

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

ATHLETE : MR CHAD EEKHOUT

SPORTS FEDERATION : ROWING SOUTH AFRICA

DATE OF HEARING : 19 MAY 2011

PLACE OF HEARING : BIDVEST CONFERENCE CENTRE  
OR TAMBO INTERNATIONAL AIRPORT  
JOHANNESBURG

DISCIPLINARY PANEL : MR TONY IRISH (CHAIR)  
DR SELLO MOTAUNG  
PROF. YOGA COOPOO

PROSECUTOR : ADV. NICK KOCK

OBSERVERS : MS WIMPIE DU PLESSIS (ROWING SA)  
MR CON PURCHASE (JEPPE BOYS HIGH  
SCHOOL)

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

The Athlete is a rower and appeared at a SAIDS disciplinary hearing on 19 May 2011 charged with a violation of article 2.1 of the SAIDS anti-doping rules, relating to the presence of a prohibited substance in his sample. The prohibited substance identified in the Athletes sample was Ephedrine which is classified as a stimulant under class "S6 (b) stimulants" on the WADA Code 2011 Prohibited List International Standard.

The Athlete is a sixteen (16) year old schoolboy and accordingly a minor. It was necessary for the panel to deal with the issue of the Athlete's legal capacity, given his

age, both in respect of the anti-doping test administered to him on 5<sup>th</sup> March 2011 and in respect of the hearing.

The panel is satisfied that an Athlete's youth does not excuse him from the application of the WADA, and/or SAIDS, rules. He is subject to the rules, without special dispensation, by virtue of his participation in the sport. His youth may only be considered as a possible factor in determining degree of fault for the purpose of considering sanction.

The evidence before the panel is also that he was assisted by an athlete representative, Ms Gayle Thompson, at the time of testing. The Athlete was assisted by his father, Mr Butch Eekhout, at the hearing. When asked whether or not he wished to raise any issues relating to his legal status as a minor, in relation to the test and/or the hearing, both the Athlete and Mr Eekhout confirmed that he did not and that the Athlete accepted that he was properly subject to both the test result and to the hearing proceedings. The Athlete confirmed that he wished the hearing to proceed, and further confirmed that he chose not to be legally represented.

The Athlete did not request a B sample and he admitted to the presence of Ephedrine in his sample.

The Athlete acknowledged that he had received copies of the SAIDS letter dated 5 April 2011 advising him of the Adverse Analytical Finding, the Doping Control Form dated 5<sup>th</sup> March 2011, the A Sample Analysis Report dated 28 March 2011 and the SAIDS letter dated 4 May 2011 advising him of the Anti-doping Rule Violation and the date of the hearing. The Athlete confirmed that he accepted these documents as evidence and did not wish to challenge their contents.

The Athlete requested that evidence be given by Ms Wimpie Du Plessis of Rowing SA in her capacity as a registered pharmacist. The proceedings were adjourned briefly to allow Ms Du Plessis an opportunity to obtain information, specifically relating to Sinucon, from the airport pharmacy. Ms Du Plessis handed in two documents, one headed "Investigation of 4-in-1 flu remedy in combination with Corenza C after an athlete tested positive for Ephedrine" and the other headed "Athlete's responsibility as it relates to Prohibited Substances as determined by the South African Institute for Drug Free Sport and WADA". Ms Du Plessis also produced a pack of Sinucon

obtained from the airport pharmacy. She presented evidence on its packaging which indicated that it contained Ephedrine HCl 6 mg.

The Athlete produced a container, with contents of 4-in-1 Flu Combination purchased by the Athlete's mother at Ackermans Pharmacy in Primrose, Johannesburg. Ms Du Plessis gave evidence that this contained 1 x Famucaps capsule, 1 x Sinucon tablet, vitamin C 250 mg and Ibuprofen 200 mg. The panel considered the following further evidence introduced, and/or given, by the prosecutor, the Athlete and Ms Du Plessis during the hearing as relevant:

1. The Athlete is a young man on a sports bursary at Jeppe Boys High School. His main sports are rugby in the winter and rowing in the summer. Despite his youth he is intelligent and aware of the danger, and consequences, of taking prohibited substances. Although his school doesn't offer any direct anti-doping education (which it should given its size and advanced sporting programme) he was clearly aware of his responsibility to check the contents of any medication consumed by him.
2. Ephedrine is a stimulant and excess beyond the permissible WADA concentration limit of 11ug/ml is prohibited in competition. It may have the effect of enhancing the Athlete performance. It is also however a specified substance generally present in certain medication used for treating medical conditions such as colds or flu. The test results confirm that the Athletes concentration level was 13 ug/ml.
3. The Athlete had been suffering from a cold and flu for several days leading up to the event and on the day of the event on 5 March 2011. He gave evidence of a cough, runny nose, chest congestion and headache
4. The Athlete's mother had purchased medication, including the 4-in-1 Flu Combination from Ackermans Pharmacy in Primrose, Johannesburg. This had been purchased 'off the shelf' and not even from behind the counter. The panel understands that this is likely to constitute an offence by the pharmacy under medical and pharmaceutical legislation for the reason that it is the type of medication which, although available without a doctor's prescription, should when sold be accompanied by professional advice as to its contents. Furthermore the container in which it was sold was not labelled as to the contents as it should have been in terms of medical and pharmaceutical legislation. The effect was that a customer purchasing the 4-in-1 Flu Combination would not have been

aware of its contents. SAIDS is urged to consider taking up these contraventions by Ackermans Pharmacy with the relevant industry authority.

