



Fédération Internationale  
de Natation

## FINA Doping Panel 02/13

### 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 diver **Hugo Pellicer Parisi**,  
affiliated to the Brazilian Swimming Federation  
(BSF), assisted by: Mr. Ricardo Moreira, coach

#### **Nature of the case**

*During the Diving Grand Prix held in Rostock, Germany, on 24 February 2013, the athlete was found positive with the indication of presence of "Prednisone & Prednisolone" in his urine sample. This substance came into his body through the use of "Prelone<sup>®</sup>" to treat a case of acute uvula swelling caused by uvulitis and associated with a viral pharyngolaryngitis which affected the athlete's breathing. The athlete had been giving assurances from the doctor that this treatment contained no prohibited substance. The athlete pleaded for no punishment in light of his good faith.*

#### **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.

1.2. The BRAZILIAN SWIMMING FEDERATION (BSF) is a member of FINA. BSF 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

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followed by *Competitors, Competitor Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the BSF.

1.3 Mr. Hugo Pellicer Parisi (“the Athlete”) is a professional diver in the Brazilian national team. He started diving since the age of 6-7 years old. He has committed himself to diving since 2001/2002. He has participated in four world championships and many continental and national championships. His best result was in Shanghai World Championship 2011.

## II PROCEEDINGS

2.1 By letter dated 19 April 2013, the FINA Executive Director advised Mr. Parisi that an A sample of an in-competition doping control test conducted on 24 February 2013 (after the FINA Diving Grand Prix held in Rostock, Germany) had tested positive for the prohibited substance “*Prednisone & Prednisolone*” (Class S. 9 Glucocorticosteroids). Mr. Parisi was advised that he could arrange for a B sample analysis.

2.2 On 19 April 2013, Mr. Parisi sent an e-mail in Portuguese to FINA. In this e-mail, Mr. Parisi explained that upon reception of the letter from FINA, he checked all the medications he had taken recently and was able to confirm that the substance “*Prednisolone*” was found in the medication “*Prelone*®” which he had been taking under a doctor’s prescription.

Mr. Parisi explained in the letter his personal circumstances and the conditions under which he encountered the doctor and took the medication. He attached to his e-mail a report from Dr. Carlos Lúcio

Pinto Viera Filho.

2.3 On 24 April 2013, Mr. Parisi sent the exact same letter, but this time in English. He once again attached a medical report from his doctor. In addition, Mr. Parisi stated that he did not want to proceed with a B sample analysis and that he accepted the analytical result of the A sample.

2.4 Mr. Parisi received a letter on 23 April 2013 from FINA Executive Director confirming the waiver of his right to a B sample test and explaining to him that in accordance with the FINA Rule C 21.5, his case would be forwarded to the FINA Doping Panel for further consideration and decision.

2.5 On 29 April 2013, FINA Doping Panel Chairman wrote to Mr. Parisi and accorded him a two week deadline to expose if he wanted a hearing pursuant to FINA Doping Control (DC) Rule 8.1 which gives athletes the right to a hearing before the Doping Panel. He was also given by the Doping Panel Chairman the alternative of sending a written defense to the Doping Panel by e-mail or fax to FINA Office. A deadline to 31 May 2013 was set for him to present the written defense.

2.6 On 30 April 2013, Mr. Parisi replied to The FINA Doping Panel Chairman requesting more explanation on the written defense and asking if he should go to the hearing with a lawyer or a doctor or his coach. He wanted to know where the hearing would take place, who would pay for the costs and how the hearing would work and in which language.

2.7. On 6 May 2013, the Doping Panel Chairman replied to Mr. Parisi's queries, stating that it was for him to decide whether he wished to attend a hearing or send a written defense. He referred

him to his federation or any other adviser for further answers to his questions. He explained that the hearing would take place in Lausanne Switzerland and he conducted in English. He stated that the hearing would be held between 14 and 15 June 2013.

2.8 Mr. Parisi confirmed he wished a hearing and submitted a written defense. The FINA Doping Panel was formed pursuant to FINA Rule C 21.6. On 21 May 2013, Mr. Parisi was advised that his case would take place on Friday 14 June 2013 at 16:00 hours CET at FINA headquarters in Lausanne (SUI).

2.9 Mr. Parisi was present at the hearing in Lausanne (SUI); he was assisted by his coach Mr. Ricardo Moreira.

### **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. Parisi did not dispute the report from the laboratory in Cologne which showed that the substance of "*Prednisone & Prednisolone*" was found.

4.2. "Prednisone & Prednisolone" is a prohibited substance under (Class S. 9 Glucocorticosteroids) under both 2012 and 2013 Prohibited List International Standard adopted by World Anti-Doping Agency (WADA) and is therefore prohibited only in-competition pursuant to FINA DC 4.1.

