



Arbitration CAS (Oceania registry) A 2/99 Australian Olympic Committee (AOC) and Amateur Boxing Union of Australia Inc (ABUA) / E., award of 2 September 1999

Panel: D. H. Bloom (Australia), Sole Arbitrator

Boxing

Doping (terbutaline)

Obligation to declare the use of such substance

Good faith of the athlete

- 1. Terbutaline is a bronchodilator and, according to the IOC list of prohibited substances, is permitted by inhaler only when its use is previously certified in writing by a respiratory or team physician to the relevant medical authority. It is clear that there cannot be more than one relevant medical authority. Further, the athlete must know, or be able readily to ascertain, to whom the giving of such certification will operate so as to take Terbutaline off the prohibited substance list. It cannot be left to the AOC in an action against an athlete and, a fortiori, after the event, to say who it might in its discretion have treated as satisfying the description.**
- 2. If one requires of athletes that they maintain enquiries, it is surely the correlative duty of all those sporting bodies involved in the important fight against drugs in sport to likewise keep up to date and to ensure the steady dissemination to athletes and their coaches - not just of information - but of information which is unambiguously correct. There is a common cause against drugs in sport and actions directed towards that end are necessarily well intentioned. However, little can be achieved in a fog of uncertainty. If sporting bodies do not provide the right information, then it is quite unfair that athletes alone should bear the significant consequences.**

The respondent is a boxer and holds the Australian Amateur light heavyweight title. He won that title on 1 November 1998. On the same day, after the fight, he was asked to take a drug test. On his drug testing form he was required to state, inter alia:

“Details of medication used by the competitor in the last week, including over-the-counter medications, prescription drugs and any other substance taken by mouth, inhalation, injection or suppository”.

Under the headings:

<i>Name of Medication</i>	<i>Dosage</i>	<i>Last Taken</i>
the Athlete printed:		
<i>Bricanyl</i>	<i>2 puff</i>	<i>1.11.98</i>
<i>Pulmicorte</i>	<i>1 puff</i>	<i>1.11.98</i>
<i>Garlic & Horseradish and vitamin C</i>	<i>1-2 tabs</i>	<i>1.11.98"</i>

The Athlete returned a positive test in that his sample showed the presence of Terbutaline. Terbutaline is a bronchodilator and, according to The Australian Drug Guide, 1991, "*is a highly specific drug in that it only activates a sub-group of adrenaline receptors (beta-2) found on the surface of muscle cells within the walls of the bronchial airways*".

Bricanyl's composition is Terbutaline Sulphate. Terbutaline is exemplified as a prohibited substance in Chapter II, Class A, "Stimulants" in the International Olympic Committee's ("IOC") Medical Code provided for under Rule 48 of the Olympic Charter as in force from 31 January 1998.

An asterisked note to the class indicates that Terbutaline is, however, "*Permitted by inhaler only when [its] use is previously certified in writing by a respiratory or team physician to the relevant medical authority*".

Thus while Terbutaline is a prohibited substance, Terbutaline whose use satisfies the last quoted words is not a prohibited substance.

It is necessary to now turn to the Anti-Doping Policies of the Australian Olympic Committee (AOC) and the Amateur Boxing Union of Australia Inc (ABUA). So far as is relevant these provide as follow:

"AOC ANTI-DOPING POLICY

1.1 Athlete: means:

- (a) a member or potential member of an Australian Olympic Team; or
- (b) members of a Member Body or persons competing in any competition under the control or auspices of a Member Body.

Doping: means:

- (a) the presence in a person's body tissue or fluids of substances belonging to classes pharmacological agents; or
- (b) the use of various methods;

prohibited by a relevant IF, or if the IF does not prohibit substances and/or methods or during the Olympic Games, then such substances and methods described in Chapter II of the Medical Code;

Doping Offence: means and includes:

(a) *Doping;*

Medical Code: means the Medical Code provided for under Rule 48 of the Olympic Charter as in force from time to time.

Member Body: means any body which is a member of the AOC and which controls a branch of sport in Australia on the Olympic programme.

Officers: means

- (a) *the members of the committee or board (by whatever name called);*
- (b) *the secretary;*
- (c) *the treasurer;*
- (d) *the executive officer (by whatever name called); and*
- (e) *the Anti-Doping Control Officer; of a Member Body, and*
- (f) *any other person who is in a position of authority within a Member Body.*

Officials: means all persons who administer, manage, coach, assist or are otherwise involved in sport other than as an Athlete or as an Officer.

