

REASONED DECISION

of the

INDEPENDENT DOPING HEARING PANEL

comprising of

John Bush lawyer member and chairperson

Dimakatso Ramagole medical practitioner member

Rishi Hansraj administrator member

In the matter between

SAIDS

and

GARY SMIT

The reasoned decision relating to the outcome of the hearing concerning the charge which

THE SOUTH AFRICAN INSTITUTE FOR DRUG FREE SPORT

“SAIDS”

had brought against

GARY SMIT

“Mr Smit”

under the SAIDS Anti-Doping Rules 2015 - “the Rules”

A. BACKGROUND & INTRODUCTION

1. On 8 August 2015 Mr Smit participated in a mixed martial arts fight bout, one of the bouts promoted by EFC Africa (Pty) Ltd., (“EFC”) under fight card EFC42.
2. After the fight, which Mr Smit won in the first round, Mr Smit provided a urine sample (Sample number 3923303) for in-competition doping control purposes.
3. Following the receipt of the laboratory report of the analysis of such sample Mr Smit was notified - by letter dated 17 November 2015, addressed to him by Mr Fahmy Galant (the SAIDS General Manager), directed to Mr Smit, through the office of Cairo Howarth (the President of EFC Worldwide), and copied to Ms Paula Pena-Tolmil at the World Anti Doping Agency (“WADA”) and Ms Aneen Mangiagalli at Mixed Martial Arts South Africa - that an adverse analytical finding had been established against him.
4. On the same day by e-mail correspondence
 - 4.1 EFC confirmed to SAIDS General Manager Fahmy Galant that Mr Smit had received such notification;
 - 4.2 Mr Smit admitted to Michael Murphy, legal counsel representing SAIDS in the prosecution of this matter, that he had taken a course of deca durabolin and testosterone due to an injury.
5. By letter dated 22 December 2015 Mr Smit was notified by SAIDS that
 - 5.1 he had been charged with an anti-doping rule violation;
 - 5.2 the disciplinary hearing, concerning such charge, would take place before the appointed panel on 28 January 2016.
6. The hearing of this matter commenced on the evening of such date and ran through until it was agreed that it be continued on 31 March 2016. It was finalised on that date, with the delivery of the panel decision pended and conditional upon the prosecution satisfying the panel that the panel had the necessary jurisdiction to have heard the matter in the first place.

7. Following the panel having been provided with the prosecution's submission and the supporting documents considered relevant for the determination of the jurisdictional aspects of this matter, the panel hereby provides its reasoned decision, relating to the anti-doping rule violation charge brought against Mr Smit, in accordance with Article 8.3 of the Rules.

B. THE REASONED DECISION

B1. INTRODUCTION

8. The Rules, being the South African Institute for Drug Free Sport Anti-Doping Rules 2015, which are relevant and have been applied in this matter, incorporate the mandatory provisions of the Code as well as the remaining provisions adapted by SAIDS in conformance with the Code. Such Rules amended and replaced those which had been published and of force dated 2009.
9. Article 8.1.1 of the Rules provides for the Registrar to appoint an independent doping hearing panel to hear and adjudicate cases.
10. Under the Rules (Article 8.3) the Chairperson is required to issue a written dated and signed decision (either unanimously or by majority {of the independent doping hearing panel}) at the time of the hearing, or on timely basis thereafter, that includes the full reasons for the decision and for any period of ineligibility imposed, including (if applicable) a justification for why the greatest potential Consequences were not imposed.
11. The following sets out the full reasons for the decision and the sanction imposed upon Mr Smit, having regard to the totality of the evidence led before the panel, in particular the circumstances giving rise to the charge, the Rules and applicable law, as well as decided case precedent.

B2. THE PANEL, PROSECUTION, DEFENCE REPRESENTATION AND WITNESSES

12. The anti-doping hearing panel appointed to adjudicate whether Mr Smit had violated the Rules and, if so, what the consequences should be, consisted of Mr John Bush (Chairperson), Dr Dimakatso Ramagole and Mr Rishi Hansraj.
13. Mrs Ayanda Majosi of Edward Nathan Sonnenberg, ("ENS") acting on the instructions of and agent for SAIDS, was the prosecutor.
14. Mr Smit was represented by Kevin Krumeck, a friend and mentor. They were both in attendance throughout the hearing.
15. Mr Smit called upon Dr Gerhard Morkel and Mr Sean Elliot a pharmacist, both of Margate, as witnesses to testify on his behalf. They each provided their evidence and answered questions on the second evening of the hearing by way of cellular conference calls.
16. The prosecution relied on the expert evidence of Professor Demitri Constantinou, Sport and Exercise Physician and Adjunct Professor: Sport and Exercise Medicine, University of the Witwatersrand, who attended the hearing on the second evening to testify to certain matters. on its behalf.

17. As Mr Smit did not have legal representation the Chairperson provided such advice and support considered appropriate to ensure fairness in accordance with the principles of natural justice (Article 8.1.3 of the Rules) and the protection of Mr Smit's rights under the South African Constitution.
18. This was because it was apparent that Mr Smit clearly did not have the required level of legal knowledge, experience, or understanding, about
 - 18.1 the procedural aspects of the hearing;
 - 18.2 what was required of him and his representative in order to have dealt with substantive issues,

which would have enabled him to have more effectively discharged the evidentiary burden which he faced and had probably not considered and/or dealt with in his defence.
19. Although Mr Smit and all the witnesses who testified were not formally 'sworn in', before leading evidence and answering questions under cross-examination, each committed to tell the truth and the whole truth.
20. The proceedings were recorded and a transcript prepared by Veritas, a division of EOH Legal Services (Pty) Ltd, represented by Sam Mahiya. Although the transcript was not a 100% recordal, due to the utterances of those speaking being inaudible and/or interventions (interruptions) it was comprehensive enough for the panel to have made its findings and prepared this reasoned decision.

B3. EXHIBITS

21. At the outset of the hearing the Prosecutor handed in her initial submission , as well as an index and bundle of documents, which documents were accepted into evidence, without any dispute, as the following exhibits.
 1. E-mail F Galant to C Howarth dated 16 November 2015
 2. E-mail G Cartnell to G Smit dated 17 November 2015
 3. Notice from SAIDS to G Smit: Adverse analytical finding dated 17 November 2015
 4. Doping control form dated 8 August 2015
 5. Chain of custody form dated 14 August 2015
 6. Analytical report *Deutsch Sporthochschule Koln Institut fur Biochemie Laboratory* dated 28 October 2015
 7. Counselling brochure
 8. E-mail G Smit to M Murphy dated 17 November 2015
 9. E-mail from F Galant to G Smit dated 22 December 2015
 10. Notification of charge SAIDS to G Smit dated 22 December 2015.

B4. CHARGE & ATHLETE'S PLEA

22. Following the Prosecutor's reading in evidence of the contents of Mr Smit's e-mail to Mr M Murphy, in which he had stated he would never have made use of any illegal substances while in competition and admitted to having taken a course of deca durabolin and testosterone
 - 22.1 due to an injury; and
 - 22.2 prior to his having any knowledge that he would have competed under the EFC,

the Prosecutor put the following charge to Mr Smit.

The charge

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

On 08 August 2015 you provided a urine sample (3923303) during an in-competition test. Upon analysis, Deutsch Sporthochschule Koln Institut fur Biochemie Laboratory* in Cologne, Germany reported the presence of a prohibited substance in your urine sample. The substances identified in your sample were 2amethyl-5a-androstan-3a-ol-17-one, 19 norandrosterone (in a concentration greater the decision limit of 2,5ng/ml and Testosterone. These substances are categorised under Class S1. Anabolic Agents on the World Anti-Doping Code 2015 Prohibited List International Standard"

**** "the Cologne lab".***

23. Mr Smit then pleaded **GUILTY** to the charge.

B.4 MITIGATION OF SANCTION

B4.1 Introduction

24. Aware that he faced a mandatory 4 (four) year period of ineligibility, for the use of prohibited substances found to be in his system, Mr Smit was then

24.1 invited to provide an explanation for why he was before the panel and anything else he would have liked to have had put on record for the purpose of reducing such period of ineligibility;

24.2 advised that the prosecutor and the panel had the right to interrogate this.