5. The Athlete took the 4-in-1 Flu Combination, without checking its contents, in the days leading up to the event and on the day of the event. On the day he continued to suffer from a cold and flu but nevertheless was able to compete in two races. He rowed in a fours heat and a fours 'plate' race. He rowed badly because of his cold and flu and the team performed badly in the heat, therefore only making it to the 'plate' race. They however won the 'plate' race. His fours team did worse than expected on the day.
6. When tested the Athlete declared on his doping control form that he had taken, inter alia, Ackermans 4-in-1 Flu tablets. This was the same medication as produced at the hearing.
7. It was highly unlikely that any of the other medication declared in the doping control form (namely Acc 200, Corenza C, megraine cocktail, Syprodene and Vitamin c tablets) contained Ephedrine.
8. Ms Du Plessis had researched the contents of the Ackermans 4-in-1 Flu Combination, including by way of a telephone conversation with the resident pharmacist, and confirmed that the Flu Combination included a Sinucon tablet, which contained Ephedrine.
9. The Athlete had been under provisional suspension since 5 April 2011. The rowing season was over and would only commence again in September 2011. However the Athlete is on a sports bursary at Jeppe Boys High School and his main sport of rugby had recently commenced its season. Mr Purchase confirmed that if found guilty and unable to participate in rugby or rowing for a period the Athlete would nevertheless not lose his sports bursary.

Following a short adjournment the panel pronounced a guilty finding on the charge. The evidence of the presence of Ephedrine in the Athlete's sample was uncontested and accepted. No other evidence before the panel justified a finding other than one of guilty.

It was explained that the proceedings would be adjourned so that a written judgement could be communicated to the Athlete in regard to an appropriate sanction. He was reminded that he remained on provisional suspension pending communication of any sanction. The prosecution asked for imposition of a sanction of three (3) months period of ineligibility applicable to all sports in which the Athlete participated. The prosecution contended that Article 10.4 applied but that there was some degree of

fault on the part of the Athlete primarily because he knew that the medication he took could potentially have contained a prohibited substance and that he could, and should, have taken steps to ascertain the contents irrespective of the fact that this information was not made readily available to him as it should have been (by correctly marking the contents of the container and by selling the medication from behind the counter).

The panel was required to determine whether circumstances exist such that it was able to consider any elimination, or reduction, of the period of ineligibility as provided for under Article 10.4.

It is the panel's finding that the provisions of Article 10.4 do in fact apply. Ephedrine is a specified substance and the evidence points to it having entered the Athletes body when he took the Ackermans 4-in-1 Flu Combination, which included a Sinucon tablet. This was taken on the days leading up to the event and on the day of the event. The 4-in-1 Flu Combination was taken by the Athlete as medication for a cold and flu and it is the panel's considered opinion that it was not taken with the intention of enhancing the Athletes sports performance or to mask a performance enhancing substance.

The panel is accordingly able to eliminate, or reduce, the period of ineligibility and this being a first violation may award, at a minimum, a reprimand and, at a maximum, a period of two (2) years ineligibility. As Article 10.4 does apply the panel is not obliged to consider this matter under Article 10.5.

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.

The panel concludes that there was not a complete absence of fault on the part of the Athlete. He is an intelligent young man who conceded that he was aware that the contents of the 4-in-1 Flu Combination could possibly contain a prohibited substance. He clearly indicated his awareness of the dangers of simply taking medication without checking the contents. Against this one must weigh up the fact that because the medication was freely available "off the shelf" it was easier to make an assumption that it was safe to take. The commentary applicable to both Articles 10.4 and 10.5 indicates that one can take into account youth and a lack of experience when assessing the degree of fault. The panel is therefore able to take into account the Athlete's youth when considering his error of judgement in making the assumption that

the medication was safe to take. The panel found that some balance between a stricter approach as applied in the case of Andrea Raducan (Arbitration CAS ad hoc division (O G Sydney) 00/011) and the recognition of youth as a factor in the case of Eric Thompson (CAS 2008/A/1490 WADA v USADA and Thompson) was appropriate.

The Athlete was also asked by the prosecution whether, if found guilty, he would be prepared to participate, in anti-doping education at school level. His indication that he would be prepared to do so was important as anti-doping education is a constant necessity and for school children to learn from one of their kind about his unfortunate experience could be of great assistance. Jeppe Boys High School is urged to follow this up.

The prosecution has asked that a period of ineligibility of three (3) months be imposed. The panel has no reason to believe that this is inappropriate in the circumstances. We are however able to, and do, take into account the period under which the Athlete was under interim suspension pending the hearing, namely from 5<sup>th</sup> April 2011 to 19<sup>th</sup> May 2011 (a period of approximately six (6) weeks). We have considered also taking into account the further two (2) week period from date of the hearing to date of written judgement. We don't however believe that the period of prospective ineligibility should be reduced by an additional two (2) weeks.

In terms of the provisions of Article 10.10 we consider that the period of ineligibility should apply not only to rowing but any other sport in which the Athlete would otherwise participate at school.

Accordingly, we find as follows:

1. The Athlete is guilty, as charged, of an anti-doping violation in terms of Article 2.1 of the rules.
2. The Athlete is ineligible to participate in any organised sport at school, club or higher level, or as envisaged in Article 10.10, for a period of three (3) months which period should end on 5<sup>th</sup> July 2011.

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Mr. Tony Irish (Chair)

Dr. Sello Motaung

Prof. Yoga Coopoo