

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

In the matter of:

STEPHANIE PRETORIUS

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 consist of Adv Nicolas Kock, Dr Deon –Jacques Peterse and Beverley Peters.

3. The charge against the amateur power-lifter, Ms Stephanie Pretorius ("**Pretorius**") is contained in a letter dated 8th February 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 21st October 2010, you provided a urine sample (A2530771) during an out-of-competition test 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 substances identified were Hydrochlorothiazide and Furosemide which are classified as Diuretics and fall under and falls under **Class S5, "Diuretics and other Masking Agents"** 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. Stephanie Pretorius is a minor i.t.o. Section 17 of the Children’s Act 38 of 2005 and Section 28(3) of the South African Constitution no 108 of 1996, as amended. She was born on 30th October 1993, therefore at the time of the hearing she was **seventeen years** of age.

6. The Age of Majority Act, No. 57 of 1972 requires that a minor be assisted and/or represented by a parent or representative at a legal proceeding such as a SAIDS disciplinary hearing when a minor is charged with an anti-doping rule violation.

7. The African Charter on the Rights and Welfare of the Child (**‘Children’s Charter’**) was entered into force in 1999 at the African Union. It complements the United Nations Convention on the Rights of the Child and provides a broad contextual framework that one needs to be cognisant of when dealing with minors.

8. Article 5.7 of the Rules that relates to the testing of minors reads as follows:

“Testing of Minors

Testing under these Anti-Doping Rules may only be conducted on a Minor where a *Person* with legal responsibility for that *Minor* has given prior consent. The giving of such prior consent shall be a condition precedent to

the participation of that *Minor* in sport, unless the rules of the relevant *National Sports Federation* provide otherwise”

9. Pretorius as a power-lifter and member of the South African Power-lifting Federation (“**SAPF**”) is subjected to the SAPF’s Drug Policy and hence compliant re Testing of Minors .i.t.o. Article 5.7 of the Rules. Furthermore, she was accompanied by her father, Andre Pretorius (**A-Pretorius**), during the anti-doping testing procedure.

10. Minors are expected to abide by the Rules of SAIDS. Article 1.2.2 of the Rules deals with minors in sport in this regard and states the following:

“Participants including Minors are deemed to accept, submit to and abide by these Anti-Doping Rules by virtue of their participation in sport.”

11. The pro-forma prosecutor for SAIDS was Mr Fahmy Galant (“**Galant**”). Pretorius was represented by her father Mr Andrew Pretorius. The South African Power-lifting Federation will be represented by Mr. Andre Ludick who will act as an observer.

12. 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.

13. A Doping Control Form (41062) was handed into evidence with test mission code 484/10 by SAIDS for the out-of--competition testing of Pretorius. This form was signed by the athlete and her accompanying father Andrew Pretorius, on 21st

October 2010. The athlete acknowledged on the Doping Control Form that she had read the notice, been notified of her selection and gave her consent to provide samples for anti-doping research that was presented into evidence.

14. The Athlete declared the use of 2 x unidentified antibiotic tablets and 1 x unidentified small white pill on the Doping Control Form (41062).
15. A Chain of Custody Form was presented as proof that the chain of custody was never broken of Sample A 2530 771 with unbroken seal nr A 029 123.
16. Documentation dating 2nd November 2010 was introduced on the sample analysis (A 2530 771) done by the South African Doping Control Laboratory at University of the Free State. It states that the substances identified in the aforementioned sample is hydrochlorothiazide and furosemide.
17. Hydrochlorothiazide and furosemide is classified as a Diuretic and fall under the Class S5, "Diuretics and other Making Agents" on the World Anti-Doping Code 2010 Prohibited List International Standard.
18. It is necessary to set out herein Article 4.2.2 of the Rules which read 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.'

19. The annual WADA *List of Prohibited Substances and Methods* specify in its introduction that Specified Substances are exclude from Substances in classes S1, S2, S.4.4 and S6.a, and *Prohibited Methods* M1, M2 and M3. These categories are

merely referred to as Prohibited Substances. Therefore, Hydrochlorothiazide and Furosemide a classified Class S5, "Diuretics and other Making Agents" on the World Anti-Doping Code 2010 Prohibited List International Standard falls outside aforementioned ambit and are therefore Specified Substances.