B4.2 Mr Smit's evidence in-chief

25. The more relevant parts of Mr Smit's own testimony during the entire hearing provided that

- he had been fighting since he was 16 and had dropped out of school;
- fighting was his life - all that he had done;
- he taught kids self defence and in doing so touched on the abuse of drugs as a topic;
- he took (the prohibited substances) as a last case scenario/resort rather than an operation which everyone knew did not go smoothly;
- it was embarrassing for him to have said he took the stuff because he really did not believe in it;
- he did so to make a living;
- he had been a doorman at Mr Krumeck's club since he was 17 and had no alternative;
- (when he did so) he had not had a clue that he would have been involved in a sport with WADA and SAIDS;
- he had always wanted to be a professional fighter;
- after his shoulder had come right he had been advised to contact EFC to see if he could be contracted to them;
- EFC had not approached him. He had approached them believing that everything was alright;

- the contract he had signed provided that there would be no taking of illegal drugs which he had fully supported;
- he thought the prohibited substances would have left his system by the time he had signed with EFC;
- it had therefore not even crossed his mind, when he had signed with EFC, that anything would be in my system because he had taken it three months before;
- he was not hugely knowledgeable about the stuff (the prohibited substances);
- he had been told by other people that it would have been out of his system so he had not even flinched when he had been tested after the fight;
- he had been helpful and had no issues about doing the test thinking that everything had been fair;
- he had not known what other points he could have made.

26. Mr Smit then provided further testimony to the effect that he

- had been fully willing to cooperate and admit that (the prohibited substances were in his system), unlike some persons, who he had been told (during the past week) had stated that they did not know how these had entered their system and were not at fault.
- had not been competing at the time he had used it (the prohibited substances);
- pleaded for the least sentence possible because, without any excuse, what happened has happened.
- had not even thought about taking it (the prohibited substances) again because his injury had been corrected.

27. In response to a questions posed by Dr Ramagole, regarding the number of injections that Mr Smit had had for his shoulder injury, Mr Smit testified that

- he had been to see a doctor about his shoulder;
- the doctor, whose name he had written down somewhere, prescribed anti-inflammatories and advised that he receive physiotherapy;
- this had not worked, so he (the doctor) gave him cortisone and Voltaren. This lasted a week and the injury came back even worse;
- he then went back to the doctor who mentioned that there was always the option of an operation but that the likely success of a shoulder operation was 50/50.
- he knew a few people that he worked with that are testament to that;
- he kept trying with anti-inflammatories and physio. Nothing was coming right to the point where it was starting to affect his work to the extent that he couldn't work;
- he had been desperate to get his shoulder right. He had injured his deltoid and the use of his (right) arm was minimal.
- he had talked about this to some other people in the gym;
- they had asked him if he had ever tried Deca;
- he had said "no" as he did not do that;
- they had advised that if he took take this stuff for a time he would see that it would work;
- he did not know what Deca was;
- he was given a contact in Pretoria, who he had not even met. He was desperate and arranged, as well as paid for delivery of the products to him;
- he had received vials of the Deca and testosterone which he had (personally) injected intramuscularly into his "bum" at the rate of half a millilitre each twice a week over

- eight weeks;
- this had definitely helped for him as it cured the shoulder;
- he had won both his fights under EFC in the first round. There had been no preliminary bouts;

28. Under questioning by Mr Hansraj, Mr Smit responded as follows

- he competed as an amateur from the age of 16;
- he signed to compete as a professional from 27 July 2015;
- although he had heard about SAIDS and drugs in sport this had not affected him (whilst an amateur)';
- he became acutely aware of this when he signed his contract as it provided that he could not take that "stuff";
- acquaintances at the gym had "sort of said" it (Deca and testosterone) would help;
- he had actually gone to a chemist and asked whether what some people had said would work (for him);
- the chemist had pretty much said the exact same thing as the doctor had said, namely that it would work but they could not promote that sort of thing;
- the advice was not good advice for a professional athlete;
- he really had no alternative with his shoulder because he had been losing out on money and on work;
- at that stage he had not thought he would ever be under scrutiny by SAIDS and WADA in that he had not thought he would become a professional athlete;
- he had gone to the doctor and the chemist to get a second opinion. They had said it would have worked, it would have helped, but would never have prescribed an anabolic steroid for such an injury for it was an illegal substance;
- it was not as though he had gone to the guys who had said they would have given him the (prohibited substances) to sort it (his injury) out. He had gone and asked professional people and they had said it would have sorted it (his injury) out but they would not have promoted this;
- his conduct in doing what he had done was irresponsible and illegal;
- he had had no other option, it had cost him money every time he got medication and he could not have worked as his shoulder was so messed up;
- he knew that strict liability (under Article 2.1.1) meant it was his responsibility to have made sure that when he went into a competition he did not have anything (prohibited substance) in his system;

29. Mr Smit testified in response to the Chairperson's statement that it appeared Mr Smit was aware of the risk, had known it was illegal and understood that it was irresponsible in the situation he had said was desperate, (alluding to the possibility of intentional use under Article 10.2.1 read with 10.2.3, when he used the illegal substances), that

- as far as he could have remembered this had not entered his mind when he competed because he had thought everything had left his system;
- he would never have wanted his opponent to have been affected (prejudiced);
- he accepted that this would have been true had he had been taking (the deca and testosterone) in competition and whilst under contract;
- had he known that he would have had some of the substances in his system (at the time of contracting) he would have been honest and told EFC that he might still have had some in his system and rather have signed the contract later, or compete later;

- he would never have taken or wanted his use (in competition) to have affected his career, the contract, or breach any rules which provided that this was not allowed;
- he had established by his own general research when the prohibited substances would have left his system;
- he had not asked the doctor and chemist who he had consulted for advice in this regard. This was because it had not entered his mind at the time and furthermore it was not a matter of his having wanted to get his injury treated so he could go and fight for EFC;
- at that time he was more fixated to have his shoulder sorted out, which had been the case;
- even after it had been fixed he had not thought about competing for months down the line.
- a couple of months down the line someone had suggested that he went to EFC;
- he believed (at the time that he signed for EFC) that the deca and testosterone, which he had used for eight weeks, would have left his system after (a further) eight weeks;
- he was obviously very wrong about that;
- he had “never, never” intended to cheat when he used the substances;
- he had consulted with and seen Dr Morkel a GP of Margate about his shoulder problem;
- he had not seen any specialist;
- Gillian Spittal was the physiotherapist he had seen;
- when he took the steroids he was not aware that he would be signing-up or have qualified to have been able to sign- up with EFC;

B4.3 Under cross-examination by the prosecutor

30. The prosecutor did not initially proceed with any cross-examination and chose rather to propose an appropriate sanction.
31. The prosecutor submitted that the period of ineligibility which Mr Smit should serve as should be 4 (four) years, as provided for under Article 10.2.1 read with 10.2.3, having regard to
 - 31.1 Mr Smit’s responsibility for whatever entered his system under Articles 2.1.1-2.1.3 of the Rules;
 - 31.2 Mr Smit not having demonstrated that the anti doping rule violation had not been intentional in order for any reduction in the period of ineligibility to apply under Article 10.2.2.
32. The Prosecutor submitted further that Mr Smit’s conduct was intentional. The direct reasons she advanced for this were that
 - Mr Smit had admitted he had injected himself with the substances for a period of eight weeks regardless of whether he had become an “athlete” as defined in the Rules or not;
 - at the stage that he did become a professional athlete he should have known about the Rules;
 - regardless of whether or not such substances may have been allowed outside of sports governed by the Rules (eg. for an athlete not defined as an athlete under the Rules), when Mr Smit became a professional athlete and was tested, the substances which were found in his body should not have been there;

- any suggestion of his having taken the substances as early as February was probably not correct. This was because he had stated in Exhibit 8 that he had completed the course 2 months before he was contracted to EFC.

