

DECISION of the FEI TRIBUNAL

dated 3 September 2012

Human Anti-Doping Case No.: 2012/01

Athlete / Host NF: Ali Nilforushan / USEF **FEI ID:** 10000657

Event: CSI2*-W Thermal CA (USA); 2012_CI_0090

Sampling Date: In-competition, 3 March 2012

Prohibited Substances: Phentermine, Hydrochlorothiazide, Carboxy-THC

I. COMPOSITION OF PANEL

Mr. Patrick A. Boelens, Chair
Ms. Randi Haukebø, Member
Mr. Vladan Jevtic, Member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by the Athlete:

The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and at the oral hearing, as also made available by and to the Athlete.

3. Oral hearing: 18 June 2012 – FEI Headquarters, Lausanne

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR: Mr. Ali Nilforushan, Athlete
Mr. Howard Jacobs, Counsel for the Athlete

For the FEI: Ms. Carolin Fischer – FEI Legal Counsel
Mr. Mikael Rentsch – FEI Senior Legal Counsel
Dr. Peter Whitehead – Deputy Chair of FEI Medical
Committee - Expert Witness

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 15 November 2011 ("**Statutes**"), Arts. 1.3, 34, 36 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 143.1, 168.4 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012 ("**IRs**").

FEI Anti-Doping Rules for Human Athletes, 1 January 2011, updates effective 1 January 2012 ("ADRHA").

World Anti-Doping Code 2009.

2012 Prohibited List of the World Anti-Doping Agency ("the List").

2. The Athlete: Mr. Ali Nilforushan

3. Justification for sanction:

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

Art. 2.1.1 ADRHA: "It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* 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 *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1."

Art. 4.1 ADRHA: "These Anti-Doping Rules incorporate the *Prohibited List* which is published and revised by *WADA* as described in Article 4.1 of the Code. The *FEI* will make the current *Prohibited List* available to each *National Federation* by means of publication on the www.fei.org website, and each *National Federation* shall ensure that the current *Prohibited List* is available to its members and constituents."

IV. DECISION

1. Factual Background

1.1 Mr. Ali Nilforushan (the "Athlete") participated at the CSI2*- W, in Thermal CA, United States from 28 February to 3 March 2012 (the "Event"), in the discipline of Jumping.

1.2 On 3 March 2012, the Athlete was selected for in-competition testing. Analysis of urine sample no. 2670754 taken from the Athlete at the Event was performed at the WADA accredited laboratory, Deutsche Sporthochschule Köln, Institut für Biochemie. The analysis of the urine sample revealed the presence of Phentermine, Hydrochlorothiazide and Carboxy-THC ("THC"), which are Prohibited Substances according to the 2012 Prohibited List of the World Anti-Doping Agency ("WADA"), in force at the time of sample collection (Certificate of Analysis dated 23 March 2012).

1.3 The Prohibited Substances detected are Phentermine, Hydrochlorothiazide and THC. Phentermine is listed in class S6.a "Stimulants" of Prohibited Substances and is considered a "non Specified Substance" under the List. It is prohibited in-competition. Hydrochlorothiazide is listed in class S5 "Diuretics and other Masking Agents" of Prohibited Substances and is considered a "Specified Substance" under the List. It is prohibited at all times (in- and out-of-competition). Carboxy-THC (a metabolite of THC (9-tetrahydrocannabinol; "THC")) is listed in class S8 "Cannabinoid" of Prohibited Substances and is considered a "Specified Substance" under the List. It is prohibited in-competition.

1.4 No valid Therapeutic Use Exemption ("TUE") under Article 4.4 of the FEI Anti-Doping Rules for Human Athletes ("ADRHA") had been granted for any of these substances. Therefore, the positive finding for Phentermine, Hydrochlorothiazide and THC gives rise to an Anti-Doping Rule Violation under the ADRHA.

2. The Proceedings

2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the Athlete by the FEI Legal Department on 18 April 2012, through the Iranian Equestrian Federation ("IRA-NF") and the United States Equestrian Federation, INC. ("USEF") (Administering NF). The Notification Letter included notice that the Athlete was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. Together with the Notification, the FEI submitted a Copy of the Doping Control Form, on which the Athlete had entered the words "No medicine".

2.2 On 24 April 2012, the Athlete submitted a statement of the same day by Dr. E. Michael Tachuk of Viva Wellness Medical Group, by which the latter confirmed having prescribed Phentermine 37.5 mg and Hydrochlorthiazide to the Athlete "as part of a comprehensive weight loss program."