Responsible Authority: means the ADC, the IOC, IFS, Sydney Organising Committee for the Olympic Games, the Australian Sport Commission, the Australian Institute of Sport, Member Bodies, State Institutes of Sport and State Sporting Associations.

8. SANCTIONS

8.1 *Subject to clauses 8.5 and 8.6, any person who is found to have returned a positive test result for Doping will be ineligible for membership of or selection in any Australian Olympic Team, or to receive funding from or to hold any position on the AOC as follows:*

- (1) *for a first infraction other than in the cases provided in paragraph (2) - suspension for two years;*
- (2) *for a first infraction in cases of a positive result of ephedrine, phenylpropanolamine pseudoephedrine, caffeine, strychnine or related compounds - suspension for a maximum period of three months.*

9. CAS HEARING

9.1 *A hearing under this clause 9 will be conducted pursuant to the Code of Sports Related Arbitration. All parties to any such hearing may appear in person (or if a body corporate to be represented by any of its officers) or to be represented by their legal representative.*

9.2 *Where the alleged Doping Offence arises out of a positive test result for Doping, the CAS may only determine that a Doping Offence has not occurred if the Athlete establishes on the balance of probabilities that:*

- (1) *the sampling or testing procedure was not conducted in accordance with clause 4;*
- (2) *the samples which led to the positive test result were not those of the Athlete; or*

(3) *the samples which led to the positive test result were so contaminated as to affect the result of the test; or any combination of these factors.*

9.3 *In all other instances of alleged Doping Offences the AOC bears the onus of establishing on the balance of probabilities that the Doping Offence has been committed.*

9.4 *Subject to clauses 9.4 and 9.5 if the CAS determines that a person has committed a Doping Offence as detailed in the infraction notice, it will impose the person the relevant sanction pursuant to clause 8.1- 8.3 and determine whether the person ought repay all or part of all grants paid to him or her by the ADC.*

9.5 *In any hearing of the kind referred to in clause 9.2, the CAS may reduce the sanction (but not overturn the Doping Offence) only if the Athlete establishes on the balance of probabilities that extenuating circumstances exist and that as a result of those extenuating circumstances the sanction should be reduced.*

For the purposes of this clause, "extenuating circumstances" means circumstances where the Athlete:

(1) *did not know or suspect that the relevant substance was prohibited and had no responsible grounds to know or suspect the substance was prohibited; ... "*

ABUA ANTI DOPING POLICY

... Athlete: means:

- (a) *any person:*
 - i. *competing; or*
 - ii. *who in the previous twelve (12) months has competed in any competition under the control or auspices of the ABUA; or*
- (b) *any person:*
 - i. *using; or*
 - ii. *who in the previous twelve (12) months has used the facilities of the ABUA; unless retired from competition pursuant to clause 15.*

Doping: means

- (a) *the presence, in a person's Sample, of substances belonging to classes of pharmacological agents; or*
- (b) *the use of the various methods, prohibited by the AIBA, or if the AIBA does not prohibit substances and/or methods or during the Olympic Games, then such substances, methods and classes of drugs described in Chapter 11 of the Medical Code.*

Medical Code: means the Medical Code provided for under Rule 48 of the Olympic Charter as in force from time to time.

8. SANCTIONS

8.1 *An athlete who is found to have returned a Positive Test Result for Doping will:*

- (1) *unless otherwise determined by the CAS, be required to repay to the ABUA all funding and grants received from the ABUA since the earlier of the implementation of this policy or the occurrence of the Doping Offence; and*

(2) *have all awards, placings and records won from the date of the occurrence of the Doping Offence withdrawn; ...*

8.6 *Notwithstanding clauses 8.1- 8.5, the CAS has an overriding ability under clause 9.5 to reduce the sanction imposed in respect of a Positive Test Result.*

9. CAS HEARING

9.1 *A hearing under this clause 9 will be conducted pursuant to the Code of Sports-Related Arbitration. All parties to any such hearing may appear in person (or if a body corporate to be represented by any of its officers) or to be represented by their legal representative.*

9.2 *Where the alleged Doping Offence arises out of a Positive Test Result, the CAS may only determine that a Doping Offence has not occurred if the Athlete establishes on the balance of probabilities that:*

- (1) *the Sampling or Testing procedure was not conducted in accordance with this policy;*
- (2) *the Samples which led to the Positive Test Result were not those of the Athlete; or*
- (3) *the Samples which led to the Positive Test Result were so contaminated as to affect the result of the test; or any combination of these factors.*

