

## Appeal decision

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**Date:** 28 May 2015

**Code of racing:** Thoroughbred

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**Appeal panel:** Mr B. Miller (chair), Mr D. Kays and Mr G. Casey.

**Appearances:** Mr S. Neaves represented on behalf of trainer Clinton Garland  
Mr D. Aurisch, deputy chief stipendiary steward, appeared on behalf of the stewards.

**Decision being appealed:** Six month disqualification.

**Appeal result:** A fine of \$3,000 with no period of disqualification.

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### **Finding of the prohibited substance heptaminol in a swab sample taken from Final Chapter (Trainer C. Garland) at the Gladstone Turf Club meeting on Saturday, 7 March 2015**

Clinton Garland is a licensed trainer with Racing Queensland who presented the horse Final Chapter to race at the Gladstone Turf Club Meeting on Saturday 7 March 2015. The horse was the subject of a post-race analytical sample taken by way of swab which upon analysis revealed a positive finding of the prohibited substance Heptaminol. During the course of the stewards' enquiry it became apparent that the trainer had caused administration of the substance Dynajec of which Heptaminol is a constituent to the horse in question. The substance is capable of being bought off the shelf and is not the subject of any requirement of prescription by any veterinary surgeon. The stewards issued a charge against the trainer under Australian Rule of Racing 178 which stipulates:

*When any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer or any other person who was in charge of such horse at any relevant time may be penalised.*

This charge is more commonly known as the *presentation* charge and the trainer had no hesitation in pleading guilty to the charge of presenting the horse to race whilst it had a prohibited substance in its system. Interestingly the stewards would have been entitled to have charged the trainer under the *Administration Rule* which effectively carries with it a significantly more penal term however the evidence that was presented by the stewards showed that the trainer in question had three previous positive swabs which had been considered by them in varying elements. Two of the positive swabs previously related to Heptaminol which is the drug the subject of this current charge and the third was for Dexapent. There was another charge in March 2014. The stewards on all of the occasions for the imposition of penalties imposed fines of \$4,000, \$3,000, \$3,000 again and in March 2014 \$6,000. The circumstances that related to those earlier charges do not warrant

repeating other than to identify that two of them were at a time when the industry had a significant number of positive swabs to the Heptaminol drug the majority of which were the subject of charges which were discontinued by Racing Qld because of various anomalies that had arisen in the actual analytical process of the various drug laboratories. In all fairness to this appellant it was the opinion of members of this Board that in fact two charges should not have been laid against this trainer and perhaps both may have been the subject of a dismissal for reasons similar to those espoused in favour of other trainers at the time. Be that as it may his record does reflect the two charges as standing.

The issues that obviously concern the stewards in all of the charges upon which they have had reason to deliberate, save with this particular charge, have obviously weighed heavily on their minds and rather than impose a period of disqualification they elected to impose financial penalties only.

Mr Neaves who appeared for the appellant argued strongly that the penalty that should have been imposed upon the appellant should have been only of a material nature. His argument which was very well supported by numerous documentary evidence identified that even though his client had had previous convictions the circumstances in this instance were extremely different. On the one hand the appellant had been aware of the drug that he was utilising which was for the betterment of his horse. He was also aware that it did contain the banned substance Heptaminol however as he identified before the stewards and before this Board he had been cautioned to ensure that there was at least a 72 hour threshold period from the time of administration during which period it would have been inappropriate for the horse to have been presented to race. The trainer followed the directions that he had been given both by veterinary surgeons and by experienced trainers involved in the administration of this type of drug. He claimed also to have rung Racing Qld some time ago to enquire about the properties of Dynajec and was advised by someone, who of course had no authority to proffer such advice, that 72 hours was the period and that it was not necessary to wait more than such period. His evidence was that he relied upon all of this information and was astounded when the horse in question returned a positive finding to the drug.

As history will identify this Board is not in the habit of allowing trainers to continue to monitor and utilise licences when they have been the subject of numerous charges where positive swabs have been found however in this particular occasion it would seem to this Board that the trainer has taken every possible step to comply with the Rules of Racing. The fact that the horse has tested positive has, from the evidence before the stewards and this Board, seem to stem from the constitution of the horse and its kidneys which are damaged and which did not properly excrete the drug as they would in the normal course of events. In the circumstances this Board is prepared to grant to this trainer and this appellant one further chance to ensure that he is able to maintain his position in the Industry without the blemish of a disqualification. It therefore allows the appeal in that the disqualification period is removed and in lieu a fine is imposed. Ordinarily the fine that this Board would have imposed would have been \$5,000 but bearing in mind the circumstances that have been enunciated in this decision and having regard to the delays that the Board has encountered in presenting this decision for publication it is of the opinion that such \$5,000.00 fine should be also reduced to \$3,000. The penalty is therefore a fine of \$3,000 with no period of disqualification.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)