

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

ATHLETE	MS HELGA MATHEE
SPORTS FEDERATION	COMRADES MARATHON ASSOCIATION
DATE	THURSDAY 12 SEPTEMBER 2013
VENUE	SAIDS OFFICES, NEWLANDS CAPE TOWN, SOUTH AFRICA
DISCIPLINARY PANEL ("PANEL")	PROF DEBBIE HAMMAN (CHAIRPERSON) DR GEORGE VAN DUGTEREN (MEDICAL REPRESENTATIVE) MR HASNODIEN ISMAIL (SPORT ADMINISTRATOR)
PROSECUTOR	MR NIC KOCK MR R CULLIS MR K VAN DER MERWE
SCRIBE	MS T FUNDA
OBSERVER	MR FAHMY GALANT (SAIDS)
ANTI-DOPING RULE VIOLATION	VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES

APPLICABLE LAW

SAIDS is an independent corporate body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997, as amended ("the Act"). SAIDS formally accepted the World Anti-Doping Code ("WADC"), adopted and implemented in 2003 by the World Anti-Doping Agency ("WADA"), in 2005. SAIDS thereby introduced anti-doping rules and regulations to govern all sports under the jurisdiction of SASCO, the South African Sports Confederation and Olympic Committee as well as any national sport federation.

The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are governed by the Rules.

This SAIDS Anti-Doping Disciplinary Panel ("the Panel") has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete, Ms Mathee, has violated any of the said Rules, and if so, what the consequences of that violation should be.

PROCEDURAL MATTERS

The Athlete elected not to attend the hearing but was represented by Mr M Van Zyl, an attorney. No representative from the Comrades Association, though notified, was in attendance.

The Athlete had been given proper notice of the inquiry.

CHARGE RELATING TO ANTI-DOPING RULE VIOLATION

The Prosecutor presented a bundle of documents as both documentary and corroborative evidence relating to the charge. Mr van Zyl, representing the Athlete, confirmed that all the documents were uncontested.

The charge against the Athlete is contained in written correspondence sent to the Athlete dated 5 September 2013. The charge sheet reads as follows:

You are formally 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 2 June 2013, you provided a urine sample (2725656) during an in-competition test. Upon analysis, the South African Doping Control Laboratory

reported the presence of prohibited substances in your urine sample. The substance identified in your sample was:

The *Glucocorticosteroid, Betamethasone*, categorized under **Class 9** **Glucocorticosteroids** on the World Anti-Doping Code 2013 Prohibited List International Standard.

The Athlete declined the opportunity to have her B-Sample tested.

BACKGROUND

The Athlete was advised, subsequent to the adverse analytical finding, to apply for a (retroactive) Therapeutic Use Exemption (TUE) for the use of the prohibited substance *Betamethasone* as contained in the product *Celestone Soluspan* on 1 August 2013. The Athlete did so but was advised in writing by SAIDS on 22 August 2013 that the application for the TUE had been denied. Reasons for the denial were supplied.

That being the case, the use of the prohibited substance Betamethasone remains an anti-doping rule violation matter and the current Panel's mandate is to

- (i) make a finding on the allegation of the anti-doping rule violation and
- (ii) reach consensus on an appropriate sanction.

SUMMARY OF EVIDENCE

1 The documents record the following:

That the Athlete, Ms Mathee, is a 38 year old female athlete who competed in the Comrades Marathon on 2 June 2013 in the Women's category when she was tested. Ms Mathee finished in 12th position in her category.

The Prosecutor tendered evidence relating to *inter alia* the Doping Control Form, the Laboratory A-Sample Analysis Report (the Athlete declined a B Sample analysis) which indicated the presence of the prohibited substance referred to in the charge sheet, and the Chain of Custody Form. The bundle of documents was presented and marked A to L. The Athlete's legal representative confirmed receiving all the listed documents and confirmed that all of the information and findings embodied in these documents were uncontested.

