

**DECISION OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE  
SPORT ANTI DOPING DISCIPLINARY COMMITTEE**

In the matter of:

IAN FURMAN

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1. This committee was appointed by the South African Institute for Drug-Free Sport (SAIDS). (SAIDS is a statutory body created by section 2 of South African Institute for Drug-Free Sport Act 14 of 1997, as amended). In 2005 SAIDS accepted the World Anti-doping code. The Anti-doping Rules 2009 published by SAIDS are applicable to the present proceedings.) (“**the Rules**”)
2. The SAIDS Anti-doping Disciplinary Committee (“**the Committee**”) has been appointed in terms of Article 8.1 of the Rules. The committee consists of Adv Nicolas Kock, Dr Nasir Jaffer, Mr. Jowa Abrahams
3. The charge against the amateur power-lifter, Mr Ian Furman (“**Furman**”) is contained in a letter dated 26<sup>th</sup> January 2011 addressed to the athlete. The relevant portion of the letter relating to the charge reads as follows:

“You have been charged with an anti-doping rule violation in terms of Article 2.1 of the 2009 Anti – Doping Rules of the South African Institute for Drug Free Sport (SAIDS).

On the 27<sup>th</sup> November 2010, you provided a urine sample (A2530472) during an in-competition test at the South African Powerlifting Bench Press Championship as per the normal procedure for drug testing in sport. Upon analysis, the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your sample.

The substance identified **was** Methylhexaneamine which is classified as a Non-Specified Stimulant and falls under class S6 (a) on the World Anti-Doping Code 2010 Prohibited List International Standard.”

4. It is necessary to set out herein Article 2.1 of the Rules which read as follows:

**“2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete’s Sample*.**

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 rule violation under Article 2.1”

5. The pro-forma prosecutor for SAIDS was Mr Khalid Galant (“**Galant**”). Mr Jon Bush (“**Bush**”) attended the hearing as an observer. Mr Mark Phillips (“**Phillips**”) acted as the representative for Furman. Allan Ferguson (“**Ferguson**”) attended the proceedings as a character witness for Mr Furman

6. In order to secure a guilty verdict from the Committee, Galant needs to discharge the burden of proof as contemplated in Article 3.1 of the Rules. It states the following:

**“3.1 Burdens and Standards of Proof**

SAIDS has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. The standard of proof in all cases is *greater than a mere balance of probability* but *less than proof beyond a reasonable doubt*.

7. A Doping Control Form (40816) was handed into evidence with test mission code 545/10 by SAIDS for the in-competition testing of Furman. This form was signed by the athlete on the 27<sup>th</sup> November 2010 acknowledging that he **had** read the notice, been notified of his selection and gave his consent to provide samples for anti-doping research that was presented into evidence.

8. The Athlete declared on the Doping Control Form that on the 27<sup>th</sup> November 2010 he consumed four Panado tablets, one portion of Muscle Marinade and two Red Bull drinks.
9. A Chain of Custody Form and a Chain of Custody Form 2 were presented into evidence stating that *the bag containing the Sample A 2530 472 was not properly sealed.*
10. However, despite expressing disappointment re the handling of the sample A 2530 472, the validity of the Adverse Analytical Finding was not challenged by Furman on the basis that the departure from the International Standard could have reasonably caused the Adverse Analytical Finding i.t.o. Article 3.2.1 of the Rules.
11. Documentation dating 9<sup>th</sup> December 2010 was introduced on the sample analysis (A 2530 472) done by the South African Doping Control Laboratory at University of the Free State. It states that the substance identified in the aforementioned sample was Methylhexaneamine (MHA).
12. Methylhexaneamine is classified as a Non Specified Stimulant and falls under class S6 (a) on the World Anti-Doping Code 2010 Prohibited List International Standard.
13. Correspondence with Furman on the 15<sup>th</sup> December 2010 requested information from Furman should he wish for a “B” sample analysis to be undertaken. The relevant portion reads as follows:

