

**In the matter between :**

**South African Institute for Drug-Free Sport (SAIDS)**

**Complainant**

**and**

**Dylan Treges**

**Respondent**

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**DETERMINATION**

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**1. CHARGE :**

The Respondent was charged in a letter to him from the Complainant dated 15 October 2015 with an Anti-Doping Rule violation in terms of Article 2.1 “**the presence of a prohibited substance or its metabolites or markers in the Athlete’s sample**” of the SAIDS Anti-Doping Rules on 29 August 2015, when he provided urine sample (3928367), during an in-competition test which, upon analysis by Deutsche Sporthochschule Koln Institut fur Biochemie Laboratory in Cologne, Germany (“the Laboratory”), which detected the presence of the Anabolic Agents Clenbuterol and Dehydrochloromethyltestosterone, both of which are categorised respectively under **Class S1 Anabolic Agents** on the World Anti-Doping Code 2015 Prohibited List International Standard.

**2. JURISDICTION :**

2.1 In terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No. 14 of 1997, National Sports Federations must adopt and implement Anti-Doping Policies and Rules which conform with the World Anti-Doping Code (“the Code”) and with the requirements as set out in the SAIDS Anti-Doping Rules.

- 2.2 The Code is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the harmonization of Anti-Doping Policies, Rules and Regulations, across all sports and all countries around the world.
- 2.3 The South African Government has made a formal commitment to the Code and formally recognized the role of WADA through the Copenhagen Declaration of Anti-Doping in Sport (2003).
- 2.4 SAIDS is the statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.
- 2.5 SAIDS has formally accepted the WADA Code and has adopted and implemented its Anti-Doping Rules in accordance with its responsibilities under the Code, on 25 November 2005.
- 2.6 Powerlifting South Africa (the South African Powerlifting Federation), has adopted the Code, following an International Review of the Code by all signatories, with the new WADA Anti-Doping Code 2015, effective as of 1 January 2015, having been agreed with an effective implementation date of 1 January 2015. These Rules under the Code were adopted and implemented in conformity with the South African Powerlifting Federation Anti-Doping Rules which, in turn, have adopted the SAIDS Anti-Doping Rules.
- 2.7 The Respondent, a 25-year old provincial powerlifting athlete, falls under and is bound by the South African Powerlifting Federation Anti-Doping Rules which, in turn, has adopted the SAIDS Anti-Doping Rules.
- 2.8 The Anti-Doping Rules so adopted by SAIDS and the South African Powerlifting Federation, are sports rules governing the conditions under which sport is played. Athletes, including the Respondent, accept these Rules as a condition of participation and are bound by them.
- 2.9 The SAIDS Anti-Doping Rules apply to SAIDS, each National Federation of South Africa and each participant in the activities of the National Federations by virtue of the participants' membership, accreditation or

participation in their National Federations or their activities and events. The Complainant in this matter has jurisdiction over the South African Powerlifting Federation (SAWF) and its members, including the Respondent, all of whom are subject to the SAIDS Anti-Doping Rules and the South African Powerlifting Federation Anti-Doping Rules.

**3. DISCIPLINARY COMMITTEE :**

3.1 A Disciplinary Committee was convened by the Complainant in order to determine whether, in this case, a doping violation in terms of the SAIDS Rules (as embodied in the charge aforementioned), was committed by the Respondent.

3.2 The Committee consisted of :

Monty Hacker, Chairperson and an admitted attorney of some fifty-five years standing;

Dr Andy Branfield, a medical practitioner and sports physician, and;

Professor Yoga Coopoo, a sports administrator.

Michael Murphy represented the Complainant as its Prosecutor, with the duty of prosecuting the Respondent.

The Respondent attended the Hearing personally, was unrepresented and had, prior to the Hearing, in a letter addressed to the Complainant's Prosecutor, Michael Murphy, dated 21 October 2015, accepted the results from the Laboratory and agreed to accept the consequences, expressing his feelings of shame and apologising for his conduct.

3.3 The Hearing before the Panel was convened to be held at the Holiday Inn Express, The Zone, Oxford Road, Rosebank, Johannesburg at 17h00 on Tuesday 1 December 2015, when the Hearing commenced.

