

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

In the matter of:

SIMONE BUTTON

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 consists of Adv Nicolas Kock, Dr Deon van Tonder and Prof Denver Hendricks
3. The charge against the amateur wrestler, Ms Simone Button (“**Button**”) is contained in a letter dated 4th February 2011 addressed to the wrestler. 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 16th October 2010, you provided a urine sample (A2530752) during an in-competition test at the South African Cadets and Senior Wrestling Championship 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 Amiloride which are classified as Diuretics 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 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 rule violation under Article 2.1”

5. Simone Button is a minor i.t.o. Section 17 of the Childrens Act 38 of 2005 and Section 28(3) of the South African Constitution no 108 of 1996, as amended. She was born on 7th August 1995, therefore at the time of the hearing she was **fifteen 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 a 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. Button as a wrestler and member of the South African Wrestling Federation is subjected to the South African Wrestling Federation's Drug Free Policy and hence compliant re Testing of Minors .i.t.o. Article 5.7 of the Rules. Furthermore, she was accompanied by her mother, Sue Button ('**S-Button**'), 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 Khalid Galant ("**Galant**"). Button was accompanied by her parents Mr and Mrs Button. The South African Wrestling Federation was represented by Mr. Pat van der Merwe ('**Van der Merwe**') who acted as Button's representative at the hearing.
12. In order to secure a guilty verdict from the Committee, Galant needed 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 (40701) was handed into evidence with test mission code 473/10 by SAIDS for the in-competition testing of Button. This form was signed by the athlete and her accompanying mother Sue Button, on 16th 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 did not declare the use of any medication on the Doping Control Form.
15. A Chain of Custody Form was presented into evidence stating that *the bag containing the Sample A 2530 752 was not properly sealed.*
16. The validity of the Adverse Analytical Finding was **not** challenged by Button or her representative, Van der Merwe, in order to argue that the departure from the International Standard could have reasonably caused the Adverse Analytical Finding i.t.o. Article 3.2.1 of the Rules. The Adverse Analytical Finding therefore stands uncontested in this regard.
17. Documentation dating 2nd November 2010 was introduced on the sample analysis (A 2530 752) 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 amiloride.
18. Hydrochlorothiazide and amiloride are classified as Diuretics and fall under the Class S5, "Diuretics and other Masking Agents" on the World Anti-Doping Code 2010 Prohibited List International Standard.
19. 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.”

20. The annual WADA *List of Prohibited Substances and Methods* specify in its introduction that all Prohibited Substances are Specified Substances except Substances in classes S1, S2, S.4.4 and S6.a, and *Prohibited Methods* M1, M2 and M3. Hydrochlorothiazide and amiloride which are classified under Class S5, “Diuretics and other Masking Agents” on the World Anti-Doping Code 2010 Prohibited List falls outside the aforementioned exclusions and are therefore Specified Substances.
21. According to the World Anti Doping Authority (“WADA”) a Specified Substance is a substance that is more susceptible to a credible explanation or non doping explanation under Article 10.4 of the Anti-doping Rules of 2009.’
22. Correspondence with Button on 16th November 2010 requested information from Button 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:
 - Monday 22nd November 2010, at 08h00
 - Tuesday 23th 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 **Friday 19 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 **Friday 19 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”
23. Mr Kallie Erasmus as coach of Button and in his capacity as Northern Free State Wrestling Federation (“**NFSWF**”) informed SAIDS on behalf of Button on 23rd November 2010 that:
- “After consultation with participant Me S Button, she decided that the original test will be accepted and no need for B sample testing.”
24. 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*.”
25. Accordingly, Button is found guilty of contravening Article 2.1 of the Rules having tested positive for the Specified Substances, hydrochlorothiazide and Amiloride.
26. 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.
27. 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.

28. The following section of the commentary on 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))."

29. 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*.

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*."