- “4. You should inform SAIDS whether you would like to have your “B” sample analysed as per the instruction below:
  - a. The proposed dates for the “B” sample analysis are:
    - Friday 28<sup>th</sup> January 2011, at 08h00
    - Monday 31<sup>st</sup> January 2011, at 08h00
  - b. You, as well as your representative have the right to attend the “B” sample analysis at the South African Doping Control Laboratory in

- Bloemfontein should you decide to proceed with this request
- c. The cost of the “B” Sample analysis is R1172.00, and should be paid prior to the commencement of the “B” sample analysis
  - d. If you would like to proceed with the analysis of your “B” sample, we require the following information before the close of business (16h30) on **Friday 21 January 2011** before we instruct the South African Doping Control Laboratory to proceed with the “B” sample analysis
    - Written confirmation that you would like to have your “B” sample analysed
    - Written confirmation whether you and your representative (provide representative’s name as well) will attend the opening and verification of the “B” sample process
    - A copy of the deposit slip for the payment of the “B” sample analysis
  - e. Confirmation of the information requested in (d) should be forwarded to Fahmy Galant at the following contact details – [fahmy@drugfreesport.co.za](mailto:fahmy@drugfreesport.co.za) (e-mail) or 021 761 8148 (fax)
  - f. If SAIDS has not received a written response as documented in (d) above from you by **Friday 21 January 2011, it will be assumed that you have waived your right to have your “B” sample analysed.** If this is the case then the “A” sample finding will be used as evidence for the anti-doping rule violation”

14. Furman submitted a 6 page statement dated the 22 December 2010 in response to the notification from SAIDS on the 15<sup>th</sup> December 2010 of the Adverse Analytical Finding. In the statement he waives his right to a B-sample. The relevant portion at the top of page 2 reads as follows:

**“B-Sample Analysis**

Given that I have accepted the findings of the A-Sample analysis and do not dispute that the stimulant methylhexaneamine was present in that urine sample in contravention of Article 2.1, I advise that I will not require the B-Sample to be analysed.

I hereby waive my right in term of Article 7.3.5 to have the B-Sample analysed.”

15. Article 2.1.2 of the Rules points to the implication of a positive “A” sample where the opportunity for a “B” sample is waived. Article 2.1.2 of the Rules reads as follows:

**“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 *Athlete’s A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analyzed; or, where the

*Athlete's B Sample* is analyzed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample*.”

16. Accordingly, Furman is found guilty of contravening Article 2.1 of the Rules having tested positive for a Non Specified Prohibited Substance, namely Methylhexaneamine.
17. The remaining question is the nature of the sanction which should be imposed in respect of the violation of Article 2.1.1 of the Rules.
18. Furman would forfeit any results obtained in the South African National Bench Press Championship held in November 2010 i.t.o. Article 9 of the Rules. The relevant portion reads as follows:

**“Automatic *Disqualification* of Individual Results**

An ant-doping rule violation in Individual Sports in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all the resulting *Consequences*, including forfeiture of any medals, points and prizes.”

19. Furman indicated that he will rely on the *lex mitior* principle as applied in UK Anti-Doping v Rachel Wallader (29<sup>th</sup> October 2010) and UK Anti-Doping v Steven Lee Dooler (24<sup>th</sup> November 2010). This principle was also very recently being used in the South African Rugby v Mahlatse Chiliboy Ralepelle and Bjorn Basson (25<sup>th</sup> January 2011) case. The relevant portion of his Furman statement reads as follows:

**“Argument in Mitigation of an Elimination or Reduction of the Period of Ineligibility**

Notwithstanding that Methylhexaneamine (MHA) is not listed as a Specified Substance in Section S 6 (b) of the 2010 Prohibited List, it will however, be listed in Section S 6 (b) of the Prohibited List for 2011 as a Section S 6 (b) Specified Stimulant.