9.3 *In all other instances of alleged Doping Offences of the ABUA bears the onus of establishing on the balance of probabilities that the Doping Offence has been committed.*

9.4 *Subject to clauses 9.5 and 9.6 if the CAS determines that a person has committed a Doping Offence as detailed in the infraction notice, it will impose on the person the relevant sanction pursuant to clauses 8.1- 8.4 and determine whether the person ought to repay all or part of all grants paid to them by the ABUA.*

9.5 *In any hearing of the kind referred to in clause 9.2, the CAS may reduce the sanction (but not overturn the Doping Offence) only if the Athlete establishes on the balance of probabilities that extenuating circumstances exist and that as a result of those extenuating circumstances the sanction should be reduced.*

...

9.7 *In any hearing by CAS:*

- (a) *CAS will decide according to the laws applicable in New South Wales;*
- (b) *the ABUA will bear the costs of CAS but each party will bear their own costs of the hearing.*
- (c) *the provision of R43 of the Code of Sports-Related Arbitration will not apply, and*
- (d) *the CAS award will be made public.”*

LAW

1. The Athlete is an “Athlete” for the purposes of both Anti-Doping Policies.
2. The Athlete started boxing in 1987 and boxed in his first tournament for the Amateur Boxing Association League in Queensland in 1989. He has been an asthmatic for some 7 years. His Doctor, – a general practitioner – prescribed Pulmicort and Bricanyl for his asthma.

3. He has been told by his Doctor that he must take the prescribed medication daily as a preventative measure, especially on the day of a fight, because of the increased stress to his lungs when he fights.
4. He began boxing in Western Australia in 1998 after he moved there from Queensland in 1996. He registered with the ABUA in June 1998.
5. Whenever asked, he has declared that he takes Bricanyl. Thus he declared it to the League at his Annual Medical Examination; but not to the Union whose medical report form does not ask the relevant question. The Union's medical report appears as part of the Athlete's "competition record book" which was exhibited to his first statement. There is no question in it which would elicit a response of the kind he made to the part of the Drug Testing Form extracted above.
6. Had he been asked, I entertain no doubt that he would have declared that he took Bricanyl; it was not something which he hid. He had no reason to hide it. Its use was therapeutic, not systemic. It was not suggested that its use enhanced his performance or indeed, that it was taken for that purpose; only that he had failed to provide the proper anterior notification which had it been given, would have removed the substance from the list of prohibited substances.
7. No prior certification of the kind specified in the Medical Code was in fact given.
8. That it was not given is not the result of any wilful failure on the part of the Athlete. Rather it is the result of a lack of knowledge of the requirement to have the certificate provided, a lack of knowledge apparently shared by the ABUA.
9. The Athlete believed that notification on the drug testing form of asthma medication being taken would suffice. This view was consistent with the view of the ABUA communicated in October 1998 to its State Officials. It was not disputed that the Athlete did not know that Terbutaline was a prohibited substance. The sole question for me is whether the Athlete has established, on the balance of probabilities, that not only did he not suspect that it was a prohibited substance, but that he had, as a 1 November 1998, no reasonable grounds to know or suspect that Terbutaline was a prohibited substance.
10. As set out earlier, if Terbutaline is to change in its status from a prohibited to a permitted substance a notification is required in the form of certification in writing by:
 - (1) a respiratory or team physician
to
 - (2) the "relevant medical authority".

11. The term “relevant medical authority” is nowhere defined. No doubt the IOC assumed that in each country, each sporting body would, in its Doping Policy, identify “the relevant medical authority”. This has not been done by the AOC or the ABUA.

In submissions, the Counsel for the AOC said:

“...the use of Terbutaline by Mr. [E.] would have been permitted if he had notified the ABUA, the International Boxing Federation, Medical Commission of the Australian Olympic Committee or the Australian Olympic Committee itself or the Australian Sports Drug Agency. Also I previously indicated at our last directions bearing that AOC and ABUA would have recognised notification to a state federation affiliated to the ABUA or a declaration to a medical team physician authorised by the ABUA. The ABUA does have a team physician”.

12. With respect, this submission only highlights the problem. The exception for Terbutaline whose use is appropriately certified is such as to provide a safe harbour to the Athlete. The notification must be by a physician of the class nominated to “the relevant medical authority”. There cannot be more than one relevant medical authority. Further, the Athlete must know, or be able readily to ascertain, to whom the giving of such certification will operate so as to take Terbutaline off the prohibited substance list. It cannot be left to the AOC, however well intentioned, in an action against an Athlete and, *a fortiori*, after the event, to say who it might in its discretion have treated as satisfying the description. The discretion of the AOC is no substitute for precision and clarity in this area.