**4. IMMEDIATE ADMISSION OF GUILT BY THE RESPONDENT :**

4.1 At the commencement of the Hearing, Mr Murphy placed before the Tribunal a type-written document captioned "Principal Submissions", a copy whereof is annexed hereto marked "A" and which he put to the Respondent. Mr Murphy pointed out, referring to Annexure "A", that the Respondent had acknowledged his guilt and also the fact that he had informed the Complainant that he did not wish to have his B sample analysed, accepting the findings on his A sample and accepting the consequences following his Anti-Doping contravention. In referring to these written Principle Submissions, Mr Murphy drew the Tribunal's attention to :

4.1.1 Article 2.1 of the SAIDS Anti-Doping Rules 2015, concerning the presence of a prohibited substance in an athlete's sample;

4.1.2 The factors necessary to establish sufficient proof of the presence of a prohibited substance or its metabolites or markers in the Athlete's sample;

4.1.3 The provisions of Article 3 of the SAIDS Anti-Doping Rules concerning the burdens and standards of proof and the methods of establishing facts and presumptions which confirm that the Respondent was not suggesting that there had been any departure from the International Standards and the fact that no basis existed for believing that there had been any such departure;

4.2 Mr Murphy also submitted that with the Respondent's plea of guilt, the sole issue for determination by the Tribunal was what the appropriate sanction should be, namely 4 (four) years for a first offence, which applied in the case of the Respondent. He further submitted that :

4.2.1 Exhibit "A" hereto also outlined, for the benefit of the Tribunal and the Respondent as well, the applicable provisions whereby the Tribunal could exercise its discretion in reducing the peremptory sanction of a 4 (four) year period of ineligibility, and;

4.2.2 Exhibit A alludes to the fact that the Respondent is a powerlifter who, at the time of the competition where he was tested, was

competing at the Gauteng Raw Powerlifting Championships on 29 August 2015, when he supplied a urine sample.

4.3 Mr Murphy then proceeded to interrogate the Respondent on these facts and then invited him to address the Tribunal with the object of endeavouring to establish whether there was a basis for the Tribunal exercising its discretion in reducing the peremptory sanction period of 4 (four) years of ineligibility. However, from the Respondent's own evidence, it became clear that he :

4.3.1 was unable to establish that the presence of the anabolic steroids which the Laboratory found in his urine sample was unintentional. On the contrary, his actions in acting on the recommendation of a gym friend or acquaintance, in purchasing from this party, a bottle containing 60 (sixty) tablets of unknown (at the time) substances, to be ingested as to 1 (one) tablet, twice a day;

4.3.2 was unable to establish what these tablets consisted of, despite him taking them religiously for 25 (twenty five) days, but discontinuing the ingestion of further tablets 5 (five) days prior to the competition;

4.3.3 did not list these tablets in his Doping Control Form, which he completed himself, and;

4.3.4 did not consult his own doctor or any other knowledgeable person who would have been in a position to advise him on the folly or wisdom of ingesting these tablets.

4.4 The Respondent, in any event, acknowledged negligence on his part in failing to take the necessary steps to establish whether the tablets (un-named at the time) were safe for him to ingest.

4.5 Cross-examined by members of the Tribunal, the Respondent :

4.5.1 Answered Professor Coopoo, that there was no good reason for him to have stopped ingesting the tablets 5 (five) days before the competition;

- 4.5.2 Told Dr Branfield that he had trusted his friend and that it was only later after he was notified and became mortified that his A sample had tested positive, did he ascertain for the first time that the tablets which he was taking were Testalis (a presumed derivative of Testosterone);
- 4.5.3 Told the Chairman that he could give no good reason as to why he discontinued taking these tablets 5 (five) days before the competition or why he had refrained from listing the tablets in his Doping Control Form, and;
- 4.5.4 He told Mr Murphy during re-examination that the bottle containing these tablets was a white bottle, but he was unable to identify any label on that bottle. However, once he had tested positive to the presence of anabolic steroid,s he threw the balance of the tablets away as well as the white bottle containing them.

5. **CLOSING ARGUMENT :**

Addressing the Tribunal in closing argument, Mr Murphy submitted that there was no basis upon which the Tribunal could entertain a lesser sanction than the prescribed 4 (four) year period of eligibility as the Respondent's negligence does not qualify for a finding of no intention to ingest the anabolic steroids with which he has been charged.

6. **CONCLUSION :**

- 6.1 The Tribunal finds that there exist no factors which require them to entertain the exercise of their discretion in reducing the peremptory 4 (four) year period of ineligibility;
- 6.2 The Tribunal, on deliberation, found the Respondent guilty as charged in the Complainants letter to the Respondent dated 15 October 2015, in which the Respondent was provisionally suspended from competing and participating in any unauthorised or organised sport by an amateur or professional league or any national or international level event organiser, as per Article 10.11 "Status during ineligibility", as of the date of that letter;

- 6.3 The Tribunal also took into account the fact that the Respondent had been forthright and co-operative and did not dispute his guilt;
- 6.4 As the Respondent has pleaded guilty to the commission of the offence with which he is charged and as no extenuating circumstances were found to exist, the sanction hereby imposed upon the Respondent is a 4 (four) year period of ineligibility commencing from the date of his provisional suspension, namely 15 October 2015;
- 6.5 During this 4 (four) year period of ineligibility, the Respondent is precluded from competing and participating in any authorised or organised sport at all local, provincial, national and international level events, organised as per Article 10.2 "Status during ineligibility", and;
- 6.6 The Respondent is required to return whatever awards he received during the competition on 29 August 2015 and none of his performances during that competition are to be recognised.