An appeal is therefore made to the Disciplinary Committee to recognise that the status of MHA has changed under the WADA Prohibited List from being a prohibited substance under section S6 (stimulants) under the generic description “all stimulants” in the 2009 list, to being expressly identified by the name MHA under section S6 (a) as a non-specified stimulant in the 2010 list, to being included as MHA under section S6 (b) as a **Specified Stimulant in the 2011 list.**

In support of this appeal to recognise the changing status MHA and particularly the status of the stimulant in 2011, I would refer you to **two** recent doping violation cases involving the stimulant MHA:

- UK Anti-Doping Limited (National Anti-Doping Organisation) v Steven Lee Dooler (24 November 2010), and
- UK Anti-Doping Limited (National Anti-Doping Organisation V Rachel Wallader (29 October 2010)”

20. The lex mitior principle states that the law most favourable to a perpetrator applies in cases where the legal situation has changed between the time the crime was committed and the punishment of the perpetrator. In this case methylhexaneamine was a Non Specified Substance at the time of testing, but at the time of the disciplinary hearing of Furman in 2011 the substance has been re-categorised on the 2011 WADA list to a Specified Substance thus allowing for a lesser sanction.
21. Therefore, the implication of Furman’s request is that he is asking for a finding that the prohibited substance Methylhexaneamine be regarded as a specified substance as opposed to an unspecified substance for purposes of sentencing.  
Application of the Lex Mitior principle granted.
22. In light of the application of the lex mitior principle it is necessary to set out herein Article 4.2.2 of the Rules that relates to the definition of a Specified Substance which reads as follows:

#### **“4.2.2 Specified Substances**

‘For purposes of the application of Article 10 (Sanctions on Individuals), all *Prohibited Substances* shall be “Specified Substances” except (a) substances

in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the *Prohibited List*. *Prohibited Methods* shall not be Specified Substances.”

23. According to the World Anti Doping Authority (“**WADA**”) a Specified Substance is a ‘ substance that is more susceptible to a credible explanation or non doping explanation under Article 10.4 of the Anti-doping Rules of 2009.’
24. Article 10.2 of the Rules is headed “**Imposition of Ineligibility for Prohibited Substances and Prohibited Methods**” Article 10.2 of the Rules provides that the period of *Ineligibility* imposed for a first violation of Code Article 2.1 (Presence of *Prohibited Substance* or its *Metabolites* or *Markers*), shall be two years, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6 are met.
25. The following section of the commentary of Article 2.1 of the Rules is important to note in respect of the period of ineligibility for specified substances under specific conditions:

*“[Comment to Article 2.1.1: For purposes of anti-doping violations involving the presence of a Prohibited Substance (or its Metabolites or Markers), SAIDS Anti-Doping Rules adopt the rule of strict liability which was found in the Olympic Movement Anti-Doping Code (“OMADC”) and the vast majority of pre-Code anti-doping rules. Under the strict liability principle, an Athlete is responsible, and an anti-doping rule violation occurs, whenever a Prohibited Substance is found in an Athlete’s Sample. The violation occurs whether or not the Athlete intentionally or unintentionally used a Prohibited Substance or was negligent or otherwise at fault. If the positive Sample came from an In-Competition test, then the results of that Competition are automatically invalidated (Article 9 (Automatic Disqualification of Individual Results)). However, the Athlete then has the possibility to avoid or reduce sanctions if the Athlete can demonstrate that he or she was not at fault or significant fault (Article 10.5 (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances)) or in certain circumstances did not intend to enhance his or her sport performance (Article 10.4 (Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances)).”*

26. Therefore, the minimum sanction is two (2) years’ *ineligibility*, but this period

may be reduced if the athlete can establish the criteria set out in Article 10.4 of the Rules:

**“10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances.**

“Where an *Athlete* 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 *Athlete’s* sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years’ *Ineligibility*. “

27. Furman set forth on page 3 - 4 of his six page plea explanation that the prohibited substance got into his system as component of the supplement Muscle Marinade that was bought at Springbok Pharmacy by his training partner, Mark Phillips. The relevant part reads as follows:

“9. I have only very recently become aware of the existence of MHA through the highly-publicised doping control of the Springbok rugby player, Basson and Ralepelle, and yet I still failed to make any association between *2-amino-4-methylhexane*, geranium oil and MHA. Nevertheless, I accept that MHA came to be present in my sample through the my ingestion as a supplement of a single serving solution of Purus Labs Muscle Marinade which contains the ingredient *2-amino-4-methylhexane* which I acknowledge is a section S6 (a) non-specified stimulant in the 2010 WADA Prohibited List ( and which will be classified from 01<sup>st</sup> January 2011 as a section S6 (b) Specified Stimulant).”

