

3SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: ANTHONY GONDONGWANA

ATHLETE'S REPRESENTATIVE & MANAGER: PATRICK COX PC

SPORTS FEDERATION: WESTERN PROVINCE ATHLETICS

DATE: 14 DECEMBER 2011

PLACE OF HEARING: 1 MONA CRESCENT, NEWLANDS, CAPE TOWN

DISCIPLINARY PANEL ("PANEL"):
RAPHAEL GRANT BRINK (CHAIRMAN & LEGAL REPRESENTATIVE)
NASIR JAFFER (MEDICAL REPRESENTATIVE)
YUSUF ABRAHAMS (SPORTS ADMINISTRATOR & REPRESENTATIVE)

PROSECUTOR: NIC KOCK

SAIDS REPRESENTATIVES: FAHMY GALANT

WP ATHLETICS OBSERVER: JAC JACOBS JA

RECORDING OF MINUTES: MS DOLORES DICK

OBSERVER: NORMA NONKHONYANA

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES

LEGAL FRAMEWORK

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South Africa Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping (“the Rules”) were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of The Rules.

HEARING

The hearing took place on 14 December 2011 at 18H00 at the SAIDS offices in Newlands, Cape Town.

The Chairperson opened the hearing and explained the procedure to be followed.

CONCESSIONS MADE BY THE ATHLETE:

The athlete conceded the following during the hearing:

1. That he had received the communications regarding the notification of the adverse finding and the charges were put to him timeously and in order.

2. That he did not request his "B" sample to be tested and that it was common cause that the substance reported was present in his system and was a prohibited substance (WADA code 2011 Prohibited List) being Prednisone an XXX which was found during an in-competition test at The Cape Town Marathon.
3. That he had obtained tablets for his girlfriend who is also a runner and that the tablets had helped her with pain arising from an injury. She had obtained advice from a friend who was studying to be a doctor and he had obtained the tablets from a pharmacist who did not request a prescription at a cost of fifteen rand.
4. When he started feeling pain in his joints his girlfriend suggested he use the rest of her tablets as it had helped her with relieving pain. He had taken one tablet on two occasions three days apart and then purchased tablets for himself which he took on average every three days.
5. He used the tablets purely to assist with pain relief and had no intention to enhance his performance thereby.
6. The athlete listed the substance as well as Iron Tablets, Muscle Mass, Vitamins and Arthro Garde on his doping control form.
7. The athlete left school at Grade 11, is 27 years of age, and was aware of the concept of doping but had no idea that a pharmacy product could be on the prohibited list. The Athletes coach and club Celtic Harriers had never discussed doping with him and he had never heard of a therapeutic use exemption.
8. The athlete advised that he had been tested many times before and had never tested positive.
9. The athlete was as a professional long distance runner who earned a small income from the club and prize money.

VIOLATION

4. Article 2.1 of the SAIDS Rules reads 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 violation under Article 2.1."
5. From the concessions made by the athlete as described above, it is clear that the Athlete violated the SAIDS Rules as the Rules are applied in terms of strict liability and accordingly no intent, fault, negligence, or knowing Use need be proved.
 6. The Prosecutor Mr. Kock called for a 3 month suspension of the Athlete, taking into account the time already served, which was in his opinion justified by the circumstances of the case.

ISSUES FOR CONSIDERATION

7. Article 10.4 of the SAIDS Rules reads as follows:

" 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 Substances 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*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which established to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period *Ineligibility*. ”

This Article is applicable to the case at hand as Dr. Jaffer confirmed that the substance is a Glucocorticosteroid and therefore a specified substance as defined. In addition the Panel was comfortably satisfied that there was no intent to enhance performance or mask usage. In addition an affidavit by his girlfriend confirming his version of events as well as the heartfelt evidence as to the character of the athlete as described by Mr. Patrick Cox, the athlete's representative and manager are accepted as corroborating evidence in this regard.

8. Article 10.5.1 of the SAIDS Rules reads as follows:

“ *No Fault or Negligence*

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a Prohibited Substance or its *Markers* or its *Metabolites* is detected in an *Athlete's* Sample in violation of Code Article 2.1 (Presence of *Prohibited Substance*), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* eliminated.

In the event that this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7. ”

This Article has no application as there are no grounds upon which a No Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

9. Article 10.5.2 of the SAIDS Rules reads as follows:

“ No Significant Fault or Negligence

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced 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 Section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete’s* Sample in violation of Code Article 2.1 (Presence of *Prohibited Substance*), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* reduced. ”

This Article has no application as there are no grounds upon which a No Significant Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

10. Article 10.5.3 of the SAIDS Rules reads as follows:

“ Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. The SAIDS *Anti-Doping Disciplinary Committee* or SAIDS *Anti-Doping Appeal Board* may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of *Ineligibility* imposed in an individual case where the *Athlete* or other *Person* has

provided Substantial Assistance to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another *Person*. After a final appellate decision under Article 13 or the expiration of time to appeal, the SAIDS Anti- Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may only suspend a part of the applicable period of *Ineligibility* with the approval of WADA and the applicable International Federation. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping sport. No more than three-quarters of the otherwise applicable period of *ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under the section must be no less than 8 years. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel suspends any part of the period of *Ineligibility* under this Article, it shall promptly provide a written justification for its decision to each *Anti-Doping Organization* having a right to appeal the decision. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel subsequently reinstates any part of the suspended period of *Ineligibility* because the *Athlete* or other *Person* has failed to provide the Substantial Assistance which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 13.2. ”

This Article has no application in that the athlete was advised to speak to his girlfriend who is also an athlete and advise her to apply for a therapeutic use exemption or alternatively immediately cease injection of further tablets. Accordingly this Article was not relevant to a possible reduction in the ineligibility period.

DECISION

11. The Panel found that the Athlete was an honest witness and disclosed all relevant factors.

12. In that a violation had occurred Articles 10.1.1 and 10.2 of the SAIDS Rules have application and provide as follows:

Disqualification of Results in an Event During which an Anti-Doping Rule Violation Occurs

“ An Anti-Doping rule violation occurring during or in connection with an *Event*, may upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all the *Athlete’s* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2. ”

Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

“ The period of *Ineligibility* imposed for a violation of *Code* Article 2.1 (Presence of *Prohibited Substance or its Metabolites or Markers*), *Code* Article 2.2 (Use or Attempt Use of *Prohibited Substance or Prohibited Method*) and *Code* Article 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 Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6, are met: First violation: Two (2) year’s – *Ineligibility*. ”

13. The base period of ineligibility for a first violation is two years.
14. The Panel taking into account the lack of intent to enhance performance as well as the corroborating evidence of the athlete’s girlfriend on affidavit and the character evidence of Mr. Cox found that these factors justify the application of Article 10.4 as quoted above and accordingly accepts the recommendation of the prosecutor in respect of a 3 month ineligibility period, taking into account time served as of 24 October 2011 and therefore being completed on 23 January 2012.
15. All medals received in the competition are also forfeited as in Article 10.1.1 above.