13. In CAS 94/129 the Tribunal said:

“The fight against doping is arduous, and it may require strict rules. But the rulemakers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders”.

These words were quoted with approval by a differently constituted Tribunal in CAS 96/149, the latter stressing the importance of *“an approach to interpretation which seeks to discern the intention of the rule-maker, and not to frustrate it”*.

14. I have taken these words into account but applying them is by no means easy.
15. The word “authority” has been considered in other contexts – see for example the cases referred to in *Federal Commissioner of Taxation v Bank of Western Australia Ltd* (1995) 133 Australian Law Reports 599 (Full Federal Court of Australia) at 616-619.

The meaning will obviously depend upon context. Here the authority must be a “medical” one. The non-medical entities to which the AOC made reference cannot, therefore, satisfy the description. Nor, in my view, can the “team physician” as he or she is in the class of possible certifiers, and could hardly certify to him or herself. The only possibility remaining from the

entities nominated by the AOC is the Medical Commission of the AOC. I do not know the nature of this Commission; and in particular as to whether it has the status of an “authority”.

But if it (or any other entity) is to be specified as “the relevant medical authority” for the purposes of the exception then that should, in my view, be done by the various Australian Sporting Bodies who are members of the AOC. Ideally this would involve the insertion in the Anti-Doping Policy of each Member Body of a definition of “the Relevant Medical Authority”, with a cross-referenced definition in the AOC's Policy – *cf.* the definitions of “Officers”, “Officials” and, especially, “Responsible Authority” in the AOC Policy. For the present, the only way for an Athlete to obtain the benefit of the safe harbour may be for written certification by a respiratory or team physician to be addressed to both “The relevant Medical Authority AOC” at the address of the AOC and “The Relevant Medical Authority (Member Body's name)” at the address of the Member Body. But that is hardly satisfactory; and the amendments to obtain certainty would, in my view, be easily achieved.

16. It is hardly to be doubted that the ABUA regards it as important to disseminate information concerning doping to its State Secretaries.
17. Exhibited to E.'s first statement were three letters from the Secretary-General of the ABUA, Mr. Arthur Tunstall to the State Secretaries, two of which letters post-date E.'s drug test. These two are worth quoting. They show, in my opinion, that even as late as February of this year, those charged with administering the Sport were still unaware of the precise requirements of the IOC's Medical Code so far as concerns both the person certifying and the authority to whom certification must be given.

Those letters are as follows:

20 January 1999

“Gentlemen

Subject: Doping Policy

I cannot stress strongly enough the seriousness of a doping offence and the implications that arises from a positive test.

It is obvious that my previous correspondence of the 2nd October and 22nd December 1998 especially relating to Asthma has been ignored. I once again enclose for your information a copy of the ABUA Drug Policy, which I suggest you READ carefully. Also enclosed is another paper relating to Asthma.

I have made it very clear in the past (or I thought I did), that any boxer taking a drug test is specifically asked "are you taking any medication of any kind" and if so (sic) tell the tester.

If a boxer fails to notify the tester and he is found guilty then he only has himself to blame and must suffer the consequence which is clearly spelt out in the Drug Policy, i.e.: 2 years suspension, banned from ever competing in the Olympic or Commonwealth games as well as International Competition. If he is receiving any money from any Government Agency or the Olympic or Commonwealth Games Association he must return any such money plus forfeit any State or Australian Titles he holds.

Gentlemen, you have a responsibility to your boxers – don't let them down.”

There is no reference in this letter to the anterior obligation to certify; although there is in the next letter.

26 February 1999

“Gentlemen,

As you are aware from previous correspondence from me, the doping situation is one that has to be given very careful consideration.

As I have explained before, it is the responsibility of State Secretaries or Board members to inform coaches and boxers of the doping policy of the OBU which clearly sets out medication which are on the IOC Banned List.

Enclosed you will now find a letter with attachments, which is self explanatory, and brings you up to date on the subject.

I would also once again bring to your attention the position regarding drug testing of athletes. In the case of Amateur Boxing, boy's names are placed on a list, from which the undersigned has been notified by that particular State Secretary.