28. Furman avers that the Muscle Marinade was not used with the intention to enhance his sporting performance. On page 4-5 of his statement the relevant portion reads as follows:

**“Absence of Intent to Enhance Sporting Performance**

14. With reference to paragraph 6 above, at the time of the Doping Control I made the declaration on the Doping Control Form that I had also drunk two Red Bulls during the competition. The purpose of doing so was that the caffeine contained in the Red Bull should act as a stimulant; whether or not that is achieved physiologically can be debated but the benefit is probably psychological at best. Be that as it may, my source of stimulant was the Red Bull as it did not occur to me, nor was it my intent, that the Muscle Marinade should act as a stimulant.



15. In order to beat the current South African record in my weight division (-125 kg) I would need to have achieved a lift (actually a 'press') of 265kg and in order to achieve a personal best lift, I would need to have beaten 255kg. On the day, my third and heaviest press was 250kg, which was short of both the record and my personal best, but sufficient to take the title. I had elected a third lift of 257.5kg, but dropped this to 250kg before I was called to the platform as I simply did not feel confident or strong enough to manage the 257.5kg"
29. Phillips acknowledged that he bought and has been buying the Muscle Marinade from Springbok Pharmacy for approximately a year now. Phillips was satisfied that he initially took all reasonable precautions at the pharmacy to ensure that the product was above board and subsequently provided it to his training partners that included Furman and himself for consumption.
30. Allan Ferguson, a former President of the South African Power-lifting Federation ("**SAPF**") for over 15 years and who has known Furman for 10 years, attested to Furman's impeccable character and anti-doping stance in the sport.
31. Furman indicated that he will be willing to assist SAIDS in understanding the doping culture within power-lifting in order to clean to sport up of the abuse of Prohibited Substances.
32. In summary: Furman was provided with a supplement called Muscle Marinade by his training partner Mark Phillips that contained a specified substance unbeknown to all concerned. Both athletes admitted to have been using this product bought at the Springbok Pharmacy for approximately 12 months before Furman tested positive for Methylhexaneamine. These facts were confirmed by both Furman and Phillips.

The athlete disclosed the use of the Muscle Marinade on his Doping Control Form.

Despite winning the –125kg South African Bench Press Championship, Furman failed to equal his personal best of a 255kg lift. He won the national title with a 250kg lift.

The inadvertent use of the MHA was not intended to enhance Furman's performance nor did it enhance his performance.

33. Accordingly, the Committee is satisfied that the evidence led has successfully established the criteria set out in Article 10.4 that will qualify for the elimination or reduction of the two year period of ineligibility for specified substances under specified circumstances.
34. In the result, the following is the decision and recommendations of the Committee:
  - a. Furman is found guilty of an infringement of Article 2.1 of the 2009 Anti Doping Rules of the South African Institute for Drug-Free-Sport.
  - b. The degree of satisfaction of the criteria as set out in Article 10.4 of the 2009 Anti Doping Rule, for the reduction or elimination of the two year period of ineligibility for a specified substance under specified circumstances, is such that the 7 weeks period served under the provisional suspension of the athlete from 15<sup>th</sup> December 2010 until 1<sup>st</sup> February 2011 would suffice as time served by the athlete.
  - c. Furman would forfeit his gold medal in term of Article 9 of the Rules in the – 125kg weight division of the South African Bench Press Championship as well as all other results obtained at this specific competition.

d. The Committee recommends that SAIDS observe an impeccable standard of protocols when handling samples of an athlete.

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Adv NG Kock  
Chairperson

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Mr Jowa Abrahams  
Sport Administrator

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Dr Nasir Jaffer  
Medical Expert

1<sup>st</sup> February 2011