

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

In the matter of:

VAUGHN VAN JAARVELD

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 SAIDA 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 Glen Hagemann and Mr Paddy Doyle

3. The charge against the professional cricketer, Mr Vaughn van Jaarsveld ("**Van Jaarsveld**") is contained in a letter dated 18th November 2010 addressed to the cricketer. 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 16th October 2010, you provided a urine sample (A2530703) during an in-competition test at the Supersport Series Match between the Chevrolet Warriors and Bizhub Highveld Lions 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 Bis-norsibutramine and Hydro (cyclobutane)-bisenorsibutramine, metabolites of the Stimulant, Sibutramine. Sibutramine is classified as a Specified Stimulant and falls under class S6 (b) 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 Mike Gajjar (“**Gajjar**”) from Cricket South Africa (“**CSA**”) attended the hearing as an observer. Mr Tony Irish (“**Irish**”) from the South African Cricketers Association (“**SACA**”) acted as the legal representative for Van Jaarsveld.

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 from SAIDS for the in-competition testing of Van Jaarsveld was signed by the athlete acknowledging that he has read the notice that was presented into evidence.

8. Van Jaarsveld concedes on the Doping Control Form that he has been notified of his selection for doping control and that he gives his consent to provide samples for anti-doping research.
9. A Chain of Custody Form was presented as proof that the chain of custody was never broken of Sample A 2530 703 with unbroken seal nr A 029397.
10. Documentation dating 4th November 2010 was introduced on the sample analysis (A 2530 703) done by the South African Doping Control Laboratory at University of the Free State. It states that the substances identified in the aforementioned sample were Bis-norsibutramine and Hydro (cyclobutane)-bisenorsibutramine, metabolites of the Stimulant, Sibutramine.
11. Sibutramine is classified as a Specified Stimulant and falls under class S6 (b) on the World Anti-Doping Code 2010 Prohibited List International Standard.
12. 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.’

13. 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.’
14. Correspondence with Van Jaarsveld on the 15th November 2010 requested information from Van Jaarsveld should he 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”

15. Mr Tony Irish as CEO of the South African Cricketers Association (“SACA”) informed SAIDS on behalf of Van Jaarsveld that the athlete is “waiving his right to a B sample test and requesting that the hearing process be expedited.”

16. 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*.”

17. Accordingly, Van Jaarsveld is found guilty of contravening Article 2.1 of the Rules having tested positive for a prohibited substance, namely Bis-norsibutramine and Hydro (cyclobutane)-bisenorsibutramine, metabolites of the Stimulant, Sibutramine.
18. 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.
19. 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.
20. 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))."

21. 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*. “

22. Van Jaarsveld set forth in his plea explanation that it was never his intention to use a prohibited substance to enhance his performance. Van Jaarsveld stated that his physician, Dr Gary Hudson, prescribed to him weight-loss medication called Ciplatrim after checking an outdated 2009 WADA List of Prohibited Substances. The Specified Substance, Sibutramine, is contained in Ciplatrim.
23. Dr Shuab Manjra, Chairperson of SAIDS and Chairperson of Cricket South Africa's Medical Committee, avers in an affidavit to have had a conversation with Dr Hudson that corroborates Van Jaarsveld's version in paragraph 4:

“On or about 16th November 2010 I telephoned Dr Hudson to discuss this matter with him. I left a message and he returned my call around 16h35 on my mobile phone. He confirmed to me that Van Jaarsveld had specifically requested him to check to ensure that Ciplatrim did not contain any prohibited substance. Dr Hudson further confirmed to me that he had checked WADA's prohibited list and that Sibutramine was not listed. I specifically asked if he checked the WADA's 2010 prohibited list and he conceded that the list checked by him was an outdated list.”

24. An affidavit is a written statement of facts voluntarily made by an affiant under an oath or affirmation administered by a person authorized to do so by law. An affiant is

strictly responsible for the truth and accuracy of the contents of the affidavit, this is based upon either on the personal knowledge of the affiant or his or her information and belief. The probative value of an affidavit is generally weak, because there is no cross-examination of the affiant.

25. The prescription of Dr Gary Hudson to Van Jaarsveld was handed into evidence. The prescription indicated dosage of 4 x 30 tablets of Ciplatrim to Van Jaarsveld to be taken daily as from the date of issue on the 11th July 2010.
26. Van Jaarsveld indicated on the Doping Control Form dated 16th October 2010 that he was taking one Ciplatrim tablet daily.
27. Van Jaarsveld furthermore asserted that he informed his coach at the Lions re the medication that was prescribed to him by Dr Hudson.
28. In summary: Van Jaarsveld was provided a non sports related prescription for weight loss medication by Dr Hudson that contained a specified substance unbeknownst to all concerned. Subsequently, the athlete took reasonable steps to ensure that the prescription was compliant to WADA's list of sanctioned medication. The athlete was open about the use of the medication and disclosed the use of Ciplatrim on his Doping Control form.
29. 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.

30. In the result, the following is the decision and recommendations of the Committee:

- a. Vaughn van Jaarsveld 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 are such that a severe reprimand of the athlete would suffice.
- c. The Committee recommends that CSA's Medical Committee look at instituting appropriate protocols for their professional athletes at a franchise level, semi professional and under 19 level.
- d. The Committee recommends that CSA must contractually compel franchise cricketers to verify the status of all prescribed medicine and other supplements provided for by third parties with their respective franchise doctors.

Disciplinary Panel: Adv NG Kock, Mr. Paddy Doyle, Dr. Glen Hagemann

Date: 02 December 2010