2.3 A Preliminary Hearing took place on 27 April 2012. During the Preliminary Hearing the Athlete explained that he had been undergoing, and was still undergoing, a very difficult period of his life. That due to non-payment of outstanding invoices by his business partners he had found himself in a financial crisis. That as a consequence, he had suffered from depression and insomnia, and had gained a lot of weight. That in the USA, THC was frequently prescribed in cases of sleeping disorders. That since he had never received any Anti-Doping education, he had no idea that the three Substances detected were Prohibited Substances.

2.4 Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

3. The B-Sample Analysis

3.1 The Athlete was also informed in the Notification Letter of 18 April 2012 that he was entitled: (i) to the performance of the B-Sample analysis on the positive sample; and (ii) to attend or to be represented at the B-Sample analysis.

3.2 During the Preliminary Hearing on 27 April 2012, the Athlete waived his right to have the B-Sample analysis performed.

4. The further Proceedings

4.1 On 1 May 2012, the Athlete submitted documents concerning his financial situation. He also explained that he had taken the Prohibited Substances for purely medical reasons and that they had not given him any competitive advantage.

4.2 On 28 May 2012, the Athlete notified the FEI that he would be represented going forward by Mr. Howard L. Jacobs, California. In addition, the Athlete requested the Laboratory Documentation Package and a copy of the Tribunal's reasoned decision in the case involving Mr. Richard Davenport (A 2004-08-31 R. Davenport).

4.3 On 8 June 2012, the Athlete submitted his Response to the charges. Together with his submission, the Athlete submitted a photo showing two unlabelled containers, partly filled with different sized white pills and a copy of the pre-treatment sheet of Viva Wellness Centre completed by him. In addition, he submitted copies of two press releases related to the

anti-doping case of Mr. Davenport (A 2004-08-31 R. Davenport) as well as an extract of the California Health and Safety Code Article 11362.5, regarding the use of marijuana for medical purposes.

4.4 In his submission, the Athlete argued:

- a) That he was a world-class Equestrian rider currently competing in the West Coast League in California. That, born in Iran, he had been a competitive rider for over 20 years, and had qualified for many World Championships and competed in the 2000 Olympic Games in Sydney.
- b) Regarding the positive finding for Phentermine and Hydrochlorothiazide, the Athlete submitted that he had taken part in a weight loss programme directed by Dr. Tachuk's clinic "Viva Wellness Center" in San Diego, California. That he had received two prescriptions which were provided to him in "clear, unmarked medicine bottles", and that he had obtained refills of both medicine bottles on a monthly basis. That he had therefore established how the two Prohibited Substances had entered his system, and had therefore satisfied his burden of proof under Article 10.5.1 of the ADRHA.
- c) That Article 10.5.1 of the ADRHA (No Fault or Negligence) was applicable in his case, and no period of Ineligibility should be imposed since he had informed Dr. Tachuk that he was an Olympic level athlete and as such was subject to drug testing. That he had no possibility of knowing that he was taking Prohibited Substances because the medicines were provided in clear, unmarked but standard medicine bottles. That alternatively, Article 10.5.2 of the ADRHA (No Significant Fault or Negligence) applied and the 2-year sanction should be significantly reduced. In this context the Athlete argued that unlike the athlete in the case of Knauss (CAS 2005/A/847, Knauss v. FIS, Final CAS Decision 20 July 2005), he had not failed to take the clear and obvious step of reading the label of the medicine since no such label had been provided. That, even if the Tribunal concluded that he could have done more, or that he had shown some degree of negligence, his negligence had to be "negligible", and that therefore, the sanction should be significantly reduced to one year. That furthermore, athletes competing in the same sport, who conducted similar offenses, had to receive similar punishments. That therefore, any sanction in excess of two months would be disproportionate, since Mr. Davenport, an equestrian athlete who had tested positive in 2004 for the same substances, and under similar circumstances, had been sanctioned with a period of Ineligibility of two (2) months.