### **MR PARISI'S POSITION**

4.3 Mr. Parisi contends that his breathing was affected by an acute case of an inflamed uvula. The athlete was in Brasilia training when he took ill. The situation was urgent, a sports doctor was not readily available and he had to go to a clinic where he was seen by an ear, nose and throat specialist, Dr Carlos Lúcio Pinto Viera Filho. Upon receiving the prescription for "Prelone<sup>®</sup>", the athlete questioned the doctor about this and explained to him that he was a professional athlete and could not take any prohibited substance. The doctor reassured him on this. Mr. Parisi was not satisfied with his explanation and checked the list of prohibited substances and could not find the substance "Prednisolone" on the WADA list. This additional investigation reassured him and he subsequently took the medication as it was prescribed by the doctor.

4.4 On 30 April 2013, Dr Carlos Lúcio Pinto Viera Filho provided the athlete with the following report which he presented with his written defense:

*"I affirm, for working purposes, that Mr. Hugo Pellicer Parisi, 28yo, was submitted to medical treatment on January 28<sup>th</sup> 2013, when I prescribed "Prednisone" (Prelone<sup>®</sup>) 60 mg for three days, and a gradual dose reduction for the subsequent days (to prevent a suprarenal insufficiency). Mr. Parisi informed being a professional athlete and that he could not be given any prohibited medication. I prescribed such treatment, unknowing that it was considered as a doping substance. He went through a check up on February 5<sup>th</sup> 2013 and his prognosis was significantly better. This type of treatment*

*aimed the reduction of the uvula swelling, caused by uvulitis and associated to a viral pharyngolaryngitis, affecting the patient's breathing. In this case, therapy with corticosteroids (similar to hormones produced by the suprarenal glands) was the most effective treatment in order to reverse his clinical condition. I would like to emphasize that the patient was treated as an emergency, having respiratory difficulty on the first day. Therefore even if I knew before that "Prednisone" was a prohibited substance, I believe that due to his clinical condition I would still use this medication. In case I had not used the treatment prescribed, the only conduct would be to wait for a spontaneous recovery (which would take days or weeks). At the time of a recent medical reevaluation, a discreet uvula swelling presents to a possible future reevaluation and if necessary a new treatment. The patient agrees that I inform all the diagnostic and treatment adopted and I enclose his medical historic."*

4.5 At the hearing before FINA Doping Panel, the athlete confirmed and reiterated the above. He showed the Panel the WADA application on his I-phone and demonstrated what he did and how the exact terms "*Prednisolone and Prednisone*" were absent from the list he consulted. When questioned about the possibility of using the procedure allowed to athletes to request a Therapeutic Use Exemption (TUE), Mr. Parisi stated that he did not consider this option, as there was no prohibited substance in the medication he was provided with.

#### **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 (...).”*

**DOPING RULE VIOLATION**

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.*

It is the Panel's opinion that Mr. Parisi committed an anti-doping rule violation under FINA Rule DC 2.1. *Glucocorticosteroids* of which *Prednisolone and Prednisone* belong to, are listed under “*Specified Substances*” (FINA Rule DC 10.4) on the prohibited list 2013 published by WADA and recognized by FINA (FINA Rule DC 4.1 and 4.2.1). Medical expertise does not deem *glucocorticosteroids* as performance enhancing. The athlete is however responsible for the prohibited substances found to be present in his body (FINA Rule DC 2.1.1).

The athlete however contends that it was not his fault that the prohibited substances were found in his body, as he relied on what he in an emergency situation perceived as the expert opinion of the Doctor whom he consulted and by precaution verified the absence of such a substance on the lists he consulted.

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

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 comments to FINA DC 10.5.1 and 10.5.2 explain that an athlete receiving a prohibited substance from his physician cannot escape a period of ineligibility and is at fault even if the athlete did not know he was ingesting a prohibited substance because: *“athletes are responsible for their choice of medical personnel (...)”*.

4.9 This has been an important principle in prior FINA cases (cf. FINA vs Stylianos, FINA Doping Panel 4/02, pp.10-12). In this matter, a 16 year old swimmer relied upon a physician who gave her vitamins and assured her that they were safe, yet the vitamins turned out to be contaminated with a steroid.

