

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

**ANTI DOPING DISCIPLINARY HEARING**

**ATHLETE:** MR FAIK PERGNOLATO

**SPORTS FEDERATION:** SOUTH AFRICAN POWERLIFTING ASSOCIATION  
(SAPLA)

**DATE:** 29 September 2015

**PLACE OF HEARING:** SAIDS Offices, Sports Science Institute of South  
Africa, Newlands

**DISCIPLINARY PANEL ("PANEL")** MR ANDREW BREETZKE (CHAIRPERSON)  
  
DR GEORGE VAN DUGTEREN (MEDICAL  
REPRESENTATIVE)  
  
MS NORMA NONKHONYAMA (SPORTS  
ADMINISTRATOR)

**PROSECUTOR:** MR MICHAEL MURPHY

**ATHLETE REPRESENTATIVE:** SUPPORTED BY MS SHAMIELA PREGNOLATO

**MINUTE TAKER:** RAYGHANA ALLIE

**ANTI-DOPING RULE VIOLATION:** ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE  
2.1 OF THE 2015 ANTI-DOPING RULES OF SAIDS

## **INTRODUCTION**

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

The SAIDS Anti-Doping Rules (“the Rules”) were adopted and implemented in 2015. These proceedings are therefore 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 has violated the said Rules, and if so the consequences of such a violation.

## **PROCEDURAL MATTERS**

The Athlete was notified on the 12 June 2015 of the Adverse Analytical Finding, and informed of his right to respond to SAIDS within 7 days after receipt of the notification. He was furthermore informed of his right to request a “B” sample.

The Athlete did not communicate with SAIDS by the 19 June 2015 and it was assumed that he had waived his right to have the “B” sample analysed.

After extensive attempts by SAIDS to communicate with the Athlete, he contacted SAIDS on the 31 July 2015, requesting that a formal hearing be convened.

The Athlete was unrepresented, but was supported by his wife.

Given that the Athlete was unrepresented, the rights of the Athlete in the inquiry were explained in detail to the Athlete. The Athlete confirmed that he understood his rights in the process.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

The Prosecutor presented a bundle of documents as documentary and corroborative evidence to the oral evidence presented.

The charge against the Athlete was set out in written correspondence addressed to the Athlete on the 28 August 2015. The charge against the Athlete read as follows:

*You have been charged with an anti-doping violation in terms of Article 2.1 of the 2015 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).*

*On 24 March 2015, you provided a urine sample (2959844) during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was Clenbuterol. Clenbuterol is categorised under Class S1 "Anabolic Agents" in specific S1(a) on the World Anti-Doping Code 2015 Prohibited List International Standard.*

The Athlete was advised of the nature of the charge and he confirmed that he recognised the seriousness of the process. The Athlete had not requested that his B-Sample be tested and did not dispute the positive test.

Mr Murphy confirmed that the "A" sample test results showed the presence of the prohibited substance, *Clenbuterol*; that the Athlete had not requested that his "B" sample be tested; and that there was sufficient proof of an anti-doping rule violation.

The Athlete stated that he was not aware of how the *Clenbuterol* had entered his system. He had listed the medication/supplements that he had taken on his Doping Control Form, and none of them listed *Clenbuterol* as an ingredient. He was aware of the dangers of supplement contamination, and when purchasing supplements checked with the assistants at the retailers. He had attempted to lose weight earlier in the year and had utilised a weight loss product that his sister had used.

Under cross examination, Mr Murphy raised the issue that the Athlete had previously assisted one of his club members/students in a SAIDS anti-doping tribunal. As such, it was put to the

Athlete that he must have been acutely aware of the seriousness of the anti-doping process, as well as the rules thereof. The Athlete acknowledged that he was aware of the seriousness, but that the matter involving his student was different given that it involved a “pre workout” substance.

On questioning from the panel, the Athlete explained that he managed a gym for students from his home (Mitchell’s Plain Powerlifting Club). These students included his sons, and other members of the community. He would often transport the students to competitions and provide them with support. He acted as chairperson of the club.