B4.4 Adjournment and resumption of hearing

33. The panel agreed to the prosecutor's request for the adjournment of the hearing for the purposes of Mr Smit being required to have produced
 - 33.1 evidence of his having consulted with the GP, physiotherapist and pharmacist;
 - 33.2 any prescription letters;
 - 33.3 the prescribed medication.
34. Immediately before the proceedings closed on the first evening of the hearing Mr Smit produced three vials which he had brought with him. These were admitted into evidence as exhibits, following identification by Dr Ramagole, as follows –
 - The first vial was a 10ml ampoule of Deca 330 which contained Nandrolone Decanoate.
 - The second vial of 10mls was empty.
 - The third vial of Sustanon 350 was also 10mls.
It contained 30mgs of testosterone, 75mgs of a different testosterone, 50mgs of another testosterone, 90mgs of a different one and 105mgs of another one, their names are just different categories of testosterone = 10mls of a 350mg vial.
35. At the resumed hearing 31 March the prosecutor submitted more documents and a revised index which were received into evidence.
36. These documents, included
 - 36.1 e-mails exchanged between the prosecutor and Mr Smit – Exhibits 12 to 19;
 - 36.2 Professor Dimitri Constantinou 's report dated 13 February - Exhibit 20;
 - 36.3 the issued decisions of UKAD v Sybren Hoogland and UKAD vs Timothy Grant - Exhibits 21 and 22;
 - 36.4 the transcript of the hearing dated 28 January 2016 – Exhibit 23;
 - 36.5 the WADA Code 2015 Prohibited List International Standard – Exhibit 24.
37. Mr Smit in turn produced letters from Dr Gerhard Morkel, Gillian Spittal – physiotherapist and ST Elliott – pharmacist. Although disputed by the prosecutor, as to whether they provided evidence of Mr Smit having consulted with such professionals these were later received into evidence (as exhibits 25-27) for the purpose of the testimony provided by Dr Morkel and Mr Elliot, in response to questions which had been put to them.
38. Additional evidence was provided under further cross-examination of Mr Smit and through the testimony of and questions put to Dr Morkel and Mr Elliot, who were called by Mr Smit and Professor Constantinou, called by the prosecutor, as an expert witness regarding the efficacy of the prohibited substances used by Mr Smit in treating his shoulder / rotator cuff injury.
39. The evidence which the panel considered relevant for the purposes of this decision, especially that which was fresh, conflicting or contradictory is recorded as follows.

B4.5 Further testimony provided by Mr Smit under cross-examination

40. This was such that

- Mr Smit took the Deca and the testosterone as a last resort for injury.
- The injury (shoulder/rotator cuff) started in 2013.
- He saw Dr Mostert in 2013 who said the most that he could have prescribed for him was an anti-inflammatory, which he took and had not helped his shoulder injury.
- Mr Smit then had in excess of 6 sessions of physiotherapy with Gillian Spittal in 2013. Her letter- exhibit 27 - referred to 5 sessions.
- Thereafter – in 2015 - he went to the pharmacist who prescribed anti-inflammatories for him as the doctor had done.
- During 2014 Mr Smit had left the injury to heal itself.
- He had not gone back to Dr Morkel to tell him that the anti-inflammatories had not worked
- In 2015 he had started getting desperate and started to speak to people in the gym about what other alternatives there are. It was then that some guys suggested Deca which he had not wanted to take at all.
- He could not give the names of such random guys in the gym.
- “Long story short”- Mr Smit met a guy from Pretoria, who told him he had had a similar injury, that Deca had worked for him and gave him a number of a person in Pretoria.
- He had contacted such person, put the money into his account and thankfully, the guy did send him the stuff (prohibited substances) which he then took;
- He had not consulted with anyone professionally beforehand because it was not something one really wanted people to have known about;
- He had gone to the pharmacist who prescribed anti-inflammatories. He had then asked him about what if he tried Deca. The pharmacist said he could not promote it.
- Mr Smit had earlier alluded to both the doctor and pharmacist as having said they could not promote the use of steroids.
- He had seen the pharmacist early in February 2015.
- This was about the same time as he had called the mysterious man from Pretoria to provide the Deca and the testosterone.
- He had not used the substances to bulk up because bulking would not have helped him in fighting which is technical.
- He was not at the hearing to say whether it was the Deca or just the time of rehabilitation which worked for him.
- When Mr Smit took the substance he did not know that it was illegal because he was an amateur.
- He believed that doping in sport was illegal when applied to professional and not amateur sport. In his view this was because the amateurs in his sport had never been tested and SAIDS had not been promoted at any tournaments.
- He fought under a licensed promoter who probably got his licence through an association like MMA – Mixed Martial Arts under a federation.
- He had known that the taking of the substances that he had taken was not permitted and was prohibited in sport.
- He had disregarded the fact that doping was prohibited in sport and took the substances
- When he fought under EFC he knew there would have been testing but thought there as there would have been nothing in his system, there was no way anyone could have

- seen him being advantage;
- He knew the drugs (substances) were banned and illegal.

B4.6 Testimony of witnesses

41. *Mr S T (Steve) Elliott*, a registered pharmacist employed by Clicks at Margate, with due regard being had to his letter dated 3 February 2016 - exhibit 26, provided the following.

- Mr Smit came to him with a shoulder injury.
- He recommended Brexica, the anti-inflammatory which he recommended to everybody. It was pretty safe and effective. He always gave a five day supply.
- He recommended Cataflam for use in acute cases.
- He would have you recall whether or not Gary ever asked you whether or not you would recommend, or whether he was to use steroids to deal with his problem.
- He would have recalled if he had recommended a steroid to Mr Smit as these would have made the bone density less.
- He would have only recommended an anti-inflammatory.
- He could not recall whether Mr Smit had ever spoken to him about the fact that he wanted to, or could use, steroids, in order to heal his shoulder, or, mentioned steroids to him at all, during Mr Smit's conversations with him.
- Had anyone mentioned steroids, he would have directed them away from that.
- He had seen so many injuries with people using corticosteroids – as their bone density decreased to such an extent and the muscles became very strong. The connective tissue becomes very a vascular, so using a steroid or any cortisone is going to make the soft tissue at risk.

42. *Dr Gerhard Morkel*, a GP practising in Margate provided the following testimony due regard being had to his letter dated 1 February 2016 - exhibit 25,

- He could not say whether Mr Smit had asked him about the use of steroids as he did not have the file in front of him.
- He had used cortisone injections in rotator cuff syndrome problems.
- He confirmed having used steroids in shoulder injuries and tendonitis and rotator cuff.
- As far as he knew Mr Smit had not spoken to him about Deca and Testosterone.
- He would definitely not have used Deca or testosterone.
- He would not have given anabolic steroids to anybody.
- He was totally against anabolic steroids in a non-medical condition and would not have prescribed them.

43. *Professor Dimitri Constantinou*

43.1 The prosecutor had given notice that Professor Dimitri Constantinou, who heads up the SAIDS Therapeutic Use Exemption Committee, would be called upon to testify, seemingly as an expert witness, in accordance with the contents of his report dated 13 February – Exhibit 24, in which exhibits the letters received from Mr Smit's doctor, physiotherapist and chemist, under exhibits 25 - 27 were referred to.

43.2 In fairness to Mr Smit and in line with the principles of natural justice enshrined in Article 8.1.3 of the Rules, the panel afforded Mr Smit the opportunity to consider whether he wished to have his own appointed expert present at the hearing, in order to deal with any matter that would arise through Professor Constantinou's evidence.