- d) That in the alternative, if the Tribunal found that he was negligent with regard to the positive finding for Phentermine and Hydrochlorothiazide, Article 10.4 of the ADRHA applied to the finding of Hydrochlorothiazide, and that insofar as his degree of fault, if any, was at the minimum end of the spectrum, the sanction should be reduced significantly and a warning – similar to decisions in previous cases (FEI v. Billing, FEI 2010/03; FINA v. Cielo, CAS 2011/A/2495; USADA v. Brunemann, AAA No. 77 190 E 00447 JENF) - or at a maximum a period of Ineligibility of the duration of the Provisional Suspension should be imposed. Lastly that he had provided corroborating evidence by which he had established the absence of his intent to enhance performance.
- e) With respect to the positive finding for THC, the Athlete contended that he had used THC for therapeutic purposes and under the direction of a doctor. That in addition, the medical use of marijuana was legal in California, and that he had never sought a TUE for marijuana since he did not intend to use it in competition. That Article 10.4 of the ADRHA applied to his case, and that a warning or a period of Ineligibility of at a maximum the duration of the Provisional Suspension should be imposed on him. That his fault, if any, was far less than in the Pereira case (Case 2010/02, Pereira, Final Tribunal Decision dated 17 March 2011) since his marijuana usage was justified by the prescription of a medical doctor.
- f) That Article 10.7.4 of the ADRHA should be applied by the Tribunal since all three Prohibited Substances detected were found in the same urine sample. That the Tribunal had to separately determine what it believed to be the appropriate sanction, if any, for each of the three substances, and then apply the most severe of the three sanctions, if any, as the sanction for this single anti-doping rule violation.
- g) That in conclusion, the sanction should be completely eliminated, or alternatively reduced to a period of Ineligibility of no longer than the duration of his Provisional Suspension.

4.5 On 14 June 2012, the FEI submitted its Response to the Athlete's explanations. Together with its submission, the FEI provided a statement by Dr. Peter Whitehead, Member of the FEI Medical Committee. Dr. Whitehead took the position that the Athlete had provided plausible explanations with regard to the positive finding for Phentermine and Hydrochlorothiazide, since those substances were widely used by weight reduction clinics in the United States. He also explained that it would be against standard medical practice and certainly best practices to dispense medication in unlabelled

bottles. Referring to the Viva Wellness questionnaire completed by the Athlete, Dr. Whitehead underlined that the Athlete had signed a statement confirming that he had received a copy of the side-effect-profile for the medications. Dr. Whitehead further affirmed that riders can generally derive performance enhancing benefit from prohibited drug use, including the use of stimulants, and that in the discipline of show jumping, weight reduction may have a performance enhancing effect. That the use of marijuana was prohibited in sports, irrespective of whether or not a medical prescription was issued. Further, that no valid medical prescription for the use of marijuana had been provided by the Athlete and that a TUE request for marijuana would only have been approved where other medications were contraindicated or thought to be inappropriate.

4.6 In essence the FEI argued:

- a) That, since the Athlete had not disputed that THC, Hydrochlorothiazide and Phentermine were present in the sample collected from him at the Event, it had discharged its burden of establishing that the Athlete had violated Article 2.1 of the ADRHA.
- b) That Article 10.4 of the ADRHA was not applicable since one of the Prohibited Substances detected – Phentermine – was classified as a non Specified Substance. That this had also been previously established by the Court of Arbitration for Sport (“CAS”) in the cases CAS 2010/A/2307 WADA v/Jobson, CBF and STJD, and CAS 2005/A/830 S. v. FINA.
- c) That, as affirmed by Dr. Whitehead, the Athlete had adduced evidence that was likely to prove, by a balance of probability, that the Phentermine and Hydrochlorothiazide in the Athlete’s system resulted from ingesting the unlabelled medication he had received from Dr. Tachuk as part of his weight loss program. With regard to the positive finding for THC, the FEI argued that since no medical prescription had been provided, the Athlete had not established how the THC had entered his system.
- d) That no elimination or reduction under Article 10.5 of the ADRHA applied since the Athlete had been highly negligent in consuming the medication provided to him in unlabelled bottles, even if the medication had been supplied by a person with a medical background. That similar to the previous decision of the FEI Tribunal in the case of KANEBO (Case 2010/05), the Athlete should not have used the medication provided to him in unlabelled bottles. Referring to previous CAS decisions (CAS 2005/A/918, K. v. FIS), the FEI argued that the Athlete could not simply transfer his duty of care to a third party, claiming that he had relied on treatment and medication prescribed by his

doctor. That the Athlete's duty of care was even higher if the doctor consulted by him was not a specialist in sports medicine, and that therefore, the Athlete needed to be "significantly more diligent" in ensuring that any medication administered by him was not in conflict with the ADRHA. That, as previously held by CAS (CAS 2008/A/1488, P. v. International Tennis Federation (ITF)), it was of little relevance to the determination of fault that the product was prescribed with "professional diligence" and "with a clear therapeutic intention". Finally, that the Athlete had omitted to use the several methods that had been at his disposal to ensure that the prescribed medication did not infringe the anti-doping rules.

e) That Article 10.7.4 of the ADRHA had to be applied by analogy and one had therefore to establish which violation carried the more severe sanction. That Phentermine, the non Specified Substance, carried the more severe sanction for the case at hand. That further no increase of sanction under Article 10.6 of the ADRHA was applicable since the Athlete had admitted the anti-doping rule violation as asserted promptly after being confronted with it.