- 2 The Prosecutor, with Mr Fahmy Galant providing support for the prosecution, advocated that
- Sample A stands on its own (no request for a B Sample analysis);
 - there was thus sufficient evidence of a violation of Article 2.1;
 - according to Article 2.1.1 the Athlete is personally responsible for substances that enter her system;
 - the Athlete is guilty of the anti-doping rule violation as charged;
 - the most severe sanction in an anti-doping rule violation where a *prohibited substance* is found is a two (2) year period of ineligibility in terms of Article 10.2 for a first violation, unless the Panel concludes that a reduction of the penalty in terms of Article 10.4 is appropriate.
- 3 Dr van Dugteren provided a comprehensive explanation of the use and effects of the *Betamethosone* and concluded that the appearance of the *Prohibited Substance* in the Athlete's A Sample was compatible with the administration of *Betamethasone* by intramuscular injection into the *Piriformis* muscle, to treat the *Piriformis syndrome*. This is supported by the detailed medical records of both the doctor and physiotherapist consulted by Ms Mathee.
- 4 According to the detailed medical records submitted by the Athlete and signed by the medical practitioners, the *Piriformis syndrome* diagnosed on 16 May 2013 proved resistant to both the numerous physiotherapy treatments and the *Voltaren* injection administered on 16 May 2013. With the marathon event days away, the decision to treat the *Piriformis* inflammation with *Celestone Soluspan*, a strong anti-inflammatory agent containing *Betamethasone*, was taken and carried out on 23 May 2013.

At this point the Chairman informed the Athlete's legal representative of the opportunity for an appeal against the denial of the delayed TUE application to the SAIDS Appeal Board in terms of Article 13.9.1. The legal representative, Mr Van Zyl, expressly stated that the Athlete did not wish to appeal the TUE Panel's decision not to grant a retroactive TUE.

FINDING ON THE CHARGE

After a short adjournment for deliberation, the Panel agreed that the presence of the substances identified as the *Prohibited Substance* i.e. *Betamethasone*, was proven. The Panel has therefore determined that the Athlete is guilty of the anti-doping rule violation

as set out, and is therefore in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug Free Sport.

PANEL DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION AND POSSIBLE REDUCTION

1 THE ANTI – DOPING RULE VIOLATION

Article 2.1.1 of the Rules reads as follows:

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.

This Article is the foundation of the strict liability principle applied to anti-doping rule violations. All athletes are required to adhere to a clear and definitive standard of compliance. Athletes are held accountable should they fail to adhere to these standards. Strict liability excludes ignorance of the Anti-Doping Rules and /or Prohibited List as an excuse.

The liability that rests on the Athlete *in casu* has been established.

The Athlete has been found guilty of a doping offence in respect of the *Prohibited Substances*, namely the glucocorticosteroid *Betamethasone* on the World Anti-Doping Code 2013 Prohibited List International Standard.

2 SANCTION

The Panel has concluded that the Athlete is guilty of the anti-doping rule violation *as set out and addressed by the Prosecutor. The Athlete has committed a violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug Free Sport.*

The only live issue for determination by the Panel was the question of the applicable sanction in respect of the proven charge.

2.1 APPROPRIATE SANCTION

The Prosecutor and the Doping Control Manager confirmed that the current anti-doping offence was a first anti-doping rule violation for the Athlete.

The Panel agreed that the applicable sanctions are firstly the disqualification of any results the Athlete achieved in the 2013 Comrades Marathon, and forfeiture of prizes, medals and points received as per **Article 9** and **Article 10.1** of the Rules. In addition, the prescribed two (2) year period of *Ineligibility*, as per **Article 10.2**, is applicable to the Athlete unless a reduction in terms of **Article 10.4** is justified.

2.2 REDUCTION OF SANCTION

In view of the fact that the Glucocorticosteroids (Class S9) are *Specified Substances*, the Panel then discussed the possibility of a reduction of the prescribed sanction in terms of **Article 10.4: Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances**.

Article 10.4 sets two conditions for the reduction of the *Period of Ineligibility* applied to an athlete found guilty of an anti-doping rule violation.

1. The Athlete must establish on a balance of probabilities, *how the Prohibited Substance* entered her system. Ms Mathee has satisfied that requirement with uncontested and detailed medical reports confirming that the *Betamethasone* contained in the *Celestone Soluspan* was injected into her body on 23 May 2013.
2. The Athlete must also comfortably satisfy the Panel that the substance was not intended to enhance her performance. Corroborating evidence in addition to the Athlete's word is required. The corroborating evidence is contained in the uncontested and detailed medical reports signed and submitted by both the general practitioner and physiotherapist who treated Ms Mathee.