- 43.3 Mr Smit, after discussion with his representative Mr Krumeck, chose not to exercise such right.
- 43.4 The more relevant parts of Professor Constantinou's testimony, which the panel noted for the purposes of this decision, were
- Mr Smit tested positive for three prohibited substances which were all in the class of anabolic agents.
 - These were
 - Testosterone - based on a testosterone/epi-testosterone ratio;
 - 19 Norandrosterone - the equivalent of Nandrolone or a metabolite of Nandrolone;
 - 2 Alpha Methyl 5 Alfa Androstanolone – a metabolite of Drostanolone.
 - The substances (Deca and Testosterone) would not be used specifically for those for therapeutic conditions or for injury management as suggested by Mr Smit.
 - If an athlete required a substance or the use of a prohibited method for therapeutic use ie a medical reason, a TUE – a therapeutic use exemption could be applied for.
 - The TUE could be granted – (preferably) before use, or retro-actively in exceptional circumstances - subject to the athlete having met the specific criteria of the international standard document which WADA published.
 - The effect of a TUE was such that an adverse analytical finding would be disregarded.
 - If Mr Smit had been brought a TUE application for the three substances with those conditions mentioned by Mr Smit it would not have been granted.
 - The three substances which were found in Mr Smit's body would not have healed his shoulder.
 - Mr Smit would have taken the anabolic steroids presumably for their known effects to increase muscle size, bulk, strength and power.
 - There was no medical indication for the healing of injuries with such substances.
 - The use of anabolic steroids in the medical sense, in the muscular skeletal environment, such as, in orthopaedics, the anabolic effect has a growth effect on some bone structure, particularly if it was brittle and weakened.
 - In other chronic conditions, it would be used again for the same indication in terms of muscle strength and bulking up in some chronic conditions where there had been wasting of muscles. So in certain cancers, for example. It's not routinely used, but has been studied in terms of HIV, muscle atrophy.
 - It not for purposes of an anti-inflammatory effect.
 - It was a misconception that Deca (Deca-Durobolin) is well known as a lubricant for joints and that it heals so much, essentially, because "anabolic" means that it builds up;
 - An anabolic steroid can increase muscle size and bulk, but it doesn't have a healing property in relation to that. A lot of body-builders end up with tendon tears.
 - Any argument that anabolic steroids were used by athletes to speed up healing and muscle repair was fallacious.

B4.4 Submissions

44. The prosecutor made the following submissions

- The anti-doping Rule violation did not involve a specified substance.
- There was thus no need for SAIDS to prove anything.
- Mr Smit had to prove, on a balance of probabilities, that the anti-doping Rule violation was not intentional in order for a reduction in the period of ineligibility.
- If Article 10.2.1 does not apply, then Article 10.2.2 provides for a period of ineligibility of two years.
- The substances that Mr Smit had tested positive for were prohibited both in and out of competition.
- The Rules provide that

"As used in Article 10.2 and 10.3 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."

- Mr Smit himself had admitted that at the time that he took the substances, he knew that it illegal in sport ie constituted doping. Nonetheless he went ahead and he took those substances
- the Rule goes on to say that the athletes engaged in conduct which he knew constituted an anti-doping Rule violation.
- Mr Smit's argument that at the time that he fought he had thought the substances would have been out of his system was irrelevant.
- When he took the substance, he knew that it was not a substance that I should be taking in sports. Whether as an amateur or professional he nonetheless went ahead and he took the substance.
- He therefore knowingly engaged in conduct which constituted an anti-doping rule violation.
- The onus is on the athlete to prove that he did not intend to cheat – that he did not intend to violate the anti-doping Rules
- Mr Smit had testified that his use of the substance was unrelated to sport performance, as he took it for healing purposes.
- That part of Article 10.2.3 relating to an anti-doping rule violation as not being considered as "intentional if the Athlete could establish that the Prohibited Substance was used out of competition in a context unrelated to sport performance")) did not apply – because that part of the provision would only be applicable if the substance was prohibited in competition.
- An internet search for Norandosterone, testosterone on Google or some other search engine was enough of a warning not to take these substances, whether one was an athlete or not.
- Mr Smit's use whilst an amateur, and then saying this was to treat an injury, was simply not acceptable. The entire version was so improbable so as to suggest that it had been fabricated. It was not necessary for SAIDS to have proved that.
- It (remained) necessary for Mr Smit to convince the panel on a balance of probabilities that when he had taken these substances he had not committed the anti-doping rule violation intentionally.
- There have been a number of contradictions in his evidence.
- The expert testimony of Professor Constantinou established that the substances that Mr Smit took did not heal the shoulder injury.
- Mr Smit's version (relating to use) was improbable.

- He was using for another purpose, namely to cheat.

In conclusion the Prosecutor submitted that

- *the period of eligibility had to be four years.*
- any reduction would be unlawful and unfairly discriminatory in relation to other athletes who were
 - subject to the anti-doping code
 - entitled to expect fair, equal treatment under the law.
- it would not be fair to act arbitrarily or to depart from the Rules on a case by case basis.

45. *Jurisdiction*

45.1 The Prosecutor submitted that

45.1.1 the Rules applied regardless of whether Mr Smit was an amateur or a professional, and he had said he was an amateur (at the time he used the prohibited substances);

45.1.2 as the competitions which Mr Smit participated in, even prior to his having turned professional, were competitions which fell under the jurisdiction of SAIDS, SAIDS and the panel had jurisdiction in this matter.

45.2 Support for this was to be found in Article 1.3 and the definition of Athlete, as well as in the contract which Mr Smit had signed with EFC

(Note: Mr Smit's own statements relating to EFC as promoter, MMA as association and a national federation)

B4.5 Evaluation of the evidence – admissibility and reliability

46. The panel's evaluation of the testimony led and other evidentiary material, provided during the hearing, centred upon the determination of the credibility of witnesses and the reliability of and weight, if any, to be attached to their evidence, through

46.1 the determination of possible contradictions;

46.2 the determination of possible conflicts between the evidence of witnesses, whether supported by exhibits accepted into evidence or not;

46.3 regard being had to the surrounding circumstances, possible motive and other factors.

47. For ease of reference the outcome of this evaluation has been dealt with in B7 – Panel Findings from paragraphs 58 through to 61.

B.5 Applicable rules

The panel considered the following articles of the Rules in reaching its findings and decision concerning the appropriate period of ineligibility to be applied as one of the consequences relating to the anti-doping rule violation which Mr Smit had admitted he had committed.

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 *Athlete's A Sample* where the *Athlete* waives analysis of the B *Sample* and the B *Sample* is not analysed; or, where the *Athlete's B Sample* is analysed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample*; or, where the *Athlete's B Sample* is split into two (2) bottles and the analysis of the second bottle confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the first bottle.

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 As an exception to the general rule of Article 2.1, the *Prohibited List* or *International Standards* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.

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.

8. Right to a fair hearing

8.1.3 The principles of natural justice shall be adhered to in all disciplinary proceedings. Such principles include, but are not limited to, the right to know what evidence will be presented at the hearing, the right to be heard and to be represented, the right to present evidence and be judged by impartial and independent adjudicators, the right to be represented by a competent person; the right to call witnesses and to cross-examine; etc.

8.2 The independent Doping Hearing Panel shall determine the procedure to be followed at the hearing.

8.3 The Independent Doping Hearing Panel shall act in a fair and impartial manner towards all parties at all times.

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of *Ineligibility* for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

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.

10.2.3 As used in Articles 10.2 and 10.3, the term

“intentional” is meant to identify those *Athletes* who cheat. The term, therefore, requires that the *Athlete* or other *Person* 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. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall be refutably presumed to be not “intentional” if the substance is a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition*. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall not be considered “intentional” if the substance is not a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition* in a context unrelated to sport performance.

B. 6 MATTERS FOR ADJUDICATION BY THE PANEL

1. Reduction of sanction under Article 10.2

48. The crisp question for determination by the panel was whether Mr Smit was entitled to any reduction of the period of ineligibility - along with all the other prescribed consequences of his having admitted that he was guilty of the anti-doping violation under Article 2.1.

49. In order to obtain such a reduction Mr Smit had the onus of establishing on a balance of probability *that the anti-doping rule violation which he had committed was not intentional*.

2. SAIDS’s jurisdiction and Panel’s appointment to hear the anti-doping rule violation charge brought against Mr Smit

Introduction

50. Mr Smit, had submitted himself to SAIDS’s jurisdiction and in turn, to the panel’s jurisdiction for the purposes of doping control and the hearing conducted under Article 8 of the Rules.

51. The Panel, through the Chairperson, had questioned whether such jurisdiction could correctly be assumed, in the absence of the Prosecutor having provided evidence to the comfortable

satisfaction of the Panel that this was so. The panel required that such proof be provided.