- 4.7 That the case at hand was not comparable to the case of Mr. Davenport, since in that case only one substance – Phentermine – had been detected and the case arose from a National, not FEI, Event prior to the implementation of the current ADRHA.
- 4.8 The Final Hearing took place on 18 June 2012. Both Parties reserved their right to comment on the Laboratory Documentation Package, which was in the process of being produced.
- 4.9 During the Final Hearing, the Athlete explained that he intended to request a TUE for the Prohibited Substances detected. He explained that he was 7 years old when he moved with his family from his home country of Iran to Europe and then ultimately to the United States. That since leaving his home country, he had faced difficulties in being accepted and supported in his equestrian activities and career, because of his Iranian nationality. That he had been involved with equestrian sport since the age of 14 and had never been drug tested before. That he had thought that only horses were subject to Doping Control, and that his horses had been tested many times with negative results. The Athlete contended that his case was a case of an inadvertent positive since he had not received any Anti-Doping education, and that he was in a unique position since he was the only high level Athlete in his country, being administered by a very small National Federation. That he was one of the few people coaching at the highest level in California, by which he was earning his basic salary, and that he also was involved in horse dealing. The Athlete further explained that in order to address his weight problems, he had visited the Viva Wellness Center at the beginning of January 2012,

following the advice of another rider. That he had spoken to Dr. Tachuk for about five minutes only, and that Dr. Tachuk had asked him what he did for a living. That he had responded that he was riding horses for a living, and that he had even made it to the Olympics. Contrary to his previous submissions, the Athlete conceded that he had not asked Dr. Tachuk about the content of the unlabelled bottles, and that he had not expressly informed Dr. Tachuk that he was subject to Doping Control. That Dr. Tachuk had informed him that the bigger of the two pills provided to him was an appetite suppressant, and that the smaller one was to control his blood pressure, which would otherwise be increased by taking the bigger pills. That he had gotten two refills of the bottles, and that he had taken the pills inconsistently for a couple of months, and had lost weight as a result. The Athlete further explained that the pills had diminished his performance, since they had made him nervous, and that he had ridden poorly. When questioned, the Athlete confirmed that he had never consulted the website of the Viva Wellness Center, and had therefore not seen that Phentermine was mentioned on the website as one of the main medications of the weight loss program, and that Dr. Tachuk specialised in cosmetic surgery and weight loss. That he had not researched the medication he was taking, or sought further medical advice on the medication, and had never received a copy of the side-effect profile for the pills. When questioned, the Athlete stated that he had not declared any medication on the Doping Control Form since he had thought that he was taking a mixture of green tea and herbals. With regards to his THC consumption, the Athlete testified that the medical use of marijuana was legal in California. That in order to treat his anxiety and depression, he had chosen to take THC instead of narcotics, and that he had either ingested the THC by smoking, or in the form of brownies approximately two times per week since November 2011, but never prior to a competition. That he did not remember the name of the doctor who had prescribed THC to him. Lastly, the Athlete explained that prior to the case at hand, he had not heard of the ADRHA, nor of the existence of the World Anti-Doping Agency or the US Anti-Doping Agency, and that he had only learned about the existence of TUEs in the course of the case at hand.

- 4.10 As regards to the question of Fault or Negligence for the positive finding of Phentermine and Hydrochlorothiazide, the Athlete argued that he bore No Fault or Negligence, mainly because he had not received any Human Anti-doping education either by the FEI or by the IRA-NF or the USEF. That further, nothing had alerted him that he should not have taken the medication, and that his only intention had been to lose weight. That the purpose of the World Anti-Doping Code was to punish athletes who were cheating, but not to end careers of athletes in cases of inadvertent positives. That alternatively, if the Panel found that he bore some negligence, his negligence was certainly not significant. In this context, the Athlete

