



## **DECISION of the FEI TRIBUNAL**

**dated 5 May 2011**

**Human Anti-Doping Rule Violation:** Case 2010/03

**Athlete / NF:** Darryl Billing / CAN

**FEI ID:** 10045350

**Event:** Bromont International CAI - A

**Sampling Date:** In-competition test, 26 June 2010

**Prohibited Substances:** Hydrochlorothiazide

### **1. COMPOSITION OF PANEL**

Mr Jens Adolphsen  
Mr Philip O'Connor  
Mr Pierre Ketterer

### **2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case:** By Legal Department.

**2.2 Summary information provided by the Athlete:** The FEI Tribunal took into consideration all evidence and documents presented in the case file, as also made available by and to the Athlete.

**2.3 Oral hearing:** None: by correspondence.

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, in particular Arts. 143 and 169 ("**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

FEI Anti-Doping Rules for Human Athletes, 2nd edition, effective 1 January 2009, updated 5 April 2010 ("**ADRHAS**").

World Anti-Doping Code 2009.

### **3.2 The Athlete:** Mr Darryl Billing

### **3.3 Justification for sanction:**

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

ADRHA Art. 2.1.1: "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."

ADRHA Art. 4.1: "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*, and each *National Federation* shall ensure that the current *Prohibited List* is available to its members and constituents."

## **4. DECISION**

### **4.1 Factual Background**

- a. Mr. Darryl Billing (the "**Athlete**") participated at the Bromont International CAI – A, CAN, from 24 to 27 June 2010 (the "**Event**").
- b. On 26 June 2010, the Athlete was selected for in-competition testing. Analysis of the urine sample no. 1895444 taken from the Athlete was performed by the Laboratoire de contrôle du dopage, INRS Institute Armand Frappier in Quebec, CAN, a WADA accredited laboratory. The analysis revealed the presence of Hydrochlorothiazide (Certificate of Analysis number 10-2243AA).
- c. The Prohibited Substances detected are Hydrochlorothiazide. Hydrochlorothiazide are diuretics and are listed in the category of S5 Prohibited Substances on the 2009 Prohibited

List. Hydrochlorothiazide are "Specified Substances" and are prohibited in- and out-of-competition. However, a Therapeutic Use Exemption ("TUE") may be requested for Hydrochlorothiazide in accordance with the WADA Code and the International Standard for Therapeutic Use Exemptions.

- d. No request had been made prior to the Event for the use of Hydrochlorothiazide, and no TUE Form had been submitted for this substance.

#### **4.2 The Proceedings**

- e. The presence of the Prohibited Substances following the laboratory analyses, the possible rule violation and the potential consequences, were officially notified to the Athlete by the FEI Legal Department on 9 September 2010.

#### **4.3 The B-Sample Analysis**

- f. Together with the Notification Letter of 9 September 2010, the Athlete also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The Athlete was also informed of his right to be present at the B-Sample opening and analysis within the time period prescribed in the International Standard for Laboratories.
- g. The Athlete declined to exercise his right to have the B-Sample confirmatory analysis performed.

#### **4.4 The Further Proceedings**

- h. On 13 September 2010, the Athlete submitted a formal Standard TUE Application form to the FEI, for the daily oral use of Hydrochlorothiazide, Acupril and Quinapril. Together with his TUE application, the Athlete submitted various medical documents and explained that the substances are taken because of high blood pressure. The Athlete further requested that a retroactive TUE be granted to him for the use of Hydrochlorothiazide.
- i. On 15 September 2010, the FEI TUE Committee issued its decision in response to the TUE application by the Athlete. The TUE Committee granted the use of the substances as requested by the Athlete, for a period of two (2) years, starting on 15 September 2010.

- j. Also on 15 September 2010, the Athlete submitted his written explanations. The Athlete explained that he suffers from high blood pressure and that, for the past eight (8) years, he has been taking blood pressure pills prescribed to him by his personal physician Dr. Gareth Jones. The specific blood pressure medication product that he uses is called "Novo-Hydraside 25mg", and he takes one pill daily. The Patient Medical Records submitted by the Athlete evidence that he has been suffering from hypertension since approximately 2005. Further, Novo-Hydraside 25mg contains 25mg of Hydrochlorothiazide. The Athlete explained that he was not aware that he was required to submit a TUE for the use of Hydrochlorothiazide, and that therefore he had not submitted a TUE application form prior to the competition.
- k. By email of 16 September 2010, the FEI Legal Department confirmed that under the applicable regulation, FEI ADRHA Article 4.4.3, a retroactive TUE is only available for very specific substances, and that the Prohibited Substance detected in the sample of the Athlete is not amongst those substances. Consequently, no retroactive TUE was granted for the Event.
- l. In its submission of 17 December 2010, the FEI took the position that the Athlete, through his submission of 15 September 2010, had established both the source of the Prohibited Substance, as well as the absence of intent to enhance his sport performance. Given that, a reduction of the applicable period of ineligibility under FEI ADRHA Article 10.4 was generally possible. The FEI pointed out however that the Athlete - despite having been registered as an FEI competitor, and having taken the blood pressure pills for approximately the previous five (5) years - had not educated himself about the rules and regulations regarding the use of Prohibited Substances in FEI competition. That in particular, the Athlete had apparently not consulted with his medical doctor about the risks of using the prescribed medicine.
- m. On 11 January 2011, the Athlete submitted his response to the FEI submission. The Athlete stated being very sorry for not having filed a TUE application prior to the competition, and acknowledged not having been fully educated on the requirements regarding Prohibited Substances. The Athlete highlighted having informed the Doping Control Officer at the time of the testing that he was taking a prescribed medication. Together with his response, the Athlete also submitted a statement by Mr. Jack Pemberton, former Head of Canadian Combined Driving and founder of Drive Canada, who explained that the Athlete was new to "the FEI world"

and had only competed at very few FEI Events.