4.10 The cause and circumstances of this matter cannot allow the Doping Panel to consider that Mr. Parisi acted with “No Fault or Negligence” in relationship to his anti-doping rule violation because he could have avoided use of a product containing *Prednisolone or Prednisone* through the exercise of utmost caution. CAS panels regularly reinforce the importance of the principle that athletes are responsible for the negligence of those to whom they trust their

medical or dietary care. For instance in *Demetis v FINA*, CAS 2002/A/432 §9.3.11, the CAS panel said: *"If an athlete...is permitted to exculpate and reinstate himself (...) by merely pleading that he had been made the unwitting victim of his or her physician's (or coaches) mistake, malfeasance or malicious intent, the war against doping in sports will suffer a severe defeat. It is the trust and reliance of clean athletes in clean sports, not the trust and reliance of athletes in their physicians and coaches which merits the highest priority (...). If such a defense were permitted in the rules of sport competition, it is clear that the majority of doped athletes will seek refuge in the spurious argument that he or she had no control over the condition of his or her body."*

4.11 Mr. Parisi, in the FINA Doping Panel's opinion, has not satisfied the high standard necessary to meet the criteria for "No Fault or Negligence". He should have proceeded with the verification of the information provided to him by a physician who whilst a specialist was not a Sports specialist. This should have been carried out through further consultation on his part with his Federation or another medical sports specialist. However, the Panel deems that the circumstances surrounding the positive test of Mr. Parisi and his request to be exculpated are to be examined under the provisions applicable to Specified Substances.

#### **B) Analysis pursuant to FINA DC 10.4 (Specified Substance)**

4.12 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.

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

a. The athlete must establish how the Specified Substance entered his or her body or came into his or her possession; and

b. He must produce corroborating evidence in addition to his 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.

4.14 If the foregoing factors are proved by Mr. Parisi, then his degree of fault is the criterion considered in assessing any reduction of the period of ineligibility.

4.15 Mr. Parisi established clearly how the substance entered his body. The Panel is satisfied that the prescription of *Prelone* provided to him by his doctor for treatment of his illness is the manner in which the specified substance entered his body.

4.16 The Panel is furthermore convinced that the substance was not taken with intent to enhance sport performance or mask the use of a performance enhancing substance. The medical testimony provided by Mr. Parisi clearly outlined the specific circumstances under which this medication was administered. In fact, the doctor stated that the athlete's condition was such that it was an emergency which would not have changed his decision to prescribe the medication, even if he had been aware it was a *Specified Substance*. In addition, the Panel noted that Mr. Parisi spontaneously mentioned on the Doping Control Form under the caption where the athlete is to disclose the use of medication that he was taking treatment for uvulitis, even if he could not remember the precise name of the drug.

Finally, the FINA Doping Panel also took into consideration that Mr. Parisi, even though he was in a medical situation questioned the Doctor specifically on the treatment he was receiving and its

conformity with the requirements of anti-doping regulations. It is also to be mentioned that he also made the effort to look at the WADA list to verify the physician's information.

4.17 Mr. Parisi has therefore fulfilled the requirements to plead a sanction within the scope of FINA Rule DC 10.4

## V THE SANCTION

5.1 In deciding on the sanction, the FINA Doping Panel considered the circumstances of the case:

- glucocorticosteroids (*prednisolone, prednisone*) are substances which are not performance enhancing;
- he was in a situation of an emergency due to acute uvulitis which created respiratory difficulties;
- Mr. Parisi was reassured to an extent by relying on a medical doctor and specialist's professional opinion. He was not in a position to question his doctor's knowledge of sports anti-doping regulations;
- he looked on the WADA list which he could access to verify his doctor's opinion;
- his condition warranted that he most probably would have been granted a TUE.

5.2 Mr. Parisi did not request a TUE. Whilst the Panel considers that Mr. Parisi intended to check the medicine and that he took steps to do so, it remains that he could have carried out his verifications in a more professional manner. In addition, in this case of apparent emergency, he might have applied for a TUE, but he sought no information nor took any steps in that direction. Although it is most likely in the Panel's opinion he would have gotten a TUE had he applied for it in accordance with the regulations, it is a failure on his

side which cannot be repaired in hindsight after such a long time. The responsibility for not having followed this procedure and the ultimate consequences remain with the athlete. In addition, as stated above, he should have sought out more information and advice from his Federation or a medical sports specialist.

## VI. CONCLUSION

6.1 Mr. Hugo Pellicer Parisi receives a three month period of ineligibility commencing on 14 June 2013, and ending at 14 September 2013, for his first anti-doping rule violation.

6.2 All costs of this case shall be borne by the Brazilian Swimming Federation (BSF) in accordance with FINA DC 12.2.

6.3 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 judgment (FINA Rule C 12.9.3).

Erik van Heijningen  
Chairman

Farid Ben Belkacem  
Member

Robert Fox  
Member

Signed on behalf of all three Panel Members



F.D. van Heijningen , Chairman