contended that his case was comparable to the case of Ms. Emily Brunemann (AAA No. 77 190 E 00447 08 JENF, USADA v. Emily Brunemann), who had taken a prescription medicine which had been prescribed to her mother, thinking that it was a laxative. That despite the fact that on the bottle of the medicine the Prohibited Substance Hydrochlorothiazide was indicated, Ms. Brunemann had been found to have been "not significantly negligent". That in addition and contrary to himself, Ms. Brunemann had also received Anti-Doping education prior to testing positive, and had been tested numerous times before. The Athlete conceded that following ample review of the decision in the case of Mr. Davenport, he was of the opinion that his case was not comparable with the Davenport case. Further that his case was also not comparable with the KANEBO case, since the latter case had been decided under the Equine Anti-Doping Rules. At the same time, the Athlete underlined that in the KANEBO case, in addition to the rider and Person Responsible, a second person, a member of the Support Personnel, had been found "not significantly negligent". The PR therefore submitted that the *degree of fault in cases of "unlabelled bottles" ranged from not significantly to highly negligent*. That the Tribunal, as in the Mellouli case (CAS 2007/A/1252, FINA c/Oussama Mellouli & Fédération Tunisienne de Natation), where the athlete accepted a pill offered by a classmate, without knowing what kind of pill it was, should take into consideration the principal of proportionality. That any suspension of the Athlete was completely disproportionate in light of the fact that the Athlete would not only lose his sporting career, but would also be prevented from exercising his profession, and be deprived of the possibility to earn his living. The Athlete acknowledged that the comment to Articles 10.5.1 and 10.5.2 of the ADRHA expressly stipulated that the evidence to be considered for purposes of assessing fault under Article 10.5.1 and 10.5.2 must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour, and that for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility would not be relevant factors in that assessment. The Athlete contended however that it had been decided in the Mellouli case that the comment to Articles 10.5.1 and 10.5.2 of the WADA Code, and therefore also of the ADRHA, was not binding on the Tribunal.

- 4.11 Lastly, the Athlete argued that Article 10.4 of the ADRHA was applicable, and submitted another CAS decision involving THC (CAS 2008/A/1473, Warren v. USADA, Final Award dated 24 July 2008).
- 4.12 In addition to its written submission, the FEI argued that in case the Tribunal would accept the applicability of Article 10.4 of the ADRHA, the Athlete had provided no other evidence than his word on the non-intention to enhance his performance. The FEI highlighted in this respect that Dr. Tachuk, who had been announced as witness and expert for the hearing, was in the end not available to answer

questions. That therefore, Dr. Tachuk could further not confirm the Athlete's allegations about the conversations he had with Dr. Tachuk. That "alarm bells" should have rung when he was provided with unlabelled bottles, and that it was unreasonable for the Athlete to rely on Dr. Tachuk to provide him with medicine free of Prohibited Substances.

- 4.13 During the Final Hearing, the FEI further clarified that it accepted that the THC had entered the Athlete's system "by consumption", but did not accept that the Athlete had provided evidence that the THC had been taken for medical reasons. In this context, the FEI argued that the general possibility of legal marijuana consumption for medical reasons, as established by the excerpt of the California Health and Safety Code, on its own was not sufficient to establish the Athlete's medical use. That – as in the FEI Tribunal case of Pereira (Final Tribunal Decision dated 17 March 2011), the Athlete had been highly negligent for not knowing that THC was a Prohibited Substance, and further for not stopping the marijuana consumption early enough before competition.
- 4.14 Dr. Whitehead testified as in his written statement. He further explained that Phentermine helped at combating fatigue, and therefore could have performance enhancing effects also in equestrian sport. That at the same time Phentermine interfered with the ability to make good judgements, and was therefore forbidden by the World Anti-Doping Agency. That the side effects of Phentermine are high blood pressure and increased heart rate. That Hydrochlorothiazide was a recognized medication for high blood pressure, but was also a masking agent and therefore forbidden. That THC was detectable for a long time and that it was dangerous in Equestrian sports, since it reduced the ability to make rational decisions. With regard to the case of Mr. Davenport, Dr. Whitehead explained that he had provided a statement at the beginning of the procedure and had been present during the entire appeals hearing of that case. That contrary to the case at hand, Mr. Davenport had advised his doctor that he was an athlete subject to Doping Control, and that his doctor had confirmed that he had received this information from Mr. Davenport. Lastly that at least in the UK, the awareness about Anti-Doping matters and regulations had been significantly raised since the case of Mr. Davenport.
- 4.15 Following the Final Hearing, on 22 June 2012, the FEI submitted the Laboratory Documentation Package to the Athlete.
- 4.16 On 10 July 2012, the Athlete informed the FEI that following his review of the Laboratory Documentation Package he did not intend to make any submissions in response thereto.

4.17 On 15 August 2012, the FEI informed the Tribunal that neither the Athlete nor the FEI wished to make any further submissions regarding the Laboratory Documentation Package.

5. Jurisdiction

5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and the FEI ADRHA.