52. The question was driven by seeming assumption, surrounding speculative comment and conjecture, regarding possible or even probable linkages towards securing certainty relating to the *legal nexus or ties* which existed between Mr Smit and EFC, presumably a licensed mixed martial arts promoter, under Mixed Martial Arts ("MMA"), any controlling national federation, SASSCOC and SAIDS.

53. Only at the "11th Hour" during the 'wrap up' of the hearing was any inkling of any formal legal nexus between Mr Smit, as a fighter under the EFC books, and SAIDS established through Mr Smit having produced his contract with EFC at the request of the panel. Such contract provided, inter alia,

"At the sole discretion, EFC may from time to time appoint or affiliate itself with the sports body or sports governing association. The fighter agrees to comply with any or all rules or regulations of the sports body."

54. Even with this information the jurisdictional elements relating to the legality of doping control and/or the hearing - connecting Mr Smit through EFC and either Mr Smit, or EFC to those associations and/or national federations governing the sport of mixed martial arts in South Africa, SAIDS and even SASSOC through its constitution, had clearly not been established but simply assumed by the prosecution and even by members of the panel.

55. The Panel therefore decided that the prosecution ought to produce specific proof that SAIDS, and thus the panel through its appointment under the Rules, in accordance with the provisions of the South African Institute for Drug Free Sport Act, Act 14 of 1997 (as amended by Act 25 of 2006,) "the SAIDS Act" and the Rules, did indeed have the jurisdiction ie the lawful authority for doping control purposes to conduct the hearing and decide on the charge brought against Mr Smit.

56. The prosecutor initially provided a reasoned submission – for which the panel is grateful - as well as the following supporting documents towards proving such jurisdiction.

- 56.1 The contract between Mr Smit and the EFC.
- 56.2 The Mixed Martial Arts South Africa ("MMA South Africa" Constitution.
- 56.3 The SASSCOC constitution;

57. In response to the panel's further request, for documentary evidence to 'close the gaps' which still existed, the following were then received.

- 57.1 The Constitution of Martial Arts of South Africa ("MASA");
- 57.2 The MMA South Africa National Federation Anti-Doping Rules, aligned with the IMMAF Anti-Doping 2015 Rules only effective from 15 April 2016 ;
- 57.3 A confirmatory letter from Mr Bertus Coetzee of MMA South Africa confirming that

57.3.1 MMA South Africa was the only recognised mixed martial arts body in South Africa recognised by MASA and SASSCOC;

57.3.2 EFC (Promoter) was a sanctioned promoter under MMA South Africa and a paid up member within MMA South Africa for both 2015 and 2016.

- 57.4 Copies of the stamped ABSA bank deposit slips provided by MMA South Africa that it had paid its affiliation fees to MASA for both 2014 and 2015

B.7 THE PANEL'S FINDINGS

1. *As to whether the anti-doping rule violation was intentional or not - for the possible reduction of sanction.*

58. In the light of the panel's consideration of the totality of the evidence led in mitigation and under cross-examination, with due regard to the applicable law, being - the Rules, the WADA Code, South African legislation, of which the SAIDS Act and the South African Constitution are the most pertinent, as well as common law and decided case precedent

the panel finds that Mr Smit had not discharged the onus which rested on him under the Rules to have proved by a balance of probability that the anti-doping violation was not intentional, as provided for in Article 10.2.1 read with Article 10.2.3 of the Rules.

59. The panel's reason for this stem from the fact that Mr Smit had, inter alia, admitted that at the time he had injected the testosterone and Deca-Durobolin he was aware that he had used illegal substances which were not permitted and prohibited in sport.
60. Mr Smit had testified that he would "never, never cheat" and believed that the prohibited substances, being the anabolic steroids Deca-Durobolin and Testosterone, which he had used out of competition, whilst an amateur for the purposes of treating his rotator cuff injury, would have left his system at the time he had contracted to fight as a professional under EFC.
61. Instead of finding for Mr Smit in this regard the panel found an analysis of the evidence was more suggestive of Mr Smit's version regarding his use of such steroids as improbable and that his use was intentional, as he knew that his use was illegal and not permitted in sport.

Such findings were supported by the following.

- 61.1 The questionable circumstances surrounding Mr Smit's acquisition and use of the Deca-Durobolin and Testosterone, which Mr Smit had purchased from an unnamed "mysterious" source in Pretoria, who he had been put in touch with through another unnamed person in the gym;
- 61.2 The unreliability of Mr Smit's own testimony having regard to contradictory, inconsistent and confusing statements in his evidence-in-chief and under cross-examination, as well as his e-mail exhibit, dealing with, inter alia
- 61.2.1 The date on which he stated he had signed his contract with EFC as having been 27 July 2015, whereas the date on which he had in fact signed was 12 June and EFC had signed was 29 June 2015;
- 61.2.2 His having stopped using Deca-Durobolin and Testosterone 3 months before he signed with EFC, therefore being in mid March.
This would have meant that he would have started his "course" some 8 weeks before, namely mid January 2015 and not in February or March as he had also testified.
- 61.2.3 His own letter (exhibit 8) having provided that he had stopped the course 2 months before he signed with EFC.

- 61.2.4 Mr Smit having elsewhere testified as to getting the Deca Durobolin and Testosterone at the same time as he saw his pharmacists Mr Elliot early in 2015.
- 61.2.5 His first having stated that he had not known that taking such substances was illegal in sport; then that it was illegal in professional sport, but not amateur sport and then finally admitting to the prosecutor under cross-examination that he knew at the time he took such substances that they were illegal in sport (ie. irrespective of one's status as amateur or professional)
- 61.3 The content of the letters from Dr Morkel and Ms Spittal (exhibits 25 & 27) which contradicted his own evidence, as to
 - 61.3.1 his only visits being in Feb 2013 and May 2013 respectively and not 2015, as he had lead the panel and prosecutor to believe and had been understood;
 - 61.3.2 the number of sessions when it came to physiotherapy as being in excess of 6 according to Mr Smit versus the 5 recorded by Ms Spittal.
- 61.4 The improbability and thus unreliability of his evidence to the extent that his defence relating to the taking the prohibited substances for his rotator cuff injury, seemingly on the advice of a complete and unknown stranger from Pretoria, who had quite coincidentally had a similar problem and had been cured – was suspect and more probably fabricated, bordering on on “fairy tale”;
- 61.5 Mr Smit's belief that doping in sport was illegal when applied to professional and not amateur sport, based on his view that amateurs in his sport had never been tested and SAIDS had not been promoted at any tournaments, was also highly improbable.
- 61.6 The uncontroverted expert testimony of Professor Constantinou which had established that Deca-Durobolin was certainly not indicated for the treatment of Mr Smit's rotator cuff injury and would thus certainly not have contributed to having healed this;
- 61.7 The likelihood that time had rather contributed to this eventual healing, which had enabled him to fight under EFC. A possibility which Mr Smit had accepted and had not ruled out, as by his own admission during 2014 he had left the injury to heal itself;
- 61.8 Mr Smit's own conduct in failing to take any steps at all (other than his own unsupported research) whether on the internet, or by referral to either Dr Morkel and/or Mr Elliott, and/or any other sports specialist - especially in the circumstances where he stood to launch his professional fight career with EFC - to have established whether or not the illegal substances had in fact left his system;
- 61.9 Mr Smit having admitted that his conduct had been irresponsible and illegal.
- 61.10 In essence the totality of Mr Smit's conduct ought to have been seen as reckless. This was because he had quite clearly “thrown all caution to the wind” in realising his dream to become a professional fighter, without having taken any of the steps that a reasonable person in his position would have done to have guarded against the risk of being found to have committed an anti-doping rule violation.