#### **4.5 Jurisdiction**

- n. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and the FEI ADRHAs.

#### **4.6 The Decision**

- o. The FEI Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LAD are accurate. The FEI Tribunal is satisfied that the A-Sample test results show the presence of the Prohibited Substances. The Athlete did not request the B-Sample analysis to be performed, and did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence pursuant to FEI ADRHA Article 2.1.1, in accordance with FEI ADRHA Article 3.
- p. Pursuant to FEI ADRHA Article 10.2, the mandatory period for a first breach of the FEI ADRHAs is a period of two years' ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of ineligibility is possible under the conditions of FEI ADRHA Articles 10.4 and 10.5. However, as is stipulated in the comment to WADA Code Article 10.5.1 and 10.5.2, neither WADA Code Article 10.5.1, nor WADA Code Article 10.5.2 should be applied in cases where WADA Code Article 10.4 applies. The same principle applies under the FEI ADRHAs.
- q. FEI ADRHA Article 10.4 is generally applicable to this case, since Hydrochlorothiazide is classified as a Specified Substance. In order to benefit from a reduction under FEI ADRHA Article 10.4 of the otherwise applicable period of ineligibility, the Athlete must establish how the Specified Substance entered his or her body. The Athlete also has to establish that such Specified Substance was not intended to enhance his or her sport performance or to mask the use of a performance-enhancing substance. To justify any elimination or reduction under FEI ADRHA Article 10.4, the Athlete 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.

- r. Considering the Athlete's explanations and supporting evidence about his consumption of Novo-Hydraside 25mg, the FEI Tribunal is of the opinion that the Athlete has established, by "*a balance of probabilities*" as required under FEI ADRHA Article 3.1, that the blood pressure pills taken by him have caused the positive test result. The FEI Tribunal is therefore satisfied that the Athlete has established the source of the Prohibited Substances.
- s. The Tribunal consequently has to determine whether the Athlete has established that the use of the Specified Substances was not intended to enhance his sport performance. In this context, the FEI Tribunal refers to the letter by the Athlete of 15 September 2010, in which he explains that he never had any intention to enhance his sporting performance or to mask the use of a performance enhancing product. The Tribunal furthermore considers the Patient Medical Records provided by the Athlete which indicate that the Athlete suffers from hypertension. Furthermore, that the pills taken by him had been prescribed by his *medical doctor*. In conclusion, the FEI Tribunal finds that the Athlete has established, in accordance with FEI ADRHA Article 10.4, the absence of intent to enhance his sport performance or to mask the use of a performance-enhancing substance. Therefore, the FEI Tribunal considers that the prerequisites of FEI ADRHA Article 10.4 are fulfilled.
- t. The FEI Tribunal determines however that the Athlete was, at the very least, grossly negligent, primarily for not knowing that Diuretics are Prohibited Substances, and secondly for not being aware of the TUE requirements concerning Hydrochlorothiazide at the time of the competition.
- u. In deciding the sanctions the FEI Tribunal considers, on the one hand, the Anti-Doping Rule Violation and the Athlete's negligence with regard to his obligations as competitor. On the other hand, and in mitigation, the Tribunal considers the fact that the Athlete has established the absence of intent to enhance sport performance to its comfortable satisfaction, the fact that the Athlete has used the Prohibited for therapeutic reasons, the Athlete's prior clean record and the fact that the Athlete, as soon as he had been notified of the case at hand, applied for a TUE for the Prohibited Substances found, which was granted for the future.
- v. The range of penalties available for first time offenders such as the Athlete with a connection to a proven violation relating to the presence of a Specified Substance during the competition is, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years' of Ineligibility.

#### **4.7 Disqualification**

w. As a result of the foregoing, the Tribunal has decided to disqualify the Athlete from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with FEI ADRHA Article 9.

#### **4.8 Sanctions**

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

- 1) The Athlete shall be formally reprimanded.
- 2) The Athlete is fined **CHF 1500,00.-**.
- 3) The Athlete shall contribute **CHF 1000,00.-** towards the legal costs of the legal procedure.

#### **5. DECISION TO BE FORWARDED TO:**

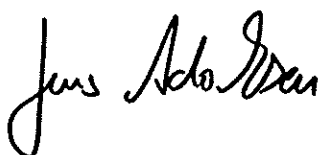
**5.1 The person sanctioned:** Yes

**5.2 The President of the NF of the person sanctioned:** Yes

**5.3 The President of the Organising Committee of the event through his NF:** Yes

**5.4 Any other:** WADA

**FOR THE PANEL**



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**THE CHAIRMAN** Prof. Dr. Jens Adolphsen