6. The Decision

6.1 As set forth in Article 2.1.2 of the ADRHA, sufficient proof of an anti-doping rule violation under Article 2.1 of the ADRHA is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A-Sample where the Athlete waives analysis of the B-Sample and the B-Sample is not analysed, or the B-Sample confirms the A-Sample. The Tribunal understands that the Athlete waived his right to the B-Sample analysis, and is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical test was performed in an acceptable manner and that the findings of the laboratory Deutsche Sporthochschule Köln, Institut für Biochemie are accurate. Further that the test results evidence the presence of Phentermine, Hydrochlorothiazide and THC in the Sample taken from the Athlete at the Event. Phentermine, Hydrochlorothiazide and THC are listed as Prohibited Substances on the WADA Prohibited List. No TUE had been provided for the Prohibited Substances, and despite the Athlete's representations, no request has been made of the FEI Medical Committee as of the date of this Decision. The Athlete did not contest the accuracy of the test results or the positive findings.

6.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ADRHA. This is undisputed between the Parties.

6.3 The Tribunal finds that the simultaneous presence of three Prohibited Substances is technically to be considered one single first violation and the sanction imposed has to be based on the violation that carries the more severe sanction. In that regard, the Tribunal takes note that the parties do not agree which violation should carry the more severe sanction. The Tribunal – in line with the comment to Article 10.4 of the ADRHA - is of the opinion that Specified Substances are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances. In terms of sanctions, the Tribunal nonetheless finds that a non Specified Substance would typically carry the more severe sanction given the range allowed (i.e. a period of Ineligibility of two years as an entry point, with the possibility of elimination or reduction of that period) as compared to the range allowed for a Specified Substance (i.e. a

reprimand to a two year period of Ineligibility). The Tribunal will therefore in a first step decide whether the conditions for eliminating or reducing of the sanction applicable to the non Specified Substance – Phentermine - are met.

6.4 In cases brought under the ADRHA, a strict liability principle applies as described in Article 2.1.1 of the ADRHA. Once an anti-doping rule violation has been established by the FEI, pursuant to Article 10.2 of the ADRHA, the mandatory period for a first breach of the ADRHA is a period of two (2) years Ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of Ineligibility is possible under Articles 10.4 and 10.5 of the ADRHA.

6.5 To start with, the Tribunal takes note of the arguments brought forward by the Parties regarding the applicability of Article 10.4 of the ADRHA in the case at hand. In line with the ruling of the CAS panel in the case of Mr. Jobson, the Tribunal determines that whereas Article 10.4 of the ADRHA is not applicable in cases involving non Specified Substances only, it is applicable in cases involving both Specified and non Specified Substances, and needs to be considered in the context of determining the more severe sanction under Article 10.7.4 of the ADRHA.

6.6 In light of the above, the Tribunal finds that Article 10.4 of the ADRHA is not applicable to the positive finding of Phentermine, since Phentermine is classified as a non Specified Substance.

6.7 Turning to a potential elimination or reduction under Article 10.5 of the ADRHA, the Tribunal holds that the Athlete has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.5.1 of the ADRHA, or "No Significant Fault or Negligence," as set forth in Article 10.5.2 of the ADRHA. That however, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the ADRHA, the Athlete must first establish how the Prohibited Substance entered his system. This element is a "pre-requisite" to the application of Article 10.5 of the ADRHA.

6.8 The Tribunal, in considering the Athlete's explanations and supporting evidence – in particular Dr. Tachuk's written statement provided at the outset of the proceedings – as well as Dr. Whitehead's statement - finds that the Athlete has established "by a balance of probability", as required under Article 3.1 of the ADRHA, that the medication used by him as part of a weight loss program, has caused the positive test result. The Tribunal is therefore satisfied that the Athlete has established how the Phentermine entered his system.

6.9 The Tribunal therefore needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. In this context, the Tribunal, having considered the entirety of decisions referenced by the Parties, comes to the conclusion that the case