- 61.11 Such conduct had been further evidenced by the fact that whatever advice Mr Smit had been given by Dr Morkel and Mr Elliot, as his doctor and pharmacist respectively, Mr Smit chose categorically to get involved with an illegal substance, or substances, when on his own admission both persons would not have promoted the use thereof.
- 61.12 Mr Smit's testimony that he would not have used the anabolic steroids for bulking (as suggested by the prosecutor), as these would not have
- 61.12.1 helped him;
- 61.12.2 given him any advantage over his opponents at all,
- because he relied on his skill as the lightest heavy weight and not more weight or power, in the technical sport of fighting, was also improbable in the light of Prof Demitri Constantinou's expert evidence that anabolic meant to "build up".
- 61.13 Mr Smit's use of the anabolic agents Deca-Durobolin and testosterone, which are prohibited for use in and out of competition, does not afford him the right granted to those who use prohibited substances, other than specified and non-specified substances out of competition, as not being intentional if used in a context unrelated to sport performance. (*Article 10.2.3*)
- 61.14 Case precedent supporting this in which, as submitted by the Prosecutor, the decisions in *UKAD vs Timothy Grant* and *UKAD vs Sybren Hoogland* were not helpful. The reason for this being that these involved
- 61.14.1 *In Grants case* - modafinil (Modalert), a specified substance prohibited in competition, with the panel having found that his use thereof, had not been intentional, (as supported by UKAD) because he had ingested this for study purposes and reasons unrelated to rowing;
- 61.14.2 *In Hoogland's case* – cocaine, as a non-specified substance prohibited in competition, which the panel having found that his use had not been intentional, as he had ingested the cocaine at a party, after consuming large quantities of alcohol, not having expected that he would have competed in a race two days later.
- 61.15 The further and most recently decided case of the *Independent Tribunal for the International Tennis Federation vs Maria Sharapova*, in which the tribunal found
- 61.15.1 the anti-doping rule violation which Ms Sharapova had committed was not intentional;
- 61.15.2 furthermore that she had not known there was a significant risk that her conduct (the use of Meldonium, which had been added to the WADA prohibited list in 2016) might have constituted or resulted in an anti-doping rule violation and manifestly disregarded such risk;
- 61.15.3 Ms Sharapova had not established that she bore No Significant Fault or Negligence in relation to the violation of article 2.1 and imposed a period of ineligibility of two years.

2. SAIDS's jurisdiction and Panel's appointment to hear the anti-doping rule violation charge brought against Mr Smit

62. Mr Smit testified that he fought in a martial arts bout on the 8 August 2015.
63. At that time he was contracted to EFC Africa (Pty) Ltd, an entity which conducted its and mixed martial arts promotional activities under the name and style of EFC – Extreme Fighting Championship. Mr Smit had signed the contract on 12 June and EFC on 29 June 2015.
64. Clause 8 of the contract is an express confirmation of Mr. Smit and EFC's acceptance of SAIDS jurisdiction and provides that:-

8. Anti-Doping

- 8.1 *EFC condemns and prohibits the use of recreational or performance enhancing drugs and doping practices (hereinafter known as "Doping Offences"). The Fighter is forbidden from making use of any illegal substances, directed by legislation, nationally and internationally, as well as any banned substances as directed by any recognised sporting body, whether nationally or internationally, in particular, the Fighter undertakes to familiarise himself/herself with and to comply with the Anti-doping rules, regulations and policy of the South African Institute of Drug-Free Sports.*
- 8.2 *By virtue of the Fighter's signature of his agreement, the Fighter agrees to undergo random drug and/or doping tests at any stage throughout the term of this agreement, of any extension thereof, whenever it is so required by EFC or any Sports Body or organisation to which EFC is affiliated or has assigned, whether nationally or internationally, or by any other body or organisation, having the authority to require such testing.*
- 8.3 *It is specifically recorded an agreed that EFC shall at no material time upon the demand of any organisation, the Fighter, or any other athlete competing in any of the EFC Events, be obliged to conduct any drug or doping tests, whatsoever, if any doping tests are requested by the Fighter or any third party, such request must be addressed to The Company or the relevant Sports Body.*
- 8.4 *In the event that the Fighter is found guilty in respect of any drug or use of Doping Offence, The Company shall be entitled to cancel this agreement within immediate effect, and claim damages against the Fighter.*
65. In the words of the prosecutor quite apart from such express confirmation of jurisdiction (under the Rules, in his testimony) Mr Smit had referred expressly to anti-

doping, to testing, to doping offences, and he is quite clearly in a very different position to that facing some athletes who have little or no knowledge of anti-doping. What is plain is that the panel had jurisdiction in consequence of an express agreement to that effect as a condition of Mr Smit's participation under the EFC banner.

66. EFC is a Licensed Promoter Member of MMA South Africa under its Constitution, as provided for in the extracts below. Proof of EFC being a paid up promoter member of MMA South Africa for both 2015 and 2016 was provided to the panel by the President of MMA South Africa through the prosecutor.
67. MMA South Africa is the federation governing mixed martial arts in South Africa. It is a Block Member affiliated to MASA the Mixed martial Arts Association of South Africa recognised by SASSCOC as the National Federation governing martial arts in South Africa.
68. The following are the relevant sections of the MMA South Africa constitution that had been considered by the panel.

CONSTITUTION AND LEGAL PERSONALITY

1. NAME,

1.1 The name of the organisation to which this constitution relates shall be Mixed Martial Arts South Africa (here in after known as MMA South Africa).

1.2 MMA South Africa is a Non-Profit Organization and Association being appointed by SASCOC and affiliated to MASA to regulate the sport of Mixed Martial Arts in South Africa from Amateur up until Professional level, having corporate identity separate from that of its members and is entitled to own property, whether moveable or immovable or otherwise, and to sue and be sued in its own name and not withstanding any change in the composition of its membership from time to time shall have perpetual succession.

2.7 "Member" means MMA South Africa affiliate club, individual or official.

2.8 "Individual member" means any natural person affiliated to any of the clubs that are registered to MMA South Africa

7. MEMBERS

7.1 The members of MMA South Africa shall comprise of regional MMA clubs, athletes, trainers, officials, promoters, managers and any individuals involved in MMA whose application for membership are ratified by the MMA SA BOARD: and is a fully paid Member of MMA South Africa.

8. INDIVIDUAL MEMBERS

8.1 Amateur - No individual natural person shall be capable of becoming a member of MMA South Africa. Only a Professional Athlete can be member or affiliate directly MMA SA as he is seen as and financial/business entity on his own.

12. AFFILIATION

12.1 MMA South Africa shall affiliate to MASA and SASCOC and the South African Sports Council.

12.3 Regardless of any affiliations MMA South Africa will remain an association with its own goals and powers.

23. MMA South Africa ATHLETE / NON – ATHLETE CODE OF CONDUCT

It is the responsibility of all Members to familiarise themselves with the content of this Constitution. On Affiliation to MMA South Africa it will be accepted that any Individual, Member or club has read and accepted the Constitution and accepts it and its code of conduct. Outlined below is MMA South Africa's Code of Conduct. I understand that my compliance with the Code of Conduct and the Constitution of MMA SA is required for my participation in MMA South Africa events or any event whereby MMA South Africa is participating. I also recognize that this Code of Conduct does not establish a complete set of rules that prescribes every aspect of appropriate behaviour. Further I acknowledge that I:

8. *As a competing athlete I will refrain from the use of performance enhancement drugs, including, but not limited to tobacco and alcohol as stipulated by the Olympic Anti-doping Movement, South African Anti-Doping Movement banned substance list as enforced, and will abide by the drug testing procedures of the South African Anti-Doping Movement. I will adhere to MMA South Africa's stipulated random drug tests.*

ADDENDUM C

PROMOTIONS

1. Amateur Promotions

- 1.1 *Classified as a Mixed Martial Arts Platform, Competition, Full contact Event or Development Event aimed at providing a safe and fair opportunity for fighters to gain experience to progress through the ranks of MMA up until a Pro Am or Professional level.*
- 1.2 *The above mention platforms will be sanctioned by the controlling body. Thus fulfilling all the required Health and Safety requirements as set out in the SANS Act of South Africa and the minimum requirement of MMA South Africa.*
- 1.3 *The Events mentioned in section 1.1 of this Addendum will also be required to make use of qualified officials trained in the correct format of MMA as prescribed by MMA SA.*
- 1.4 *All Amateur fight cards/matchups are to be reviewed and approved seven (7) days prior to any sanctioned event. MMA SA reserves the right to cancel, change or alter matchups which are believed to be unfair or not conducive to both athletes competing on any format as set out in Section 1.1 of this Addendum*