Mr Murphy argued that the period of ineligibility must be four years, as the Athlete had failed to prove that the anti-doping rule violation was not intentional – as per Article 10.2.1. The Athlete requested that the Panel sanction him to a two year period of ineligibility, based on the fact that he had no intention to commit a doping offence.

#### **FINDING ON THE CHARGE**

The presence of the prohibited substance identified as *Clenbuterol* was proven. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2015 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

#### **DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION**

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 violation under Article 2.1.*

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-

doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the athlete is therefore clear, and 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 substance identified as *Clenbuterol*. *Clenbuterol* is categorised under *Class S1 "Anabolic Agents" in specific S1(a)* on the *World Anti-Doping Code 2015 Prohibited List International Standard*.

Article 10.2 provides that the period of ineligibility for a violation of Article 2.1 shall be as follows:

*10.2.1 The period of ineligibility shall be four (4) years where:*

*10.2.1.1 the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

*10.2.1.2 the anti-doping rule violation involves a Specified Substance and SAIDS can establish that the anti-doping rule violation was intentional.*

The offence *in casu* relates to a Non-Specified Substance and as such Article 10.2.1.1 is applicable. The question therefore is whether or not the Athlete has established that the violation was not intentional. Article 10.2.3 states that the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. The Athlete must prove that there was no intention on a balance of probabilities.

The Athlete was not able to produce evidence to prove that the anti-doping violation was unintentional. The Athlete attended a SAIDS anti-doping hearing in April 2013 (*SAIDS v Tashriq Hendricks 2014*) in support of an athlete who was a member of his club, and who he trained. He was therefore acutely aware of the anti-doping rules and regulations, and the risk of contamination when using supplements (as the matter concerned Methylhexanamine contamination). Furthermore in the finding of the matter, the Panel highlighted the need for

the parties to engage in anti-doping education on the use of supplements. It appears as if this anti-doping training was not implemented.

The Athletes only explanation for the positive test was that he must have used a contaminated supplement. He stated that he was aware of supplement contamination, but had always reviewed the label on the supplements that he purchased.

This can be compared to the matter of ***FINA vs Ivan Alejandro Enderica Ochoa 2014 (decided under the 2009 Rules)*** where after testing positive for Clenbuterol, the Athlete admitted the violation and stated that due to a respiratory affliction he used medication, prescribed by the sports federation's physician, 10 days and 3 days before the doping control. The physician testified and sustained the Athlete's statement. The FINA Doping Panel accepted that the Swimmer had no intention to enhance his sports performance, but was also naïve, insufficiently cautioned by his physician and failed to investigate the label of the medication before using. The Panel took into consideration that the physician made a significant mistake due to him prescribing a medication that contained a prohibited substance. Therefore the FINA Doping Panel imposed a 12 month period of ineligibility on the Swimmer. Although this matter was determined under the 2009 Rules, it is an example of a matter where the Athlete was able to prove on a balance of probabilities where the prohibited substance had originated from, and that the intention was to medicate an ill health problem, and that the anti-doping rule violation was therefore not intentional.

The evidence of the Athlete does not meet the onus required, as the Athlete has engaged in conduct that amounted to a significant risk. He has not been able to prove that his actions were not intentional.

Given the above, a possible reduction in the period of ineligibility (Article 10.5) is not applicable.

## **SANCTION**

In reviewing the above, the Panel has determined that the sanction on the finding of Guilty is as follows:

1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.2 of the Rules, for a period of four years;
2. The period of four years will be effective as of 12 June 2015 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on the 11 June 2019;
3. The results of the Athlete obtained in the SA Raw Powerlifting Championships are disqualified, including forfeiture of all medals, points and prizes.

The Panel wishes to note the following point:

- It is evident that the Athlete is an integral member of the Mitchells Plain Powerlifting Club, as Chairman and as a trainer. The Panel wishes to propose that SAIDS engage with the Athlete on assisting in anti-doping education of club members; and on the future management of the club given the extent of his suspension – specifically with reference to activities that the Athlete may not participate in as a suspended Athlete.

This done and signed at Cape Town this 10 day of October 2015.



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Mr Andrew Breetzke on behalf of Dr George van Dugteren and Ms Norma Nonkhonyana