



Fédération Internationale
de Natation

FINA Doping Panel 01/13

FINA Doping Panel

comprised of

F.D. van Heijningen	(NED)	Chairman
Farid Ben Belkacem	(ALG)	Member
Robert Fox	(SUI)	Member

In the proceedings against

the swimmer **Mads Glaesner**,
affiliated to the Danish Swimming Federation (DSF),

represented by:

Harold Jacobs
Antonio Rigozzi,
lawyers

Nature of the case

During the World Championships Short Course in Istanbul, December 2012, the athlete was found positive on levmetamfetamine after his 400 m free style (bronze medal). Investigation learned the substance came into his body through the use of his mothers "Vicks inhaler", bought in the United States. His own inhaler, bought in Denmark, does not contain the substance. The athlete pleaded for a reprimand or another mild sanction and no disqualification of his 1500 meter gold medal.

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

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1.2. DANISH SWIMMING FEDERATION (DSF) is a member of FINA. DSF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Code ("FINA DC"). The FINA DC is directly applicable to and must be followed by *Competitors, Competitor Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of DSF.

1.3 Mr. Mads Glaesner is a professional swimmer in the Danish national team. He has participated in European and World Championships, as well as in the Beijing and London Olympics. He has been in the FINA Registered Testing Pool since 2011, Q4.

II PROCEEDINGS

2.1 By letter dated 7 February 2013, the FINA Executive Director advised Mr. Glaesner that the A sample of an in competition doping control test conducted on 14 December 2012 (after 400 meter free style) had tested positive for the prohibited substance Phenpromethamine. Mr. Glaesner was advised that he could arrange for a B sample analysis.

2.2 On the request of Mr. Glaesner the B sample analysis was conducted on 6 March 2013, in the presence of his representative dr. Laurent Rivier.

2.3 By letter dated 11 March 2013 Mr. Glaesner was informed by the FINA Executive Director that the B sample analysis had confirmed the A sample finding that the prohibited substance Phenpromethamine was present in his urine sample. Mr. Glaesner was advised that his case would be forwarded to the FINA Doping Panel for further consideration.

2.4 By letter dated 18 March 2013 the FINA Doping Panel Chairman informed Mr. Glaesner of the possibility of a hearing and other rights.

2.5 By letter dated 20 March 2013 the legal representative of Mr. Glaesner made the request to FINA to produce "all chromatograms or other documentation evidencing testing of the sample for the substance levmetamfetamine."

2.6 Mr. Glaesner's representative also stated that the athlete accepted a provisional suspension offered by FINA.

2.7 In the Report dated 5 April 2013 the Laboratory of Barcelona informed FINA:

"As you know we have been requested afterwards by the expert witness to provide all chromatograms or other documentation evidencing testing of the A-sample for the substance levmetamfetamine, which is also prohibited under the same category. In addition, both phenpromethamine and levmetamfetamine, in spite of different names, are isomers which mean that they share the same molecular formula, molecular mass and mass spectrometric.

After revision of all data available and deep further investigations, the final conclusion is that the Prohibited Substance present in the sample is levmetamfetamine and not phenpromethamine as originally indicated. In the explanations below the technical reasons leading to this situation are explained. The laboratory carried out also the corresponding Corrective Actions in order to avoid any

similar situation in the future. WADA will also be informed of the case and of the Corrective Actions taken.”

2.8 On 17 April 2013 the FINA Doping Control Review Board (DCRB) advised to inform the FINA Doping Panel about the clarification from the Laboratory and to proceed with the case.

2.9 The FINA Doping Panel was formed pursuant to FINA Rule C 21.6.

2.10 The FINA Doping Panel hearing was held on 14 June 2013 in FINA Headquarters, Lausanne (SUI).

2.11 Mr. Glaesner was present at the hearing; he was represented by his lawyers.

Also present was Mrs. Glaesner, his mother, as a witness. Mrs. P. Holmes, general director of the DSF, attended the hearing.

III JURISDICTION AND APPLICABLE RULES

3.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 21.5., C 21.6 and FINA DC 8.1.

3.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since January 1, 2009 (amended on the occasion of the FINA General Congress on 24 July 2009).

IV LEGAL DISCUSSION

THE FACTS

4.1 Mr. Glaesner did not dispute the report of the Barcelona laboratory dated 5 April 2013 which concluded the prohibited substance Levmetamfetamine in his urine sample. Phenpromethamine (which substance was initially found by the Barcelona Laboratory) and Levmetamfetamine are both forbidden substances.

4.2 Levmetamfetamine is a prohibited substance under Class S6 Stimulants under both the 2012 and 2013 Prohibited List International Standard adopted by the World Anti-Doping Agency (WADA) and is therefore prohibited only in-competition, pursuant to FINA DC 4.1.

MR. GLAESNER'S POSITION

4.3 Mr. Glaesner's counsel contended that Mr. Glaesner's use of Levmetamfetamine was wholly attributable to the error of taking his mother's Vicks inhaler not knowing that this type, bought in the United States, would contain a prohibited substance (levmetamfetamine) other than the Danish type to which he was used to. He stated he suddenly needed an inhaler during the championships suffering from a stuffed nose and trusted his mother's inhaler.

