sample of a racehorse, the Panel is satisfied that Dr Squire is guilty of a breach of AR 227(a).
41. Dr Squire prescribed and dispensed Ovu-Mate Injection to Mrs Pratten in ignorance or defiance of the warnings issued by Stewards/Racing New South Wales and his conduct or negligence in doing so has resulted in a breach of the Rules.
42. The Panel accepts that Dr Squire genuinely believed that prescribing and dispensing the injectable Altrenogest product had health and safety benefits, although this factor is more relevant to penalty than whether the breach of AR 227(a) can be made out.
43. The Panel respectfully disagrees with Mr O'Neill's contention that as the warning issued was a "should not" warning rather than a "must not" warning, that this created ambiguity in relation to the use of injectable Altrenogest products. As Mr Van Gestel noted during the Appeal, the issue of such a "should not" warning was necessary to distinguish between the use of such injectable Altrenogest products in racehorses (which is not permitted) and other horses that are not racehorses or subject to the remit of Racing New South Wales (in which case such products could be used).
44. The Panel also disagrees with the assertion by Dr Squire that no veterinarian could be found guilty of a breach of AR 227(a) on the basis that each and every veterinarian would be susceptible to being found

guilty, as once prescribed and dispensed, it is beyond the control of the veterinarian as to how a particular product was used by those to whom it was prescribed and dispensed, which could potentially be used in a manner contrary to the Rules. If Dr Squire had prescribed a product that was not prohibited under the Rules or subject to warnings by the Stewards/Racing New South Wales, then it may not have been open to the Panel to bring Charge 1 against Dr Squire.

45. With respect to Charge 2, the Panel do not accept the submissions of Mr O'Neill that as notice of non-attendance was provided to Mr Van Gestel and as Dr Squire had already provided his evidence and rendered assistance, then he is not guilty. Dr Squire failed to attend or give evidence at an interview, investigation, inquiry, hearing or appeal when directed or requested to do so by the Stewards. It is not a matter for Dr Squire to determine whether he has provided all of his evidence or has been of assistance to the Stewards prior to the hearing. The Panel is satisfied that Dr Squire is guilty of a breach of AR 232(h).
46. With respect to penalties, the penalties imposed are not for the purpose of punishment, but are a means of protecting the industry, and to demonstrate to the public that racing officials will take steps to ensure that the reputation of the industry, and its integrity, are protected. The Rules, breach of which can result in substantial penalties, are in place so that racing authorities can not only control the sport as required, but protect it.
47. Deterrence is another important matter, itself related to both the protection of the sport, and the racing public. The question to be asked is what kind of penalty is required to deter the conduct involved in a particular breach of the Rules.
48. The Panel has considered these matters in assessing what penalty is appropriate in this matter, together with the subjective circumstances of the Appellant.
49. We do not agree with the submission by Mr O'Neill that an appropriate penalty here is closer to a fine, or that the penalty imposed was manifestly excessive.
50. The conduct here of Dr Squire has contributed to the presence of anabolic steroids in a pre-race sample of a racehorse. It raced with those substances in its system. These are List A product substances. Detection of such substances in racehorses is very damaging to the image of racing.
51. Similarly, non-attendance at a Stewards hearing is a serious matter. It is a breach of the Rules and also inhibits the activities of Stewards to protect the integrity of racing and to investigate possible breaches of the Rules. Dr Squire noted during the Appeal that he was a Steward in Queensland for 12 years. Having had such experience, the Panel is of the view that Dr Squire would be in a better position than most to understand the role played by Stewards and the importance of cooperation by industry participants.

52. Amongst the most important matters the Panel has had regard to in this Appeal are the following:
- (a) The Appellant was genuinely trying to assist Mrs Pratten with the care of a racehorse and prescribed a product having regard to health and safety considerations for the racehorse and those coming into contact with the racehorse.
 - (b) The product the Appellant prescribed and dispensed was a therapeutic product (albeit a contaminated one).
 - (c) The Appellant prescribed the Ovu-Mate Injection contrary to the warnings given by Racing New South Wales about the risks associated with the injectable version of these products. The warning given was that they could be contaminated with steroids. Veterinarians were told not to use them and are expected to keep up to date with these kinds of warnings issued by racing authorities. It is also expected that they should heed these warnings. If they even contemplate not following such warnings, then they should contact the Stewards to discuss why, and what risks might be involved in not following such warnings.
 - (d) The Appellant has a clean record. The Appellant has not previously been charged with breaches of the Rules and has been working as a veterinarian for 44 years.
 - (e) The Appellant's work is important to other racehorse participants in the Northern Rivers region of New South Wales, in which there are relatively few veterinary surgeons with a practice dealing with racehorses.
 - (f) The Appellant, prior to his non-attendance at the Stewards hearing on 25 September 2020, had cooperated with Stewards, both with regard to the inquiry of Mrs Pratten and in correspondence between Mr O'Neill and Mr Van Gestel.
 - (g) There was no suggestion that the Appellant's evidence or motives were dishonest.
 - (h) The Panel is satisfied that the Appellant will not offend in this way again. The Panel is also satisfied that the Appellant will in future take all necessary steps to ensure that he is fully informed regarding any warnings that may be issued by the Stewards/Racing New South Wales with regard to any restrictions or prohibitions affecting substances that he is considering prescribing and dispensing.
53. Taking all these relevant factors into consideration, we agree with the Stewards that the nature of the penalty to be imposed here must be a suspension of Dr Squire's Racing NSW Veterinary Permit.
54. Where we differ from the Stewards is as to the length of that suspension. They considered a base penalty should be a 9 month suspension for Charge 1, a 6 month suspension for Charge 2, with 3 months of the

suspension for Charge 2 to be served concurrently with the suspension for Charge 1, resulting in a 12 month suspension of Dr Squire's Racing NSW Veterinary Permit.

55. That is a longer period than we consider to be appropriate. The Panel is of the view that the penalty to be imposed with respect to Charge 1 should be a suspension of 6 months rather than 9 months. The Panel is of the view that the penalty imposed by the Stewards with respect to Charge 2 should be a suspension of 3 months rather than 6 months, although acting under AR 283(4), the Panel believes the entirety of such suspension should be served concurrently with the suspension resulting from Charge 1.
56. The Appeal against Severity of Penalty is allowed. The Penalty should remain a suspension of Dr Squire's Racing NSW Veterinary Permit, but the suspension of 12 months is set aside, and in lieu of that a suspension of Dr Squire's Racing NSW Veterinary Permit is imposed as follows:
- (a) Charge 1 (Breach of AR 227(a)): 6 months suspension of Dr Squire's Racing NSW Veterinary Permit; and
 - (b) Charge 2 (Breach of AR 232(h)): 3 months suspension of Dr Squire's Racing NSW Veterinary Permit.
 - (c) Acting under AR 283(4): 3 months (i.e., the entirety) of the suspension under AR 232(h) is to be served concurrently with the penalty under AR 227(a), and accordingly Dr Squire's Racing NSW Veterinary Permit is to be suspended for 6 months.

Orders

In the Appeal of Dr Kevin Squire, the following Orders are made by the Panel:

1. The appeal on conviction is dismissed with respect to each of Charge 1 and Charge 2 and the conviction with respect to each of Charge 1 and Charge 2 is confirmed.
2. Appeal against severity of penalty allowed.
3. In lieu of a suspension of Dr Squire's Racing NSW Veterinary Permit for 12 months, the Appellant's NSW Veterinary Permit is suspended for 6 months, with such suspension to commence on 3 December 2020 and to expire on 3 June 2021.
4. Appeal deposit to be forfeited.