30. It is Button's submission that it is socially acceptable for the older kids at school to use 'water tablets' to lose weight for the matric dance and other similar events. Button stated that her father uses 'water tablets' to lose weight in order to make his tummy smaller. The athlete mentioned that she was menstruating the week before the competition. The menstruation caused her to swell up and she felt *bloated and her tummy was swollen*. The scale at home was broken and she *could not verify her weight*. This caused her to *panic* and on her own volition take one of her father's 'water tablets' unbeknown to him. Button conceded that this was the first time she has ever taken a 'water tablet not knowing that the consumption thereof was illegal.

31. It is evident from the previous paragraph that the behaviour of the athlete's peers at school served as an indicator to Button of what is deemed as acceptable behaviour. This speaks to Button's deviation from her standard behaviour. Prof Cora Burnett in her article *Influences on the Socialisation of South African Elite Athletes*; published in the South African Journal for Sport, Physical Education and Recreation 2005 27(1); argues that:

" Family members, especially the father or same-sex older siblings seem to exert the strongest influence on athletes under the age of fourteen, **whereas *the influences of peers seem to dominate during later adolescence.***" (Own italics)

32. It was the experience that Button's evidence as a fifteen year old was frank, honest and she accepted full responsibility for her actions without shifting the blame to anybody else.

33. Premenstrual Symptoms and menstrual issues include (but is not limited to) weight gain, bloating, anxiety, tension and difficulty in handling stress.
(http://kidshealth.org/parent/growth/growing/menstrual_problems.html;
<http://health.howstuffworks.com/wellness/women/general/premenstrual-syndrome-signs-and-symptoms.htm>)
34. Button testified to feeling bloated; her tummy being swollen; panicking about her weight which she was not able to measure due to a broken scale at home; then taking a substance she thought was legal.
35. Furthermore, research indicates that teenage girls endure the same PMS symptoms as older females. This experience is amplified when coupled with the emotional and physical changes of adolescence. This can make for an explosive combination if one considers that at fifteen years of age Button is still grappling emotionally with the physical changes to her body that has thrust her to the core of this tumultuous physical and emotional experience.
(<http://www.epiqee.org/menstruation-teenage-pms.html>). These unique and specific set of circumstances considerably negates Button's degree of fault when considering the reduction of the period of ineligibility.
36. Internationally PMS has been accepted as a mitigating factor in several legal cases. Katharina Dalton, who coined the term premenstrual syndrome, states in her article Premenstrual Syndrome in 1986 that:
"English courts have recognised PMS as a factor justifying a finding of diminished responsibility and mitigation in sentencing"
37. The weigh in card shows that Button weighed in at 47,1kg for the SA Cadet Competition on 16th October 2010. On 2nd October 2010 she weighed in at

46,9kg to compete in the South African Youth Tournament. There is an increase in weight of 200 grams in the space of 14 days.

38. It is impossible to ascertain how much of the weight gain was limited by the taking of the 'water tablet'. Button made her weight category comfortably as she was 1,9kg below the 49kg limit for the South African Cadets and Senior Wrestling Championship.

39. The Committee feels that despite the specific circumstances of this case Button still bears some degree of fault in taking the 'water tablet'.

40. In summary: Button, a fifteen year old minor, tested positive for the Diuretics, Hydrochlorothiazide and Amiloride. The A sample (A 2530 752) was not contested. The athlete gave oral evidence in an honest and frank manner accepting all the blame for her actions throughout. Button was menstruating at the time of the incident. She felt bloated, heavy and with a broken scale at home panicked about her possible increase in weight. Unbeknown to her father the athlete took one of his 'water tablets' to lose weight.

41. 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.

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

- a. Simone Button 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 nine (9) 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 Saturday 16th October 2010 and end on Saturday 16th July 2011.

- e. The Panel notes with disappointment that the bag containing the Sample A 2530 752 was not properly sealed.

Adv NG Kock
Chairperson

Prof Denver Hendricks
Committee Member

Dr Deon van Tonder
Committee Member

19th February 2011