

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

STAY APPLICATION RE TRAINER ANTHONY SCHEMBRI

1. Mr Schembri is an A Grade Trainer situated in Broken Hill. He was initially licensed as a stablehand in 1998 and progressed to a Trainer's licence in 2000. As at November 2023 he had trained 100 starters across 11 seasons for 14 winners and 32 placings. It appears that in 25 years as a licensed trainer he had never been fined, suspended or disqualified nor had he been found guilty of prohibited substances offences under the Rules of Harness Racing.
2. However, between 29 January 2022 and 26 March 2022 two of Mr Schembri's horses returned positive samples showing the presence of the prohibited substance dobesilate while participating in 4 races at Broken Hill. The horse On Wheels returned a positive pre-race swab, while the horse Keayang Balbo returned post-race positive swabs after winning each of 3 races. On 11 October 2023 Stewards commenced an Inquiry in relation to these positive samples. Dr Martin Wainscott, the HRNSW Regulatory Veterinarian, gave evidence that dobesilate was a synthetic substance and that there were no substances containing dobesilate registered for use in Australia in either human or veterinary fields although that substance was available as a raw product.
3. During the course of the Steward's Inquiry the photograph of four products was provided by Mr Schembri's legal advocate. Two products were prescribed medications for Mr Schembri as well as Anusol haemorrhoidal ointment and Doxiproct ointment. The Doxiproct ointment identified Calcium dobesilate monohydrate as an ingredient. Mr Schembri said that his wife had purchased the Doxiproct for use by him as a haemorrhoid cream and he had applied it with his finger.
4. Mr Schembri gave evidence that he had utilised a portaloos on his training property. It had been in use for up to 8 years and had been positioned next to a tree and in close proximity to the yards where his horses were kept. He would empty the tank of the portaloos onto a grassed area adjacent to the yards in which his horses were housed. The horse Keayang Balbao was located in the yard closest to that grassed area and would put its head through the fence railings and eat the grass. He would also allow those horses to pick at that grass after they had been washed following training. HRNSW Industry Notices had warned against allowing horses to graze in areas that were likely to be contaminated by prohibited substances.
5. At the conclusion of the evidence the Stewards issued 4 charges against Mr Schembri under AHRR 190 (1), (2) and (4), namely :that a horse was to be presented for a race free of prohibited substances; a horse presented otherwise led to the trainer being guilty of an offence; and an offence under sub rule (2) was committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse. Mr Schembri pleaded guilty to each of the charges. The horses were also disqualified in accordance with the provisions of AHRR 195.
6. In setting the penalty, the Stewards commenced with a disqualification of no less than 2 years for a Class 2 prohibited substance offence. Consideration was given to his guilty pleas and 'personal subjectives' and an appropriate starting point for penalty was declared at 12 months disqualification. Mr Schembri's guilty plea reduced the penalty by 25%, while subjective matters resulted in a further reduction of 2 months. Thus, a penalty of 7 months disqualification was imposed to commence immediately from 22 November 2023, with all 4 periods of disqualification to be served concurrently. Mr Schembri has appealed against the penalty only.
7. Solicitors acting for Mr Schembri have also applied for a stay of proceedings with the effect of allowing Mr Schembri to continue training until the Appeal is determined by the Appeal Panel. Briefly put it is argued that the matters under consideration are consistent with a contamination finding in circumstances where the HRNSW Penalty Guidelines carry little weight. In particular it is alleged that the substance dobesilate had no performance enhancing effect on the two horses in

question. During the Stewards Inquiry a Preliminary Report was provided by veterinarian Derek Major, who had been asked to explain the nature of the substance dobelisate and to advise as to whether that substance had the potential to affect the performance of a horse. Dr Major stated that he had not encountered this substance in 40 years of equine veterinary practice and had not heard even anecdotally of its use, legitimate or otherwise. A search of literature revealed that the substance had been used in human medicine for a chronic eye condition and as an ointment in the treatment of haemorrhoids. A pilot study had explored the possible application in equine medicine, specifically for the treatment of navicular disease, with one hypothesis involving abnormalities of blood clotting in the navicular bone, being a small bone within the hoof. Dr Major concluded by stating that the finding of dobesilate in Mr Schembri's horses was unusual and that there was no scientific support for any proposition that the substance had the potential to affect the performance of a racehorse.

8. During the course of his evidence Dr Wainscott was asked by Stewards if dobesilate would have an effect on a horse's performance in a race? His reply was that there was very little information on the effect of dobesilate on a horse. He referred to the pilot study mentioned by Dr Major and the possibility of having a therapeutic effect on improving lameness in horses exhibiting navicular pain. He noted that it was just one study and a pilot study and did not have any control horses in the study. He was not aware of any other studies done on a horse. When asked what classification of prohibited substance would dobesilate fit within, Dr Wainscott replied that it was neither a registered medication in Australia for veterinary use, with an accepted therapeutic use in the racing horse and it was not a registered human preparation prescribed by a registered veterinarian. It could not be included in class 3 and its nature was such that it would not be included in the class 1 substances, and therefore would fit into a class 2 substance.
9. Dr Wainscott was cross examined on this evidence by Counsel for Mr Schembri. It was put to Dr Wainscott that because this substance was not within class 1 or class 3, then his logic was that it was a class 2 substance. Dr Wainscott agreed to that suggestion and that it was a process of elimination. He agreed that class 2 included substances that pose a risk to the welfare of the horse and this substance, dobesilate, was not such a substance. He also agreed that a substance having a remedial effect on a condition could not be a risk to the welfare of the horse.
10. Dr Wainscott was then taken statements made by Dr Curl, the regulatory veterinarian for Racing NSW. He agreed that Dr Curl had spoken about the 2011 pilot study to assess whether calcium dobesilate had a therapeutic effect for navicular disease in horses and that while there were encouraging signs, it was impossible for the experts conducting that trial to be certain of this or to draw anything like a firm conclusion. Dr Curl had agreed that the scientific research and the evidence fell well short of allowing any conclusion to be drawn, even on the balance of probabilities, that calcium dobesilate had any therapeutic benefit to horses. Dr Wainscott agreed with that statement. Dr Wainscott also agreed that given these statements there was no basis for finding that the substance would constitute a risk to the integrity of harness racing.
11. HRNSW opposes a stay in this case and has filed submissions in support of that position. The Appellant has raised a number of issues in support of a stay, however, the status of the substance dobesilate appears to be a matter of significant importance for the harness racing industry. The extracts from the Stewards inquiry that are referred to above deserve full inquiry on Appeal.
12. The powers of the Appeal Panel on appeals and stay applications are set out in NSW Local Rule 181E (1), as follows: 'On the lodging of an appeal for a stay of proceedings, the New South Wales Harness Racing Appeal Panel has the power to grant a stay of proceedings in circumstances where it considers that a substantial injustice may be caused to the appellant if the stay were not granted. In this case Mr Schembri has a good training record until these events arose. He appears to have a significant status in his community as described by residents who have provided character

references. Importantly, if the status of the substance dobesilate is found to have no therapeutic benefit to horses and does not constitute a risk to the integrity of harness racing, the Appeal Panel will be faced with a very different case to the one considered by the Stewards. As the evidence stands it appears that there is, at least, an arguable case that dobesilate does not have any therapeutic benefits to horses nor does it constitute a risk to the integrity of harness racing. In those circumstances it is considered appropriate to grant the stay. Having regard to the time of the year it is likely that a final hearing will not be available until some time in the New Year and that prospect adds further support to the appropriateness of a stay in this case.

Hon Wayne Haylen KC
Principal Member

16 December 2023