of Mr. Davenport does not assist the Tribunal in determining the applicable sanctions, since in that case, only one Prohibited Substance was detected, and since it was rendered prior to the entering into force of the current anti-doping regulatory system. For the Tribunal, the case of KANEBO, (Case 2010/05, Final Tribunal Decision 22 October 2010) is most similar to the case at hand, since in both cases, the Athlete (or Person Responsible, in the case of KANEBO) used a product out of an unlabelled bottle. In the opinion of the Tribunal, the fact that the case of KANEBO was governed by the FEI Equine Anti-Doping Rules (EAD Rules) instead of the ADRHA does not exclude a comparison between those two cases since the concept of No (Significant) Fault or (Significant) Negligence is equally foreseen in the EAD Rules, and applied in a similar manner under that set of rules. With regard to the KANEBO decision, the Tribunal further accepts that different degrees of negligence have been found by the panel in charge. Particularly, that the member of the Support Personnel in the case of KANEBO had been found negligent only, whereas the rider and Person Responsible ("PR") in that case had been found to have acted highly negligently. However, in the understanding of the Tribunal, the lower degree of negligence in the case of the member of the Support Personnel results from the fact that he had been insufficiently instructed and trained, and that there had been a language barrier between him and the other members of the Support Personnel. In the case at hand, the Athlete, as "principle actor" is – in the opinion of the Tribunal – comparable to the PR in the case of KANEBO, and similar expectations may be made to the two individuals with regard to the question of fault and negligence. However, the Tribunal takes into account that in the case of KANEBO, and unlike as in the present case, the Prohibited Substance involved, Capsaicin, had been detected in several anti-doping cases during the 2008 Olympic Games, and that the panel in KANEBO had therefore determined that the PR had sufficient means to inform himself about the substance and the potential consequences of its use. The Tribunal further finds that unlike in the KANEBO case, where the PR, by keeping the unlabelled bottle in his Horse's stable, had opened the door of unintended and uncontrolled use to third persons, such as the members of the Support Personnel, no similar source of risk has been caused by the Athlete in the case at hand.

6.10 However, the Tribunal finds that the Athlete was highly negligent for several reasons. To start with because he took medications which were provided to him in unlabelled bottles, without knowing the ingredients. Each athlete has a proactive responsibility to check all medications used by him, and to ensure that they are not prohibited under the ADRHA. In line with previous CAS decisions (i.e. CAS 2008/A/1488, P. v. International Tennis Federation (ITF)), the Tribunal holds that the respective check has to be even broadened if the medication used is provided by medical personnel that is not specialised in sports medicine, and is not familiar with the applicable anti-doping rules and the WADA Prohibited List. Given that Dr. Tachuk, as undisputed by the PR, is not a specialist in sports medicine, it was not sufficient for the Athlete to simply inform Dr. Tachuk that he was "riding horses for a living", and that he had competed at the

Olympic Games. He should have clarified his obligations and responsibilities as a high-level athlete to Dr. Tachuk, or otherwise verified that the products used were in compliance with the applicable Prohibited List. The Athlete, to the contrary and as admitted by him during the hearing, did not take a single step to verify whether the products provided to him by Dr. Tachuk contained any Prohibited Substances. Moreover, in the twenty (20) years of his competitive career, the Athlete apparently omitted to inform himself of the applicable Anti-Doping Rules for Human Athletes.

6.11 Notwithstanding the above, the Tribunal takes into account the claim by the Athlete of the lack of Anti-Doping education received by him through his National Federation. Whereas the Tribunal accepts that education is one very important element in the fight against doping, the lack thereof does not excuse Athletes from their responsibilities to educate themselves about the applicable rules, especially Athletes who compete at an international level as professionals. The Tribunal does however consider as a mitigating factor that the Athlete was using the substances to lose weight which could potentially qualify as "use for therapeutic reasons", given the treatment the Athlete sought from Dr. Tachuk. The Tribunal further takes into account that the Athlete admitted the anti-doping rule violation only a couple of days after having been notified of the rule violation.

6.12 Given the above, the Tribunal further takes note of the Athlete's claim that any longer period of Ineligibility would not only cause him to lose his sporting career, but would also prevent him from engaging in his profession, and from earning his living. Further that those arguments, despite being listed in the comment to Articles 10.5.1 and 10.5.2 of the ADRHA as being excluded from consideration in the assessment of Fault or Negligence, could be taken into consideration by the Tribunal, since the comment is not binding. The Tribunal is of the opinion that – irrespective of the question of the binding character of the comments – given the circumstances of the case at hand, the arguments brought forward by the Athlete do not add any material facts to the assessment of the Athlete's Fault or Negligence for the rule violation, and may therefore not be considered for the determination of any reduction of the applicable sanction. Taking into account the above, the Tribunal determines that only a minimal reduction of the otherwise applicable period of Ineligibility of two years may be applied, under Article 10.5.2 of the ADRHA.

6.13 The Tribunal further determines that the presence of multiple substances may generally be considered as an aggravating circumstance under Article 10.6 of the ADRHA. That however in the case at hand, there is no basis to increase sanctions under Article 10.6 of the ADRHA due to the fact that the Athlete admitted the anti-doping rule violation "promptly after being confronted with the anti-doping rule violation."