The winners of an Australian Championship are automatically placed on this list, the requirements are: the person's correct name, address and date of birth. With this list, an Australian Drug Agency (ASDA), can visit any gymnasium and test a boy, with or without notice, for drug infringements. This is called “out of competition testing”.

Should a boxer refuse to take a test, he is deemed to be guilty of a drug offence and his name is sent to the Australian Institute of Sport. Should this happen, and a boy is receiving any financial assistance, he is required to refund the said money. The Olympic Federation, if he is proved to be guilty, will refuse to accept that athlete's name for any Olympic Games team.

If a boy believes he has been wrongly treated, then he is entitled to go to a Court of Arbitration, where three independent judges listen to the arguments, for an against, regarding the bans placed on the boy. Their decision is final.

The most important thing a boy has to remember if he is being tested, is that he is required to fill out a questionnaire. The most important question being, “Are you on, or taking, any medication of any description”. It is important that the boy writes down whatever he is taking, be it an Aspro, or cough medicine, because if he does not do this, he is deemed to be guilty of taking a banned substance.

In the case of a boy suffering from asthma, it is a requirement that he obtains from his doctor, a certificate stating the type of inhaler or stimulant that he is using.

Whilst some of the names of prohibited drugs are difficult to decipher, it is advisable that he seek a person, medical officer or otherwise, who can explain to him the definition of certain drugs.

Remember, to be guilty and have it recorded, either within his association or more importantly, in the newspaper, is a stigma on the boy's record.

Trusting that you will make all the information known to your coaches and boxers.”

(emphasis added)

The Attachment to the letter of 26 February 1999 stated as follows:

“IMPORTANT NOTICE TO ALL COMPETITORS

You are the person who is ultimately responsible for checking that any medications you take are PERMITTED in Sport.

ASTHMA SUFFERERS

Only 3 substances used in asthma medications are allowed under certain conditions within the IOC rules. Only products containing Salbutamol, Salmeterol and Terbutaline are permitted subject to the following.

COMPETITORS who require asthma medication MUST get a letter from your doctor outlining which medication(s) you are using for the legitimate treatment asthma and send it in to the Amateur Boxing Union of Australia. This letter must be re-newed every year.

If you are unsure of the medication you are taking please CHECK it in the Drugs in Sport Handbook the Drugs in Sport Hotline or in the MIMS bi-Monthly (copies held by most Doctors and Chemists).

Contact ASDA (1800 020506) or ABUA (02 93262784) for more information.”

18. Neither this letter nor the attachment correctly identifies the current obligation of the Athlete which, as set out earlier, requires certification by a team physician or respiratory physician (not “your doctor”) to the relevant medical authority (not the ABUA).
19. So far as concerns the ASDA, although there is some evidence of its having earlier been in contact with the ABUA, it first wrote to E. on 23 March 1999 i.e. long after the test. A copy of the Agency’s “Drugs in Sport Handbook” or “DISH” accompanied the letter.
20. Curiously, the Handbook lists Bricanyl (at pp. 56 and 151) as a “Permitted” rather than a prohibited medication; although at each page Bricanyl is underlined. At p. 45 the Handbook states:

“If a drug you need to use is underlined, please check whether the restrictions apply to you. You can do this by checking in section 2.6, contacting your sporting organisation, or ringing the Drugs in Sport Hotline on 1800 020 506.

If the drug is subject to certain restrictions or is banned by some sports this is also highlighted under its therapeutic class listing (see section 5.5).”

The “restricted substances” listed in Section 2.6 of the Handbook do not include asthma inhalants other than corticosteroids. Bricanyl is not nominated.

At section 5.5 it is noted in relation, *inter alia*, to Bricanyl, that:

“written notification of administration of the preparations which are underlined may need to be given to the relevant sporting body”.

21. Again there is a lack of precision here which can only work against an Athlete. To describe Bricanyl as “permitted” in my view is apt to mislead those to whom it is directed. Further DISH does not precisely identify by whom, and to whom, certification need be given; still less

that it is mandatory. It should not be too much to ask of such a handbook, which describes itself as “written for athletes”, to set out precisely the IOC requirement as to certification as it exists from time to time.

