

Ruling # 9649

IN THE MATTER OF A HEARING UNDER ENABLING LEGISLATION OF THE LEGISLATURES OF THE PROVINCES OF PRINCE EDWARD ISLAND, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, AND NEW BRUNSWICK ESTABLISHING AN ATLANTIC PROVINCES HARNESS RACING COMMISSION AND UNDER THE RULES AND REGULATIONS OF THE ATLANTIC PROVINCES HARNESS RACING COMMISSION.

Hearing at Kensington, PE, September 27th – 28th, 2023

BETWEEN: Atlantic Provinces Harness
Racing Commission

Per: Derek Quinn, Senior
Judge

AND:

Marc Campbell
(V0040)
APHRC Licensee

A Panel consisting of Vice-Chair Stefan Decourcey (N.B.), Lowell Crowe (N.S.), and Dr. James Boswall (P.E.I.) was convened to conduct a hearing in respect of charges against Marc Campbell under the Equine Medication Control provisions of the Rules of Standardbred Harness Racing.

The Hearing was conducted under the provisions *Atlantic Provinces Harness Racing Commission Act*, RSPEI 1988, c A-22.1 (the “Act”) and the Rules of Standardbred Harness Racing (the “Rules”) which are enacted pursuant to the Act.

The Commission received four certificates of positive tests for horses trained by Mr. Campbell in the past year. Three of the four certificates related to the same horse, the “Lady Sheriff”, for the same substances, Furosemide (also known as Lasix). The Lady Sheriff was on the E.I.P.H. (Lasix) program pursuant to the Rules. The fourth certificate related to a different horse, the “Galway Girl”, and different substance, Ephedrine and its Metabolite Phenylpropanolamine, Pylamine and its metabolite O-Desmethyl Pylamine. The first Lasix certificate was from October of 2022. Mr. Campbell served the penalty for that charge. The remaining certificates were all from August of

2023. On receipt of the third and fourth certificates, Mr. Campbell was suspended indefinitely and referred to the Commission in accordance with Rule 367 (4).

The Hearing began as an appeal of the Lasix overage charges from August 2023. Mr. Campbell also asked that the October charge be revisited in light of new evidence regarding the “Lady Sheriff” pursuant to Rule 382. Ultimately, the Commission decided, with the consent of Mr. Campbell, to consider all four charges together given that the charge related to the “Galway Girl” had been referred to Commission pursuant to Rule 367(4) with Mr. Campbell being suspended indefinitely in the interim.

The Panel heard from Dr. Thomas Tobin, an expert in veterinary science and pharmacology. Dr. Thomas testified about the drug Furosemide and the rate at which it is expected to be metabolized or excreted in racehorses. Dr. Tobin also testified that a small percentage of racehorses will not excrete the medication at the normal rate. He described this as being a characteristic of the horse, which would not reasonably be known until a pattern emerged. The terms “outlier” or “slow metabolizer” are used to describe this phenomenon. The condition is considered rare and potential causes are still being investigated in the scientific community. In Dr. Tobin’s opinion, the “Lady Sheriff” is one such outlier.


Trainers are responsible for the condition of the horses they train. They must safeguard the horses they train against tampering, and take all reasonable precautions to protect horses under their care. The standard is high. If a horse tests positive for a restricted substance, the trainer is responsible. However, a due diligence defence is available to trainers. The trainer may escape culpability if they can prove that they took all reasonable precautions. Again, the standard is high. Generally, the trainer will need to prove an alternate explanation for the presence of the restricted substance in the horse’s system. In this particular case, the Commission is satisfied that Mr. Campbell took all reasonable precautions and had no reason to suspect an issue until the pattern emerged. As such, the Commission has determined that Mr. Campbell ought not be held responsible for these overages. This result is supported by precedent presented by counsel for Mr. Campbell, identified as Amended Ruling Number Com SB 055/2010 of the Ontario Racing Commission regarding Licencee Walter Whelan. As set out in the reasons for that decision, now that it is known the horse in question appears to be an outlier with respect to the EIPH (Lasix) program, future positive tests for furosemide for the horse, should they occur, could not reasonably expect to receive the benefit of a due diligence defence.

This result impacts the charge against Mr. Campbell in respect of the “Galway Girl” in a significant way. As set out above, Mr. Campbell was suspended indefinitely on that matter because it was considered his third offence within a year. The finding that Mr. Campbell should not be held responsible for the three Lasix overages means that this charge is considered a first offence, not a third or subsequent offence.

Mr. Campbell accepted responsibility for the positive test in respect of the “Galway Girl”. As summarized in these reasons, this situation was unusual. Mr. Campbell trains and drives many horses. The Commission accepts that the impact of the charges, and specifically the indefinite suspension, has been significant for Mr. Campbell. The Commission accepts that there are

mitigating circumstances in this case. In light of all of the circumstances, the Commission unanimously rules as follows:

1. Mr. Campbell exercised due diligence and is deemed not to be responsible for the three Lasix overages in the "Lady Sheriff".
2. Mr. Campbell is responsible for the positive test in respect of the "Galway Girl" from August 17th, 2023.
3. The Commission imposes a Penalty of a 34 day suspension and an additional \$750 fine on Mr. Campbell.
4. Purses and the previously paid fine also remain forfeited by Mr. Campbell.


Stefan Decourcey, Vice Chair

Dated this 3 day of ~~September~~^{4th} 2023, at Kensington, Prince Edward Island.
~~October~~