- 1.5 *All Promoters are to ensure that all fighters that are to compete on said formats have been medically cleared and pass the minimum requirements as set out by the sanctioning body from time to time.*
- 1.6 *All MMA Promoters are to adhere to the format of competition and administration as set out by the Controlling Body.*
- 1.7 *All MMA Promoters are liable to pay Sanction Fees as prescribed from time to time by the sanctioning body. This will be pre-determined every year at the National AGM by the Members of MMA SA and the MMA SA BOARD. MMA SA reserves the right to prescribe minimum fees for such sanctioning. Fees will be the same across all promotions and events. Fees will be calculated in accordance with the work required by the association to sanction events and to ensure the safety of the events and its participants and to ensure the professional running of the events. Fees will not be calculated in accordance to the turnover received by a promoter or in accordance with the size of an event.*
- 1.8 *No athlete may be financially compensated in any way or form for competing on any amateur Event/Platform or Competing.*
- 1.9 *No Amateur MMA Promoters will be recognized if the Promotion or organisation is not and active recognized Member in MMA SA.*
- 1.10 *All MMA Promoters will adhere to the rules and regulations of MMA SA and will be held responsible to any disciplinary procedure of MMA SA.*
- 1.11 *All Promoters will be required to develop individuals that help with promotions by having Workshops for said individuals i.e. locker room/ fighter inspectors, wrapping, cut men etc. (not including officials)*
- 1.12 *No Promoter or any person with direct links to a Promotion or that will profit in any way or form financially or personally from a Promotion (amateur or professional promoters) will be allowed to hold a position on any MMA SA Board whether it be Amateur or Professional as this is a clear conflict of interest and does not promote fair, governing, development or running of MMA in South Africa.*

2. Professional Promotions

- 2.1 *Classified as a Mixed Martial Arts Platform, Competition, Full contact Event or Development Event aimed at providing a safe and fair opportunity for fighters to compete at a professional level for monetary value to earn, support a partial or full subsidy or their required income.*
- 2.2 *The above mention platforms will be sanctioned by the controlling body. Thus fulfilling all the required Health and Safety requirements, medical Requirements as set out in the SANS Act of South Africa and the minimum requirements of MMA South Africa.*

- 2.3 *The Events mentioned in section 1.1 and 2.1 of this Addendum will also be required to make use of qualified officials trained in the correct format of MMA as prescribed by MMA SA.*
- 2.4 *All fight cards/matchups are to be reviewed and approved prior to any sanctioned event. MMA SA reserves the right to not allow matchups to take place which are not fair or conducive to both athletes competing on any format as set out in Section 2.1 of this Addendum.*
- 2.5 *All Promoters are to ensure that all fighters that are to compete on said formats have been medically cleared and pass the minimum requirements as set out by the sanctioning body from time to time.*
- 2.6 *All MMA Promoters are liable to pay sanction Fees as prescribed from time to time by the sanctioning body. This will be pre-determined every year at the National AGM by the Members of MMA SA and the MMA SA BOARD. MMA SA reserves the right to prescribe minimum fees for such sanctioning. Fees will be the same across all promotions and events. Fees will be calculated in accordance with the work required by the association to sanction events and to ensure the safety of the events and its participants and to ensure the professional running of the events. Fees will not be calculated in accordance to the turnover received by a promoter or in accordance with the size of an event.*
- 2.7 *No professional MMA Promoters will be recognized if the Promotion or organisation is not an active recognized member in MMA SA*
- 2.8 *All MMA Promoters will adhere to the rules and regulations of MMA SA and will be held responsible to any disciplinary procedure of MMA SA.*
- 2.9 *All Promoters will be required to develop individuals that help with promotions by having Workshops for said individuals i.e. locker room/ fighter inspectors, wrapping, cut men etc. (not including officials)*
- 2.10 *No Promoter or any person with direct links to a Promotion or that will profit in any way or form financially or personally from a Promotion (amateur or professional promoters) will be allowed to hold a position on any MMA SA Board whether it be Amateur or Professional as this is a clear conflict of interest and does not promote fair governing, development or growing of MMA in South Africa.*
65. MASA is the body governing martial arts in South Africa. It is the National Federation recognised by SASSCOC under the SASSCOC Constitution.
66. The relevant sections of the MASA Constitution considered by the Panel provide for MASA
- 5.5 *To be a member of SASSCOC.*
- 5.8 *To recognise and accept the jurisdiction, rules and regulations of the South African Institute for Drug-free Sport ("SAIDS") as well as the code of the World Anti-Doping Agency ("WADA"), and advocating and promoting of legislation for the control the use of illegal substances and other health risks.*

NOTE:

Associate Members shall be:

Anyone seeking to be affiliated to MASA may apply to the Secretary General of the Executive Committee in the form determined by the Board from time to time, enclosing a copy of its duly adopted Constitution, a declaration that it will adhere to the Constitutions of SASCOC and MASA a complete membership list and such other information as may be required by the Board. The Secretary General shall submit applications for affiliation to the next Board meeting for consideration and the board shall in turn submit all such applications, with a recommendation, to the next Annual General Meeting

- 7.4.4 All clubs must affiliate directly to the a Federation/style or organisation where they are domiciled subject to its application for membership being accepted by MASA. Each Federation/style or organisation shall automatically become a member of their Provincial structures. Each such Provincial structure shall be entitled to reimbursement of part of the fees collected by MASA as determined at its A.G.M.*
- 8.19 To impose fines, to suspend for a period of time, to ban and/or implement any other disciplinary measures on its Members or former Members or on any Participant or club or association or organisation connected or concerned with martial arts arising out of or connected with any contravention or breach of the provisions of this Constitution or any rule, by-law or regulation passed by Exco, including those of SAIDS, SASCOC and World Anti-Doping Code and recover by legal action or otherwise such fines or compulsory contributions or damages from its Members or former Members. Without in any way limiting the generality of the foregoing, MASA shall have the power to suspend or ban any Participant, Member or club from participating in any event, or championship event;*
- 13.16.25 to authorise testing for illegal performance enhancing substances at any time and that at any competition held under the authority of any of its members, according to current legislation, and evoke the penalties as laid out in the rules and regulations(?)*

AFFILIATION TO MASA.

Eligibility requirements for Provincial Martial Arts Associations, Members and Associated Members in terms of clause 8.2 of the Constitution of MASA.

- 1. The objects clause of the constitution of a Provincial Martial Arts Association, Ordinary Members and Associate Members must include provisions that are identical to or substantially the same as sub-clauses 6.3, 6.6 and 6.7 hereof and shall provide that the Provincial Association, Ordinary Members and Associate Members shall encourage, promote, develop and administer the sport of martial arts within the area of its jurisdiction in accordance with sound business principles.*
- 2. There must be provisions in the constitution of each Provincial Association, Ordinary Members and Associate Members, stipulating that the Provincial Association, Ordinary members and Associate Members may not authorise, send or sanction any team to go on a tour outside the boundaries of the Republic of South Africa without having first obtained the written consent of Exco through the National Body.*
- 3. Any dispute as to whether the foregoing requirements have been complied with shall be referred to the MASA Constitution sub-committee whose decision shall be final and binding.*

69. For the purposes of the panel's consideration of the jurisdictional elements in this matters concerning the SASCOC constitution are dealt with in paragraph 69.
70. The WADA Code ("the Code") is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the South African Institute of Drug Free Sport's ("SAIDS") Anti-Doping Rules, Regulations and Policies for Anti -Doping across sport in South Africa.
71. Article I of the Rules sets out the scope of application of the Rules. It provides:

1.1 Application to SAIDS

These Anti-Doping Rules shall apply to SAIDS

1.2 Application to National Federations

1.3 Application to Persons

- 1.3.1** *The Anti-Doping Rules shall apply to the following Persons (including Minors), in each case, whether or not such Person is a national of or resident in South Africa:*

all Athletes and Athlete Support Personnel who are members or license-holders of any National Federation in South Africa, or of any member or affiliate organisation of any National Federation in South Africa (including any clubs, teams, associations or leagues);

all Athletes and Athlete Support Personnel who participate in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by any National Federation in South Africa, or by any member or affiliate organisation of any National Federation in South Africa (including any clubs, teams, associations or league), wherever held;

any other Athlete or Athlete Support Person or other Person who, by virtue of accreditation, a license or other contractual agreement, or otherwise, is subject to the jurisdiction of any National Federation in South Africa, or any member or affiliate organisation of any National Federation in South Africa (including any clubs, teams, associations or leagues), for purposes of anti-doping;

all Athletes and Athlete Support Personnel who participated in any capacity in any activity organised, held, convened, or authorised by the organiser, of a National Event or of a national league that is not affiliated a National Federation; and

all Athletes who do not fall within one of the foregoing provisions of this Article 1.3.1 but who wish to be eligible to participate in International Events or National Events (and such Athletes must be available for testing under these Anti-Doping Rule for at least six (6) months before they will be eligible for such Events).