20. According to the World Anti Doping Authority ("WADA") a Specified Substance is a ' substances that is more susceptible to a credible explanation or non doping explanation under Article 10.4 of the Anti-doping Rules of 2009.'

21. Correspondence with Pretorius on the 16th November 2010 requested information from Pretorius should she wish to take up an opportunity for a "B" sample analysis to be taken. 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 26th November 2010, at 08h00
 - Monday 29th November 2010, 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 **Wednesday 24 November 2010** 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 (e-mail) or 021 761 8148 (fax)
- f. If SAIDS has not received a written response as documented in (d) above from you by **Wednesday 24 November 2010, 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"

22. Pretorius acknowledged in the hearing that a decision was taken to waive her right to a "B" sample.

23. Article 2.1.2 of the Rules point 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*."

24. Accordingly, Pretorius is found guilty of contravening Article 2.1 of the Rules having tested positive for a prohibited substance, hydrochlorothiazide and Furosemide.

25. 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.

26. 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.

27. 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))."

28. 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. "

30. A-Pretorius submitted a statement (see Annexure A) setting out the manner in which the specified substances entered his daughter's system as well as his role in the matter. The statement reads as follows:

"... My name is Andrew Pretorius and I am the father as well as personal trainer of Stephanie Pretorius.

I have been training my three daughter and various other weight trainers for many years I also still competes in bench press competitions. I provide my children with subliments for protein, vitamins, iron tablets etc., when I feel they are in need of it.

I notice that Stephanie was +/- 1kg over weight for her devision. I decided to give her one water tablet per day for four days to stabilize her weight. I used furosemide (white) as well as hydrochlorohiazide (pink), for no specific reason. Both tablets does the same job.

Stephanie took this with other subliments without any questions, because she know and trust me.

In fact, I am well known as an anti-steroid man in Eastern Cape power lifting. I complain a lot to management about people in the province using steroids and getting away with it.

Stephanie was completely shocked when she received the doping report from you. She is completely innocent in the outcome of the results. I know I made a mistake and take full responsibility for my acts.

It would be so cruel and unfair to suspend an innocent girl, seeing that there are big sporting events lying ahead next year.

I regret giving watertablets for Stephanie or any other athlete in the past.

I trust your honest consideration in this matter..."

31. It is evident from the abovementioned statement that Pretorius unknowingly consumed the specified substances provided to her by her trainer and father. The athlete implicitly trusted her father when he told her that he is merely administering to her usual compliment of supplement.
32. It was the experience of the Committee that Pretorius's evidence as a seventeen year old girl was frank and honest.
33. The Committee feels that despite the specific circumstances of this case Pretorius still bears some albeit a limited degree of fault in taking the 'water tablet'.

34. In summary: Pretorius, a seventeen year old minor, tested positive for the Diuretics, Hydrochlorothiazide and Furosemide. The out-of-competition A sample (A 2530 771) was not contested. The athlete gave oral evidence in an honest and frank manner. The athlete's father, A-Pretorius, provided a statement admitting that he administered water tablets to his daughter. The tablets form part of his personal prescription. A-Pretorius led his daughter to believe that he is providing her with supplements for training.
35. 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.
36. In the result, the following is the decision and recommendations of the Committee:
- a. Stephanie Pretorius 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. There has been a substantial degree of satisfaction in meeting 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.
 - c. The Committee feels that under these conditions a sanction of three (3) months would be appropriate to be calculated from the date of sample collection i.t.o. Article 10.9.4 of the 2009 Anti-Doping Rules for Commencement of Ineligibility Period.

d. Therefore, the period of ineligibility to start from Thursday 18th November 2010 and end on Friday 18th February 2011

e. The Panel recommends that Andrew Pretorius be charged under Article 2.7 Trafficking or Attempting Trafficking in any Prohibited Substance or Prohibited Method and Article 2.8 Administration or Attempted Administration to any Athlete of the 2009 Anti-Doping Rules

Adv NG Kock
Chairperson

Ms Beverley Peters
Committee Member

Dr Deon-Jacques Pieterse
Committee Member

22nd February 2011