4.4 Alternatively, Mr. Glaesner's counsel contended that pursuant to the Specified Substance provision set forth in FINA DC 10.4 that Mr. Glaesner should be sanctioned with a reprimand or other mild sanction and no disqualification of his gold medal for the 1500 m free style won during these championships on 16 December 2012.

4.5 Mr. Glaesner underlined the acceptance of a provisional suspension as declared in his statement dated 20 March 2013, contending that an eventual ineligibility should start from the date of the sample collection.

THE LAW

4.6 FINA DC 2.1.1 reads:

“It is each Competitor’s personal duty to ensure that no Prohibited Substance enters his or her body. Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Competitor’s part be demonstrated in order to establish an anti-doping violation under DC 2.1.”

DC 2.1.2

“Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Competitor’s A Sample where the Competitor waives analysis of the B Sample and the B Sample is not analyzed; or, where the Competitor’s B Sample is analyzed and the analysis of the Competitor’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Competitor’s A Sample.”

DC 10.2

“The period of ineligibility imposed for a violation of DC 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), DC 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or DC 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in DC 10.4 and 10.5, or the conditions for increasing the period of ineligibility, as provided in DC 10.6, are met: First violation: Two (2) years’ ineligibility.”

DC 10.4

“When a competitor or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Competitor’s sport performance or mask the Use of a performance-enhancing substance, the period of ineligibility found in DC 10.2 shall be replaced by the following:

First violation: At a minimum, a reprimand and no period of ineligibility from future Competitions, and at a maximum, two years’ of Ineligibility.

To justify any elimination or reduction, the Competitor or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Competitor’s or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.”

DC 10.5.2

“If a Competitor or other Person establishes in an individual Case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor’s Sample in violation of DC 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the competitor must also establish how the Prohibited Substance entered his or her system in order to have the period of ineligibility reduced.”

DC 9

“A violation of these Anti-Doping Rules in individual Sports in connection with an in-Competition test automatically leads to Disqualification of the result obtained in that Event with all resulting consequences, including forfeiture of any medals, points and prizes.”

DC 10.1

“An anti-doping rule violation occurring during or in competition with a Competition may, upon the decision of the ruling body of the Competition, lead to Disqualification of all of the Competitor’s individual results obtained in that Competition with all Consequences, including forfeiture of all medals, points and prizes (...).”

Analysis pursuant to FINA DC 10.5.1 (No Fault or Negligence)

4.7 The FINA Doping Control Rules are founded on the fundamental premise contained in FINA DC 2.1.1 that:

It is each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body. Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.

4.8 The FINA Doping Control Rules define "No Fault or Negligence" as:

The Competitor's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method.

The FINA Doping Panel agrees with Mr. Glaesner's lawyers that these proceedings do not involve the application of DC 10.5.1 or DC 10.5.2. The Panel would have denied an appeal to the application of these rules referring to – amongst alia – the decision in the case Ryan Napoleon dated 20 august 2010 (in connection with the CAS-decision 2010/A/2216 Ryan Napoleon v. FINA, award of 22 December 2010) .

4.9 The Panel will discuss in the paragraph below the possible application of DC 10.4 (Specified Substance) as pleaded for by Mr. Glaesner's defence.

Analysis pursuant to FINA DC 10.4 (Specified Substance)

4.10 Levmetamfetamine is a "Specified Substance" pursuant to FINA DC 4.2.1. Consequently, pursuant to FINA DC 10.4 if certain

factors are met the otherwise applicable period of ineligibility can be reduced to at a minimum a reprimand and a maximum of two years ineligibility.

4.11 The factors which must be established in order for an athlete to qualify for treatment under FINA DC 10.4 are:

- a. The swimmer must establish how the Specified Substance entered his or her body or came into his or her Possession; and
- b. The swimmer must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the use of a performance enhancing substance.

4.12 If the foregoing factors are proved by the swimmer then the swimmer's degree of fault is the criterion considered in assessing any reduction of the period of ineligibility.

4.13 Mr. Glaesner established by a balance of probabilities how the Levmetamfetamine entered his body by establishing the high probability that he used his mother's inhaler containing Levmetamfetamine during the championships and by adequately discounting any other possible sources of the drug. In this regard the Panel complements Mr. Glaesner and his defence for the active and adequate contribution to the disclosure of the forbidden substance "levmetamfetamine" instead of "Phenpromethamine" as earlier found by the Barcelona Laboratory during the testing of the A- and B-sample taken during the doping control on 14 December 2012.

