

1. Chris Kennedy (Mr Kennedy) is a New Zealand power lifter and member of the New Zealand Powerlifting Federation (NZPF). The NZPF has adopted the 2023 Sports Anti-Doping Rules (SADR) promulgated by Drug Free Sport New Zealand (DFSNZ) as its anti-doping policy.
2. Mr Kennedy participated in the NZPF Nationals in September 2023 and underwent a drug test. His sample showed the presence of Methylphenidate metabolite Ritalinic Acid which is a specified substance prohibited in competition.
3. Mr Kennedy's B sample was tested and also showed the presence of the prohibited substance.
4. Mr Kennedy was provisionally suspended by an Order of the Tribunal on 22 November 2023 (the PSO).
5. DFSNZ brought proceedings alleging breaches of Rule 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers) and Rule 2.2 Use or Attempted Use.
6. Mr Kennedy did not admit or deny the alleged breaches and instead put DFSNZ to formal proof. Mr Kennedy wanted to be heard on the issue of sanction.

Formal proof

7. Mr Kennedy maintains that he did not take the substance 'in-competition'. He submits that he took the substance three days prior to the competition beginning. Mr Kennedy gave his sample on the first day of the competition and cites the very low concentration of the substance (103ng/ml) found in his system (supported by the clinical study from the Practical Laboratory Medicine) to show that the substance had not been eliminated from his system due to dehydration.
8. In light of Mr Kennedy's assertions, DFSNZ submitted that there is insufficient evidence to uphold the Rule 2.2 charge and so withdrew the charge. It submits that the Adverse Analytical Finding (AAF) is sufficient evidence to uphold the Rule 2.1 charge and Mr Kennedy has not contested this.
9. The Tribunal accepts that the presence of the substance in Mr Kennedy's system is sufficient evidence that an anti-doping rule violation occurred.

Rules regarding sanction

10. If DFSNZ can establish that Mr Kennedy had taken the substance with the intention of enhancing his performance, then the sanction for taking a specified substance would be a period of ineligibility of four years.
11. 'Intentional' refers to conduct that an athlete knew constituted an ADRV, or which the athlete knew there was a significant risk that the conduct could result in an ADRV and manifestly disregarded that risk.
12. Where the substance used was one that is only prohibited in-competition, there is a rebuttable presumption that the breach was not intentional if the substance is a specified substance and the athlete can establish that the substance was used out of competition.
13. DFSNZ has not sought to establish intention and so the period of ineligibility should be two years. Mr Kennedy's counsel, in a memorandum filed on 8 March 2024, agreed that a two-year period of ineligibility would be appropriate.

Credit for Provisional Suspension

14. Mr Kennedy's PSO prohibited him from participation 'of any kind in any event or activity organised, sanctioned or authorised by any sporting organisation that is a signatory to the SADR' and Rule 10.14.1 makes provision for non-involvement in sporting activities, including coaching, during a period of provisional suspension.
15. Mr Kennedy stated on his Form 2 that he has continued to run his business while he has been provisionally suspended. This involves him coaching clients in powerlifting.
16. DFSNZ has raised the issue of whether this constitutes a breach of his PSO and thus subjects him to the provisions of Rule 10.14.3 to forego having the period of time he has been provisionally suspended credited to his overall period of ineligibility.
17. Mr Kennedy provided an affidavit stating that he has coached two clients, neither of whom are competitive athletes nor are involved in an organisation that is a signatory to the SADR. On this basis Mr Kennedy submits he has not breached his PSO and should therefore be afforded credit for his provisional suspension.

18. DFSNZ was not satisfied with the information contained in Mr Kennedy's affidavit and requested the Tribunal to direct a second affidavit naming the second of his two clients (he had already named his brother, Michael) and providing information about when Michael ceased to be a member of NZPF and whether either client participated in any other sport that was a signatory to the SADR.
19. A second affidavit was filed to which DFSNZ responded with further questions. DFSNZ filed material with the Tribunal that demonstrated that Mr Kennedy's brother was still a member of NZPF and had competed as recently as 24 November 2023.
20. On receipt of this information Mr Kennedy instructed his counsel to accept the two-year period of ineligibility without the credit for the time he has spent provisionally suspended.

Conclusion

21. In light of the evidence received and the concessions made, the Tribunal accepts that the appropriate sanction should be a period of ineligibility of two years and that Mr Kennedy is not entitled to credit for his time being provisionally suspended.

Orders

22. The Tribunal **orders** as follows:
 - (i) A period of ineligibility from participation in any capacity in a competition or activity organised, sanctioned, or authorised by any sporting organisation that is a signatory to the SADR, of two years, is imposed on Mr Kennedy under Rule 10.2.2, and will not be backdated but will take effect from the date of this decision. That means he is ineligible to participate in competitive sports until 25 March 2026.
 - (ii) Costs are not ordered, as none are sought, but they are reserved should DFSNZ wish to apply.

- (iii) This determination should be the final determination by the Tribunal in this matter, and it may be published in the usual way.

Dated: 25 March



John Macdonald, Chair



Helen Tobin, Member



Pippa Hayward, Member