**DATED at JOHANNESBURG ON THIS THE 22nd DAY OF DECEMBER 2015.**



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**MONTY HACKER**  
Chairman

**With DR ANDY BRANFIELD and  
PROFESSOR YOGA COOPOO Concurring.**

"A"

**IN THE MATTER BETWEEN:-**

**SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT**

and

**MR DYLAN TREGES**

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## **PRINCIPLE SUBMISSIONS**

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### **Introduction**

1. These proceedings are governed by the South African Institute for Drug Free Sport Anti-Doping Rules 2015 ("the Anti-Doping Rules"). Federations and athletes are subject to the jurisdiction of SAIDS and are required to comply with the Anti-Doping Rules as a matter of law and contract.<sup>1</sup>
2. Mr Dylan Treges is a power lifter<sup>2</sup> who competed at the Gauteng Raw Powerlifting Championships on the 29 August 2015 and at the request of the South African Institute for Drug Free Sport ("SAIDS") supplied a urine sample<sup>3</sup> at the event.
3. The urine sample was submitted for analysis to the Deutsche Sporthochschule Köln Institut für Biochemie Laboratory in Cologne, Germany<sup>4</sup> which returned a finding to the effect that the effect that certain anabolic agents, namely Clenbuterol and Dehydrocholormethyltestosterone were present in the urine sample<sup>5</sup>.
4. These substances are prohibited under the 2015 Prohibited List World Anti-Doping Code. They are listed as such under articles S1 a. and S1.2 of the list. They are not substances produced endogenously and where there is a finding that these substances are present that constitutes an adverse analytical finding<sup>6</sup>.
5. SAIDS notified Mr Treges on the 15 October 2015, of the adverse analytical finding, and, *inter alia*, informed Mr Treges that he was entitled to have his B Sample

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<sup>1</sup> The South African Institute for Drug Free Sport Act 14 of 1997 and the Ant-Doping Rules – see Article 1.

<sup>2</sup> He participates under the auspices of the South African Powerlifting Federation.

<sup>3</sup> Sample number 3928267

<sup>4</sup> The Laboratory is a leading World Anti-Doping Agency accredited Laboratory.

<sup>5</sup> See page 1 the indexed bundle.

<sup>6</sup> The finding is set on page 5 of the indexed bundle.



analysed should he wish to do that<sup>7</sup> and also that he was entitled to respond to the assertion of an adverse analytical finding.

6. He was informed that he had until Thursday 22 October 2015 to respond to the allegations and also notified that the B Sample analysis would be conducted if he elected to pursue that option.
7. Mr Treges responded to the notification<sup>8</sup> and indicated he would accept the consequences imposed upon him but did wish to have his B Sample analysed. SAIDS consequently set the matter down for hearing before this panel on the 2<sup>nd</sup> of December 2015 at 17h00 at the Holiday Inn Express, the Zone, Oxford Road, Rosebank, Johannesburg<sup>9</sup>.
8. Mr. Treges responded to the charge sheet in writing by indicating that he would attend the hearing but would not be bringing legal or other representation to the hearing.<sup>10</sup>
9. Mr. Treges has been contacted by Mr. Galant of SAIDS and by SAIDS representative in writing and telephonically and has indicated that he does not intend appearing before the panel. The only information he has provided is that he did use a particular substance.

#### **Has there been an anti-doping rule violation?**

10. Article 2.1 of the SAIDS Anti-doping rules 2015 provides 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.*

2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following:*

*presence of a prohibited substance or its metabolites or markers in the*

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<sup>7</sup> See paragraph 4 of the SAIDS notification at page 1 of the indexed bundle.

<sup>8</sup> See page 10 of the indexed bundle.

<sup>9</sup> See charge sheet at page 8 of the indexed bundle.

<sup>10</sup> See page 13 of the indexed bundle

*Athlete's A Sample ...*

- 2.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the prohibited list, the presence of any quantity of a prohibited substance or its metabolites or markers in an athlete's sample shall constitute an anti-doping rule violation*

2.1.4	...
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11. When it comes to the issue of proof the Anti-Doping Rules provide:-

### **3 PROOF OF DOPING**

#### **3.1 Burdens and Standards of Proof**

*SAIDS shall have 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, which is made.***

*This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

#### **3.2 Methods of Establishing Facts and Presumptions**

*Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*

3.2.1 ...