4.14 Mr. Glaesner also produced corroborating evidence which established to the Panel's comfortable satisfaction that Mr. Glaesner did not intend to enhance sport performance or mask the use of a performance enhancing substance. Such corroborating evidence included:

- a. The detailed explanation by Mr. Glaesner under which circumstances during the championships he spontaneously had used his mother's inhaler, showing a significant factor in the chain of events leading to the positive drug test and which indicates that there was no wrongful intent behind the ingestion of Levmetamfetamine;
- b. The testimony from his mother as a witness during the hearing, clearly explaining why and where during a trip in the United States she once had bought the Vicks inhaler for herself and under which circumstances at home in Denmark she had switched the different caps of the American and Danish inhalers, not knowing the difference between the two types and forgetting about her act, only afterwards, after her son's positive doping test and the research for "levmetamfetamine", realizing that she had apparently mixed two types of inhalers;
- c. the presentation of the two inhalers, one bought in the United States and the other in Denmark, having the same white body but different caps;

- d. the active and adequate contribution by Mr. Glaesner to the disclosure of the forbidden substance “levmetamfetamine” instead of “Phenpromethamine”;
- e. the fact that Mr. Glaesner tested negative in the following doping control during the championships (only two days later after the positive doping test) on 16 December 20, after his 1500 m free style, winning a gold medal;

4.15 Accordingly, Mr. Glaesner established his entitlement to a sanction within the range specified by FINA DC 10.4.

V SANCTIONS

5.1 In considering whether Mr. Glaesner should receive any period of ineligibility, and, if so, what period of ineligibility was appropriate the Panel considered Mr. Glaesner’s degree of fault as instructed by FINA DC 10.4.

5.2 As explained above, Mr. Glaesner’s degree of fault was, when considering the degree of care required from elite athletes who represent their country in international competition, while not overwhelming, certainly manifest (i.e., clearly apparent and visible).

5.3 It is also below the standard of care for an elite athlete to use medications from another person, even if he or she is close and trustworthy family, because confusion with other medications or mistakes can never be excluded and this is particularly the case where the athlete was admittedly not questioning the label of the products used by him. Remarkably Mr. Glaesner had not mentioned the use of a Vicks inhaler during the doping control, whereas, according to the

Doping Control Form, he had mentioned "Vitamine C, Multivitamins, Wellness Pills and Powerade. Apparently Mr. Glaesner had used the inhaler "without thinking".

5.4 Factors weighing in Mr. Glaesner's favor include the fact that his act of using his mother's inhaler, having always discussed with her nutrition and medications as a way of double check to prevent forbidden substances, was understandable in the context of his family relationships and living situation. Furthermore, there was no indication of any intent to cheat. Mr. Glaesner also responded promptly to his positive test, quickly ascertaining the cause of the positive test and convincing the Doping Panel he would take steps to avoid any future recurrence.

5.5 Under these circumstances, the Panel believes a three (3) month period of ineligibility is appropriate under the FINA Doping Control Rules.

5.6 The Doping Panel has seriously studied Mr. Glaesner's arguments to let begin the period of ineligibility on the sample collection's date (14 December 2012) or the day he learned of the positive test, also stating he has not competed since December 2012. Looking at the correspondence between Mr. Glaesner and FINA, the facts and circumstances the Doping Panel can only find one clear moment on which the athlete accepted provisional suspension, which is his official letter dated 19 March 2013.

5.7 Pursuant to FINA DC 10.9 Mr. Glaesner's period of ineligibility shall run from 19 March 2013, the day on which he by letter officially accepted his provisional suspension, and end on 19 June 2013.

5.8 Pursuant to FINA DC 9 the result obtained by Mr. Glaesner during the 400 m free style race (bronze medal) has been automatically disqualified.

5.9 Mr. Glaesner has pleaded for fairness and not to disqualify his gold medal from the 1500 m free style race on 16 December 2012, during the same event, referring to the specific circumstances of the positive test but also the negative test after his gold medal race two days later.

5.10 For the Doping Panel Mr. Glaesner's degree of fault was, when considering the degree of care required from elite athletes who represent their country in international competition, while not overwhelming, certainly manifest (i.e., clearly apparent and visible). If he would have been more careful, he would not have suffered from the consequences of a positive doping test. His behavior has put a flaw not only on his own reputation but also on that of international swimming, because the public relates the use of doping through this kind of news to the world of swimming. As his results (bronze and golden medal) and positive doping test are so much related to the world championships swimming short course in Istanbul December 2012 and for the public hardly to be distinguished, the Doping Panel sees the disqualification of all results during the championships (and afterwards, although in this case not relevant) as a fair and clear sanction, in combination with the three months ineligibility beginning on 19 March 2013.

VI. CONCLUSION

6.1 Mr. Mads Glaesner receives a three (3) month period of ineligibility commencing on 19 March 2013, and ending at the conclusion of 19 June 2013, for his first anti-doping rule violation.

6.2 All results obtained by Mr. Glaesner on or after 14 December 2012 and through and including 18 June 2013 are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

6.3 All costs of this case shall be borne by DSF in accordance with FINA DC 12.2.

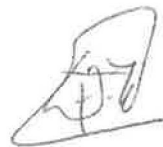
6.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3).

F.D. van Heijningen

Farid Ben Belkacem

Robert Fox

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'F.D. van Heijningen', written over a horizontal line.

F.D. van Heijningen