

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

ATHLETE : KEVIN WALLER

SPORTS FEDERATION : SWIMMING SOUTH AFRICA

DATE OF HEARING : 22 JUNE 2011

PLACE OF HEARING : SAIDS OFFICES
NEWLANDS
CAPE TOWN

DISCIPLINARY PANEL : TONY IRISH (CHAIR)
DR NASIR JAFFER
JOWA ABRAHAMS

PROSECUTOR : ADV. NICK KOCK

ATHLETE REPRESENTATIVES : MR & MRS WALLER (Parents)
DR C DOMMISSE

OBSERVERS : FAHMY GALANT (SAIDS)
BRIANE REYNOLDS (SWIMMING SA)
MS ROCHELLE LE ROUX (UCT)
MS DOLORES DICK (SAIDS)

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

The Athlete is a disabled swimmer and appeared at a SAIDS disciplinary hearing on 22 June 2011 charged with a violation of article 2.1 of the SAIDS anti-doping rules, relating to the presence of prohibited substances in his sample. The prohibited substances identified in the Athletes sample were Prednisone and Prednisolone, which

are classified as Glucocorticosteroids under class "S9" on the WADA Code 2011 Prohibited List International Standard.

The Athlete is a twenty three (23) year old disabled swimmer and the positive sample resulted from a test conducted at the SASAPD Swimming Championships in Pretoria on 29th March 2011.

The Athlete was assisted at the hearing by his parents and had also requested the attendance of Dr C Dommissie.

The Athlete did not request the testing of a B sample. He had been under provisional suspension since 4th May 2011.

The Athlete, the Prosecutor and Dr Dommissie all took an oath in regard to the evidence to be given at the hearing.

The chairman explained the nature of the hearing and dealt with a number of preliminary issues relating to the documentation. The Athlete confirmed that he did not wish to challenge any of the documentation before the Panel, including the letters to him from SAIDS, the Report on the A Sample Analysis, the Doping Control Form and the Chain of Custody Form. He also confirmed that he wished the Panel to consider the contents of the letter from his mother, Delene Waller, dated 24th May 2011 and the letter from Dr Dommissie dated 6th May 2011. These documents were all admitted as evidence.

The prosecutor requested clarity on the medication declared on the Athlete's Doping Control Form, namely cortisone and nasal spray, and the potential performance enhancing nature of these. The Athlete confirmed that the medication had been prescribed to him by Dr Dommissie.

Dr Dommissie confirmed that the Athlete had been suffering from a severe ear infection and that he had prescribed the Athlete the medication containing Prednisone for an ear infection to take in doses of 2 x 5 mg tablets twice a day and that this was a specified substance. He explained that this could potentially be performance enhancing but not in that dosage. He explained that this had a catabolic, as apposed to anabolic, effect and was used to break down rather than build up. The doctor further confirmed that he was aware that the Athlete was a swimmer, although not fully

aware of the level at which he was competing, but had neglected to apply for a TUE, or to advise the Athlete to do so himself. The Athlete was unaware at the time that he could have, or should have, applied for a TUE and relied on the expertise of the doctor. Dr Dommissie is involved as a doctor with Western Province rugby and confirmed that he dealt with anti-doping matters relating to rugby.

Mrs Waller explained that the Athlete's ear infection was severe and he had even considered withdrawing from the gala. She also explained that the Athlete's disability arose out of a car accident in 2007 in which he had been seriously injured. He had suffered from prolonged depression following the accident. He had shown much resolve in dealing with his disability and being able to compete as a swimmer had become a very important part of his life. The Athlete was however extremely modest about his swimming abilities and did not consider himself a "competition" swimmer.

The Athlete confirmed that he had taken the medication prescribed for the ear infection for a few days prior to the event but that he had then forgotten it at home in Cape Town and didn't take it on the day of the gala. He had competed in freestyle, backstroke and butterfly events but the ear infection had affected him and his times were slower than normal in all races.

When asked why he had not mentioned the Prednisone in the Doping Control Form the Athlete stated that he thought the Prednisone was Cortizone.

It appears that the Athlete unofficially swam in a swimming meeting in the week prior to the hearing. He had been advised by his coach that although he could swim he could not officially compete and his time would not count.

The Panel adjourned briefly and on reconvening it confirmed a decision of guilty on the charge. The Athlete had conceded the presence of the prohibited substance in his sample and there was no evidence before the hearing to warrant any other finding.

The Prosecutor called for imposition of a period of ineligibility of two (2) months stating that this case involved a specified substance, it was clear as to how the Prednisone entered his body, it had been prescribed by a doctor for a legitimate condition and was not related to performance enhancement reasons. The fault on the part of the Athlete lay in him not considering himself as an Athlete and therefore not having sufficient

awareness that perhaps he should have done his own check and not rely only on the doctor.

The Athlete was asked whether he wished to put forward any further factors. Mrs Waller asked the panel to consider the circumstances of the Athlete and all the facts surrounding his taking of the medication which suggested that he was naive, but also innocent.

Following a further adjournment the panel confirmed that it believed that it should impose only a nominal sanction on the Athlete.

Its reasons for this were the following:

- a) Corroborated evidence was presented of the fact that the prohibited substance had entered the Athlete's body in medication prescribed by a doctor for a legitimate medical condition, it was a prescribed substance and it was not taken for reasons relating to performance enhancement.
- b) There was a low degree of fault on the part of the Athlete in that the medication had been prescribed by a doctor who the Athlete was reasonably entitled to believe had the requisite knowledge in anti-doping matters and further the Athlete did not know that he could, or should, have applied for a TUE.
- c) It is unlikely that the prohibited substance had any actual performance enhancing effect for the Athlete.

The panel believed that it was marginal as to whether or not there was any fault at all but that an Athlete who competes, even in a disable capacity where he doesn't see himself as a "competition Athlete", should demonstrate at least some awareness and vigilance in respect of anti-doping.

The prosecutor requested a two (2) month ban. The panel believes that this is too severe in the circumstances. Although the Athlete should not have competed while under interim suspension the panel is also of the opinion that if the provisions of the Article 10.10.3 are technically applied then this would also have the effect of rendering the Athlete ineligible for a period longer than what the panel believes fair and appropriate the circumstances. Accordingly the panel believes a nominal period of ineligibility for the period from date of the hearing on 22nd June 2011 to 4th July 2011 is appropriate.

The Athlete is therefore ineligible to participate in any event or activity as prescribed by the SAIDS Anti-Doping Rules from date of the hearing up to and including 4th July 2011.

The Athlete was duly informed of the sanction at the hearing and that a written judgment would follow.

Date: 14 October 2011

Tony Irish (Chair)

Dr Nasir Jaffer

Jowa Abrahams