The Panel is comfortably satisfied, on the evidence presented, and also taking into account the nature and timing of the use of the *prohibited substance*, the swift and open disclosure and co-operation of the Athlete in submitting documents and records, that the Athlete took the substance in order to treat the medical condition and not to enhance her performance. The Athlete's medical practitioners had attempted to solve the *Piriformis syndrome* with alternative and more conservative treatment including regular

physiotherapy treatments as well as an anti-inflammatory (*Voltaren*) injection. The condition persisted and, after making enquiries, including consulting the SAIDS website, and being incorrectly advised that the glucocorticosteroid would not linger in her system longer than 8 days, resorted to the *Celestone Soluspan* injection 10 days prior to the marathon event.

Thus the key question of whether the Athlete, Ms Mathee, has fulfilled these two conditions is answered in the positive.

Reduction of sanction

Once the Panel was satisfied that the two cumulative pre-conditions in **Article 10.4** had been met, the Athlete's degree of fault became relevant as the degree of fault influences the potential reduction of the *period of ineligibility*.

For a first violation the sanction at a minimum is a reprimand and at a maximum two (2) years *period of ineligibility*. The Panel members turned their attention to a possible reduction of the sanction and of necessity, to the degree of fault on the part of the Athlete.

Article 10.4 of SAIDS Rules of 2009 states that the sanction can be reduced depending on the fault and/or negligence of the Athlete

As reported in the **Final Arbitral Decision** delivered by CAS after several appeals in the cases CAS 2008/A/1591, CAS 2008/A/1502 and CAS 2001/A/1616 involving ASADA, WADA, the UCI and the Athlete Mr N O'Neill, the WADA Commentary offers non-binding guidelines regarding measuring the *qualifying element of fault, significant or otherwise*. In ***Puerta v ITF (CAS 2006/A/1025)*** it was held that measuring the fault or negligence of the athlete with respect to the analytical positive result influences the imposition of sanctions and if the fault or negligence is not significant, an opportunity arises to reduce a sanction that would otherwise arise by the strict liability principle.

This once again brings into sharp focus the extraordinarily high standard of care and vigilance required of athletes who have to ensure that no prohibited substances enter their bodies. Athletes have to exercise the *utmost care*.

In ***WADA v CONI, FPI & Comasiri (CAS 2008/A/1479)*** the fact that an athlete is prepared to take the risk with respect to a detection period of a substance, which was prohibited in-competition, amounts to *negligence* on the part of the athlete.

Ms Mathee deliberately used the *prohibited substance*. She was aware the substance was prohibited. Ms Mathee was prepared to take the risk regarding the detection period of the in-competition *prohibited substance*. This amounts to negligence.

In addition, the Panel unanimously agreed that though Ms Mathee as well as her general practitioner had made some effort to research use of the *glucocorticosteroid*, including an internet search, the decision to ultimately rely on a fellow athlete/manager who was not a medical specialist or sports medicine expert was also negligent. The advice of a medical specialist would have been the more prudent course of action.

In assessing Ms Mathee's degree of fault/negligence, the Panel has considered circumstances specific and relevant to Ms Mathee. The Panel concluded that the Athlete's behavior falls short of the expected standard of care, namely the *utmost care*.

There is therefore justification for a *reduction* as opposed to the complete *elimination* of the *period of ineligibility*.

In view of the facts stated above and after careful consideration the view of the Panel is that a *period of ineligibility* of three (3) months would be an appropriate sanction.

CONCLUSION

Finding: An anti-doping rule violation has been established.

Applicable sanction

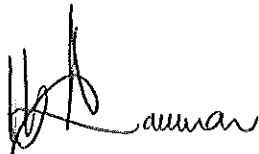
The sanction on the finding of guilty is as follows:

1. The Athlete is ineligible to participate in any organised sport as envisaged in Article 10.10 of the Rules, for a period of three months, which ineligibility includes the coaching of sport;
2. The period of three months will be effective as from 1 August 2013 (being the date of notification by SAIDS to the Athlete to apply for a TUE retroactively,

from which date Ms Mathee ceased participation), to terminate at midnight on 31 October 2013;

3. The above anti-doping rule violation occurred during the Comrades Marathon held on 2 June 2013. The athlete secured 12th place in the Women's Category. The additional sanctions of automatic disqualification of the Athlete's results in the aforementioned competition and forfeiture of medals, points and prizes in terms of Article 9 and Article 10.1 is applicable.

This done and signed at Cape Town, September 2013.

A handwritten signature in black ink, appearing to read 'D Hamman', with a stylized flourish above the name.

Professor Deborah Hamman (Chairperson)

For and on behalf of the SAIDS Anti-doping Disciplinary Panel

Dr George van Dugteren, Mr Hasnodien Ismail