6.14 Lastly, and in light of the above stated, the Tribunal finds that the circumstances in the case at hand are not truly exceptional, and therefore

rejects the request made by the Athlete that, by reason of the principle of proportionality, it can and should impose specific sanctions.

6.15 Turning to the other two substances detected, the Tribunal decides that with regards to the positive finding of Hydrochlorothiazide, similar considerations as above apply to the question of the source of the Prohibited Substance. However, since Hydrochlorothiazide is a Specified Substance, Article 10.4 of the ADRHA applies to that positive finding, allowing for a reduction of the otherwise applicable sanctions, including the possibility of not imposing any period of Ineligibility. Having said that, the Tribunal does not see the necessity to specifically determine the sanction for the finding of Hydrochlorothiazide, since in the opinion of the Tribunal – in comparison to the finding of Phentermine – the latter would lead to the more severe sanction.

6.16 With regards to the finding of THC, the Tribunal is of the opinion that the Athlete established how that substance entered his system. The Tribunal is however not convinced that the Athlete has established that the THC was not intended to enhance his performance. In fact, the Athlete – in addition to his word - has not provided any corroborating evidence which would, to the comfortable satisfaction of the hearing panel as requested under Article 10.4 of the ADRHA – establish the absence of intent to enhance performance. In this context, the Tribunal takes note of the fact that the Athlete did not submit the alleged medical prescription for THC, and testified that he does not even remember the name of the person that had allegedly prescribed THC to him. As regards the excerpt of the California Health and Safety Code provided by the Athlete, the Tribunal finds that the article referred to generally regulates the conditions under which the use of marijuana for medical purposes is allowed in California. That this excerpt on its own does not establish that the respective conditions were met in the case of the Athlete. Therefore, the prerequisites of Article 10.4 of the ADRHA are not met. The Tribunal is further of the opinion that the Athlete cannot establish that he bears no Fault or Negligence for the rule violation, and accordingly the prerequisites for an elimination of sanctions under Article 10.5.1 of the ADRHA are not met. Conclusively, the applicable sanction would be based on Article 10.5.2 of the ADRHA. As for the positive finding of Hydrochlorothiazide, the Tribunal determines however that the sanction for the THC finding would not be “more severe” than the sanction for the Phentermine finding, and the Tribunal therefore finds that it does not need to specifically determine the applicable sanction.

6.17 In light of the above, the Tribunal holds that the positive Phentermine finding is the violation which carries the more severe sanction under Article 10.7.4 of the ADRHA, and that therefore, the Athlete’s sanction has to be based on that positive finding. The Tribunal further determines that the period of Ineligibility shall be deemed to have started on the date of sample collection, here 3 March 2012, in accordance with Article 10.9.2 of the ADRHA.

7. Disqualification

- 7.1 For the reasons set forth above, the Tribunal is disqualifying the Athlete from the Competition and all medals, points and prize money won in that Competition must be forfeited, in accordance with Article 9 of the ADRHA. The Tribunal is further disqualifying all other individual results obtained by the Athlete in the Event, with any and all horses, in accordance with Article 10.1 of the ADRHA.

8. Sanctions

- 8.1 As a consequence of the foregoing, the Tribunal decides to impose the following sanctions on the Athlete, in accordance with Article 169 of the GRs and Article 10 of the ADRHA:

1) The Athlete shall be suspended for a period of 12 months to be effective immediately and without further notice from the date of the notification. The Period of Ineligibility is deemed to have started on the date of Sample collection on 3 March 2012. Therefore, the Athlete shall be ineligible through 2 March 2013.

2) The Athlete is fined **CHF 1000,-**.

3) The Athlete shall contribute **CHF 2000,-** towards the legal costs of the judicial procedure.

- 8.2 No Athlete who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organization (Article 10.10.1 of the ADRHA). Under Article 10.10.2 of the ADRHA, specific consequences are foreseen for a violation of the period of Ineligibility.

- 8.3 According to Article 168.4 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.

- 8.4 In accordance with Article 12 of the ADRHA, the Athlete and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- 1. The person sanctioned: Yes**
- 2. The President of the NF of the person sanctioned: Yes**
- 3. The President of the Organising Committee of the Event through his NF: Yes**
- 4. Any other: WADA**

FOR THE PANEL

A handwritten signature in blue ink, appearing to read 'Patrick A. Boelens', written in a cursive style.

THE CHAIRMAN Patrick A. Boelens