22. It remains for me to record my conclusions as to whether an offence has been made out, and if so, to impose what I consider to be the appropriate sanction.
23. I find that the doping offence has been made out. I accept that I have no discretion to find otherwise and that the only question open to me is as to the appropriate sanction.
24. The AOC (on behalf of itself and the ABUA) accepted – correctly in my view – that the Athlete's “*breach of the AOC Policy and the ABUA Policy is a breach of procedure*”.
25. It accepted - also correctly in my view - that I have a discretion “*to reduce the sanction but not to overturn the doping offence*”. I agree. The following are the submissions made by the AOC as to sanctions:

“APPLICABLE SANCTIONS

3.1 *It is submitted that the appropriate sanction in respect of E.'s breach of the AOC Policy is:*

- (1) *suspension from membership of or ineligibility for selection in any Australian Olympic Team;*
- (2) *ineligibility to receive funding from the AOC; and*
- (3) *ineligibility to hold any position on the AOC;*

for a period of up to 3 months pursuant to clause 8.1(2) of the AOC Policy.

3.2. *It is submitted that the appropriate sanction in respect of E.'s breach of the ABUA Policy is :*

- (1) *suspension from membership of or ineligibility for selection by the ABUA in any Australian representative team;*
- (2) *banned from competing in any events and competitions conducted by or under the auspices of ABUA;*
- (3) *ineligible to receive, directly or indirectly, funding or assistance from ABUA; ineligible to hold any position with ABUA;*

for a period of up to three months under clauses 8.1 and 8.2(2) of the ABUA.

3.3. *Accordingly CAS has an unfettered discretion as to the period of sanction.*

3.4. *It is further noted that under clause 8.1(2) of the ABUA Policy, E. must “have all awards placing and records won from the date of the occurrence of the Doping Offence withdrawn”.*

The date of the doping offence is the date of the provision of the sample i.e. 1 November 1999. Subject to the operation of clause 9.5 of the ABUA Policy, this withdrawal is automatic and is not subject to the discretion of CAS.

3.5. *Noting:*

- (1) *the discretion of the CAS in respect of further sanctions;*

- (2) *that it is not disputed that E. is an asthmatic and uses or administers Terbutaline for therapeutic purposes on medical advice (relying on the certificates/statements of Dr. [X.] of 22 January 1999 and 26 March 1999); and*
- (3) *E.'s breach of the AOC Policy and the ABUA Policy is a breach of procedure;*
It is submitted that E. should not be subject of any further sanction other than as detailed above.

26. The appropriate sanction in terms of clause 8.1(2) of the AOC Policy (8.2(2) ABUA Policy) is “*suspension for a maximum period of three months*”. In addition there are the sanctions listed in clause 8.1 of the ABUA Policy. It is accepted however that I have a discretion to determine the period of the sanction as well as, under clause 9.5 of each Policy, to reduce the sanctions, if I am of the opinion that the Athlete has established on the balance of probabilities that “*extenuating circumstances*” as defined exist.
27. I am of that opinion. In particular the evidence did not establish that, prior to November 1998, Terbutaline was listed as a component of Bricanyl either on the packaging or in an accompanying leaflet. The Athlete used the Bricanyl Turbohaler; he had been using it for some 7 years and it had been prescribed by his General Practitioner, He candidly admitted that he read the instructions “*when I first got the medication the first time, plus the medication lasts quite a long time and as you can understand after using it so many times I really had no need to read it again*”.
28. While it is entirely possible that when he first used the product Terbutaline Sulphate was shown as the component, the evidence does not establish that to have been the case, still less that Terbutaline was exemplified as a prohibited substance in the IOC Medical Code as it then stood (we know that the current version dates from 1 January 1998). That is not to say that there is no duty upon an Athlete, especially an elite Athlete, as the Athlete is, to constantly upgrade his or her knowledge as to any drug he or she may take. But the Athlete believed, from what had been said to him, that his only obligation was to declare the use of asthma medications on his test form. In all the circumstances of this case, including the confusion in the ABUA as to the correct position – even afterwards – I accept this as a true statement and, as earlier set out, he did declare his use of Bricanyl on his testing form.
29. Further, it seems to me that if one requires of athletes that they maintain enquiries, it is surely the correlative duty of all those sporting bodies involved in the important fight against drugs in sport to likewise keep up to date and to ensure the steady dissemination to athletes and their coaches – not just of information – but of information which is unambiguously correct. I do not wish to be seen as too critical of any person or body identified in these reasons. I accept that there is a common cause against drugs in sport and that actions directed towards that end are necessarily well intentioned. However, little can be achieved in a fog of uncertainty. If sporting bodies do not provide the right information, then it seems to me to be quite unfair that Athletes alone should bear the significant consequences.

The Court of Arbitration for Sport hereby rules that:

1. A warning is imposed on the Respondent E.
2. The Award should be made public.