



**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: MR TIEGAN MULHOLLAND

SPORTS FEDERATION: SOUTH AFRICAN HOCKEY ASSOCIATION

DATE: 1st DECEMBER 2011

PLACE OF HEARING: CITY LODGE
2 PALM BOULEVARD
UMHLANGA RIDGE
DURBAN

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL
REPRESENTATIVE)
DR. GLEN HAGEMANN (MEDICAL
REPRESENTATIVE)
MS BEVERLEY PETERS (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV NIC KOCK

SOUTH AFRICAN HOCKEY REPRESENTATIVE: MR REGGIE SMITH

OBSERVER: (1) PROFESSOR LOUW

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

APPLICABLE LAW

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 African Sports Confederation and Olympic Committee, as well as any national sports federation. The SAIDS Anti-Doping Rules ("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, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

The Hearing commenced at 5:30pm.

The Panel recorded its appreciation at the fact that there was a representative of the South African Hockey Association in attendance at the hearing.

PROCEDURAL MATTERS

The Athlete was in attendance at the proceedings. The Athlete confirmed that he had elected to represent himself at the hearing. He further indicated that he did not intend to call any witnesses nor did he intend to use any documents at the hearing.

THE EVIDENCE

The Prosecutor presented a bundle of documents marked "A" to "F" as documentary and corroborative evidence to the oral evidence presented. The Athlete did not dispute the veracity of any of the documents presented. In fact the athlete confirmed that he agrees with the contents of all documents presented. The charge against the Athlete was set out in written correspondence sent to the Athlete on the 15 NOVEMBER 2011 ("A1" and "A2"). The charge against the Athlete

read as follows:

You have been charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 20 August 2011, you provided a urine sample (A2531570); during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample. The substance identified was 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of Cannabis. Cannabis is categorized under Class S8. "Cannabinoids" on the World Anti-Doping Code 2011 Prohibited List International Standard.

The Athlete is an adult male, who returned the above positive test sample at the South African Hockey Association interprovincial tournament in August 2011. The Prosecutor tendered evidence about the testing process that was undertaken. He presented the Doping Control Form ("D") as well as the Laboratory A-Sample Analysis Report ("C") which indicated the presence of the identified substance. He also tendered the chain of custody form of the doping control session as evidence ("E").

The Prosecutor specifically highlighted that, on the Doping Control Form, the Athlete had declared that he had taken seven other supplements prior to being tested.

THE ATHLETES EVIDENCE

The athlete indicated that he was guilty of the charge. He had smoked Dagga (Cannabis) approximately two to three weeks before he participated in the event. He thought that the test was only to detect performance enhancing substances and not recreational drugs. He indicated that he was not a regular user and had only smoked Cannabis on a few occasions with friends and at parties.

He conceded it is illegal to possess and consume cannabis in the Republic of South Africa and that he knew that he would be in violation of the relevant code if it was found in his urine sample.

He further indicated that although his team had won his event he had not used cannabis to enhance his performance. He agreed that it was a silly thing for him to have done. He stated that his federation had disseminated no information and neither were they conducting any education in regard to use of drugs and prohibited substances by athletes. It is clear that the detection of cannabis in his urine sample had been a wakeup call for him as he has educated himself about the use of drugs. The panelists and the prosecutor further educated him about the danger of using recreational drugs and other supplements including those listed on his Doping Control Form ("C").

THE PROSECUTORS ADDRESS

The Prosecutor indicated that he has prosecuted several athletes for use of recreational drugs during the last year. Reggie Smith from SA Hockey Association stated that all athletes had to confirm in writing that they had been aware of the relevant rules pertaining to Anti-Doping.

The Prosecutor argued that the evidence proved that the Athlete was guilty. He argued that the evidence presented justified a sanction of a period of 4 months ineligibility if one took into consideration all factors, such ineligibility should commence upon notification being sent to the athlete of the adverse test results, being 28 September 2011.

The Prosecutor acknowledged the co-operation of the Athlete and his open and honest approach at the hearing and as he acknowledged that Article 10.4 of the Code was applicable.

FINDING ON THE CHARGE

The presence of prohibited substance identified as *11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of Cannabis* in the sample (sample number A2531619) of the Athlete was uncontested. The Panel has therefore determined that the Athlete is

Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1 of the Rules reads as follows:

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.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established. The athlete went further and gave an honest account of how the substance entered his body which was in the form of an acceptance of guilt and an explanation of his actions which resulted in the adverse finding in regard to his urine sample.

Despite the strict standard, the Panel is however able to eliminate, or reduce the period of ineligibility and may award, at a minimum, a reprimand and, at a maximum, a period of two (2) years ineligibility. The question of whether it is appropriate to decide on a period "no ineligibility" or "some ineligibility" depends on the degree of fault the Panel considers to exist on the part of the Athlete.

Article 10.4 is the relevant provision and reads as follows:

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

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes 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 of *Ineligibility*.

The issue before the Panel is therefore whether circumstances exist such that it is able to consider any elimination, or reduction, of the period of *ineligibility* as provided for under Article 10.4. This entails a consideration of the degree of fault of the individual athlete and the appropriate sanction for the athlete viewed in the light of that degree of fault. In this regard there are a number of factors to consider:

1. The Athlete has established how the Specified Substances entered his body;
2. The Athlete disclosed to the hearing his mistake in an open and frank manner;
3. The concentration of the cannabis was 23ng/ml which was a little higher than the WADA DL of 18ng/ml;
4. The substance was used a few weeks prior to participation for recreational purposes and not to enhance his performance.
5. This is the first positive test of the Athlete.

The above factors are mitigating factors relevant to the degree of fault. There are

various issues in this matter however, that indicate a serious degree of fault on the part of the Athlete:

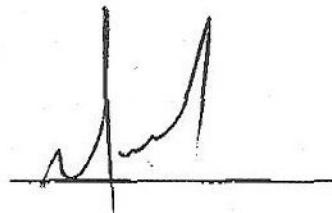
6. The Athlete is an adult sportsperson, an intelligent university student, participating at the highest level in his sport. He must have been fully aware of the consequence of his actions.
7. The substance is prohibited for possession and use in terms of the laws of our country.

In reviewing the above, the sanction on the finding of Guilty is as follows:

The Athlete is ineligible to participate in any organized sport, club or higher level or as envisaged in Article 10.4 , for a period of four (4) months which period will be effective as of 28 September 2011 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on 27 January 2011.

DATED AT DURBAN THIS 1st DECEMBER 2011.

SIVEN SAMUEL (Chair)



DR GLEN HAGEMANN



BEVERLEY PETERS