- 3.2.2 ***WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures in accordance with the international standard for laboratories.***

*The athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the international standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then SAIDS shall have the burden to establish that such departure did not cause the adverse analytical finding.*

12. Mr. Treges has not suggested that there has been any departure from the International Standard<sup>11</sup> and there is no basis for believing there has been. Mr. Treges has rather, in effect, accepted guilt and the sole issue for determination is what the appropriate sanction should be.
13. In light of the presumptions that are applicable<sup>12</sup> and the absence of any indication of a challenge or dispute<sup>13</sup> there is no basis for a finding other than that this constitutes an anti-doping violation. SAIDS has consequently established an anti-doping rule violation to the comfortable satisfaction of the panel.

### What is the appropriate sanction?

14. The sanctions that fall within the competence of the tribunal are dealt with in Article 10 of the Anti-Doping Rules. Beginning with the question of ineligibility:-

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.*

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two (2) years.*

H. N. 6

15. The substances found to be present are anabolic agents falling into category S.1.1 a and S1.2 on the 2015 WADA Prohibited List. Anabolic agents are not specified substances for purposes of the Anti-Doping Rules<sup>14</sup>.
16. This being the case there is no basis for the exercise of a discretion as to whether to reduce the period of ineligibility save and unless Mr. Treges can establish that

<sup>11</sup> Mr Treges speaks in his email of supplements he has been taking – see page 10 of the indexed bundle.

<sup>12</sup> The Laboratory is accredited, there is no issue with the process (apart from the SAIDS review function the athlete confirmed that the process “went well” on the Doping Control Form – see page 4 of the indexed bundle).

<sup>13</sup>Article 7.10.2 provides that in the absence of a dispute as to an assertion an athlete is deemed to have admitted the violation.

<sup>14</sup> See Article 4.2.2

the anti-doping rule violation was not intentional. To establish is to “*place beyond dispute; ascertain; demonstrate, prove ...*”<sup>15</sup>

17. The anti-doping rule violation here is presence. Mr. Treges would have to prove to the panel that the presence was not intentional. None of the presumptions in Article 10.2.3 are of assistance to him and in fact he has accepted that he used supplements and that must have been intentional. It could not have been in error.
18. Administrative action must be lawful, reasonable, and procedurally fair<sup>16</sup>. For the panel to be in a position to consider a reduction in any particular case requires that the athlete in question establish that there was no intent. Here there has been no attempt at disputing the facts, there is nothing for SAIDS to consider rebutting, and it would be unlawful, unfortunately, to reduce the period of ineligibility.
19. That being the case the period of ineligibility must in SAIDS respectful submission<sup>17</sup> be 4 (four) years. A reduction would be unlawful and unfairly discriminatory in relation to other athletes who are subject to the Anti-Doping Code and entitled to expect equal treatment under the law<sup>18</sup>.
20. In the event that the panel is satisfied that Mr. Treges has established that there was no intent, then, and only then, Mr. Treges prompt admission<sup>19</sup> opens the door to a consideration of the “*seriousness of the violation and the ... degree of fault*”.<sup>20</sup> In the event of the panel considering a reduction on this basis the reduction considered would be to a minimum of 2 (two) years.
21. Mr Treges was provisionally suspended from the 15<sup>th</sup> of October 2015. Article 10.10.3.1 of the Anti-Doping Rules provides-

*If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person **shall** receive a credit for such period of Provisional Suspension against any period of Ineligibility, which may ultimately be imposed...*

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<sup>15</sup> Shorter Oxford English Dictionary, Oxford University Press, 6<sup>th</sup> Edition, page 865.

<sup>16</sup> Section 33 of the Constitution of the Republic of South Africa, 1996 read with the Promotion of Administrative Justice Act 3 of 2000

<sup>17</sup> The Anti-Doping Rules used the word “shall” which means MUST.

<sup>18</sup> Section 9 of the Constitution of the Republic of South Africa, 1996 read with the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

<sup>19</sup> Page 10 of the indexed bundle, line 1 of Mr. Treges typed response.

<sup>20</sup> See Article 10.6.3

22. Mr Treges should consequently receive a credit for the period of provisional suspension in the sense that the period of ineligibility should run from the 15<sup>th</sup> of October 2015 in accordance with the requirements of the Anti-Doping Rules.
23. In addition to the question if ineligibility the Anti-Doping rules require the disqualification of Mr. Treges' individual results obtained in the event including the forfeiture of all medals and prizes (if any)<sup>21</sup> and mandatory publication.<sup>22</sup>
24. Consequently SAIDS respectfully submits that the appropriate findings and sanction are that Mr. Treges should be declared ineligible to participate in any competition or other activity (as contemplated in Article 10.11.1) for a period of 4 (four) years commencing on the 15<sup>th</sup> of October 2015; that Mr. Treges individual results (including medals and prizes (if any) must be forfeited; and the finding of guilt and imposition of these Consequences must be published by SAIDS.

Dated at **JOHANNESBURG** on **1 December 2015**.



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<sup>21</sup> Article 10.1.

<sup>22</sup> Article 14.3.