- 1.3.2** *These Anti-Doping Rules shall also apply to all other Persons over whom the*

Code gives SAIDS jurisdiction, including all Athletes who are nationals of a resident in South Africa, and all Athletes who are present in South Africa, whether to compete or to train or otherwise.

1.3.3 Persons failing within the scope of Article 1.3.1 or 1.3.2 are deemed to have accepted and to have agreed to be bound by these Anti-Doping Rules and to have submitted to the authority of SAIDS to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine case and appeals brought under the these Anti-Doping Rules, as a condition of their membership, accreditation and/or participation in their chosen sport."

72. The prosecutor submitted that the Panel had jurisdiction in this matter because:-

72.1 EFC, the body that organized the fight card and bout that Mr. Smit participated had provided for this in clause 8 of the contract concluded with Mr. Smit, which provided

"the Fighter undertakes to familiarise himself/herself with and to comply with the Anti-doping rules, regulations and policy of the South African Institute of Drug-Free Sports" (her underlining)

72.2 EFC is an affiliate of the relevant National Association - Martial Arts South Africa ("MASA") - which association is in turn an affiliate of the South African Sports Confederation and Olympic Committee ("SASCOC").

72.3 Mr. Smit had in fact submitted himself to the jurisdiction of the panel and was clearly correct in so doing in view of these factors and the deeming provision of Article 1.3.3.

73. EFC is a member of MMA South Africa, which in turn is a block member of MASA.

74. The South African Sports Confederation and Olympic Committee, "SASCOC", is a signatory to the World Anti-Doping Code "the Code" as amended.

75. MASA, one of the National Federation members recognised by SASCOC has agreed to be bound by and procure that its members including MMA South Africa, be bound by the WADA Code presently in force and adopted by the South African Government and the IOC arising out of the WADA declaration adopted in Copenhagen in March 2002 (as amended) or any subsequent declarations by WADA from time to time.

76. Under the constitution adopted at the Annual General Meeting held on the 26 September 2015 SASCOC committed, as one of its ancillary objects,

"to adopt and implement the WADA's anti-doping code thereby ensuring that SASCOC's anti-doping policies and rules and regulations, membership and/or funding requirements, and results management procedures conform with the Code and respect all the rules and responsibilities for NOC's that are listed within the Code. (Clause 2.4.7)

and furthermore committed that

“SASCOC and all its Members agree to comply and be bound by and to procure that their members comply with the Code presently in force and adopted by the government of South Africa and the IOC declaration adopted in Copenhagen in March 2002 (as amended) or any subsequent declaration or declarations adopted by WADA from time to time.”

77. Having regard to the contract, the constitutions and other information provided to the panel, proving the connection between Mr Smit, EFC, MMA South Africa, MASA and SAIDS – under their constitutions and that of SASCOC- as read with Article 1.3.1, **the panel hereby finds that in Mr Smit’s case**

- 77.1 SAIDS had the necessary jurisdiction to carry out doping control;**
77.2 the panel, duly appointed by the Registrar under Article 8.1.1, had the jurisdiction to have heard the matter relating to the anti-doping charge brought against him. (Article 1.3.3)

78. Although it now thus accepted without any qualification whatsoever, that the Rules apply to this matter, as accepted by Mr Smit himself, it is pertinent to note that the panel’s jurisdiction to hear this matter arises further as follows

- 78.1 The South African Institute for Drug-Free Sport, “SAIDS” the corporate body established under section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, “the Act”.
- 78.2 The main objective which SAIDS has to promote and support the elimination of doping practices in sport which are contrary to the principles of fair play and medical ethics in the interests of the health and well being of sportspersons.
- 78.3 On 25 November 2005 SAIDS, formally accepted the World Anti-Doping Code, “the Code”, which the World Anti-Doping Agency, “WADA”, had adopted on 5 March 2003.
- 78.4 By doing this SAIDS, as the National Anti-Doping Organisation for South Africa, introduced anti-doping rules and principles governing participation in sport under the jurisdiction of SASCOC or any national sports federation.
- 78.5 The anti-doping rules which SAIDS adopted in 2005 were subsequently revised in 2009. The Rules which now apply are the SAIDS Anti-Doping Rules 2015, revised in accordance with the WADA Code 2015.

PANEL'S FINAL DECISION & SANCTION

Based upon the panel's findings and the reasons set out above the panel makes the following decision in accordance with the mandatory provisions of the Rules.

1. Mr Gary Smit
 - 1.1 having admitted that he was guilty of the anti-doping rule violation for which he had been charged under Article 2.1 of the Rules;
 - 1.2 having failed to establish that the anti-doping rule violation was not intentional in accordance with Articles 10.2.1 and 10.2.3 of the Rules;

is required to serve a 4(four) year period of ineligibility as the sanction under the consequences relating to such anti-doping rule violation.
2. Although Article 10.10 provides that such period of ineligibility "shall start on the date of the final hearing decision" it allows for an exception under Article 10.10.3.
 - 2.1 Such exception enables a panel to grant credit for any period of ineligibility served under provisional suspension, which has been respected, against any period ultimately imposed.
 - 2.2 Thus although the period could have started on the 31 March 2016 and ended on 30 March 2020 the panel decided that because the period of provisional suspension had been respected by Mr Smit, it should –
 - 2.2.1 be deemed to have commenced on the date of notification of the adverse analytical finding and Mr Smit's provisional suspension, being the 17 November 2015;
 - 2.2.2 end at midnight on 16 November 2019,on the understanding that the time Mr Smit served under provisional suspension from 17 November 2015 be credited to such 4(four) year period of ineligibility.
3. During such period of ineligibility Mr Smit shall – in accordance with the provisions of Article 10.11 of the Rules - not participate in any capacity in any singular race, match, or singular sport contest or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by MMA South Africa and/or MASA or any national federation affiliated to SASSCOC, or a club or other member organization of a *Signatory's* member organisation, or in singular race, match, or singular sport contest organised by any professional league or any international or national level *Event* organisation or any elite or national-level sporting activity funded by a governmental agency.
4. Further consequences of such anti-doping rule violation, as provided under Article 9 of the Rules are that
 - 4.1 Mr Smit is automatically disqualified from the results of his fight on 8 August 2015;
 - 4.2 any medals, points and prizes received by him are forfeited.

5. A further consequence is such that SAIDS may make disclosure in accordance with the provisions of Articles 10.12 and 14.3, read with Article 13.7.2 of the Rules, which latter Article, inter alia, provides

NOTE: No party or parties may make any revelations, decisions taken, projected outcomes, opinions, comments, etc., known to the media, in whatever form, until the appeal process is exhausted.

5. Mr Smit may return to train with a team or to use the facilities of a club or other member organisation of SAIDS's member organisation(s) during the shorter of the last two (2) months of his period of *Ineligibility*, or the last one (1) quarter of the period of *Ineligibility* imposed.
6. Mr Smit, including any other party referred to in Article 13.2.3, has the right to appeal this decision in accordance with the provisions of Article 13, specifically Articles 13.2 - 13.7 of the Rules.

The time provided for the filing of any appeal, shall be twenty-one (21) days from the date of written receipt of the decision by the appealing party, as provided under Article 13.7.2.



John Bush
Chairperson

Dr Dimakatso Ramagole
Member

Rishi Hansraj
Member

17 June 2016

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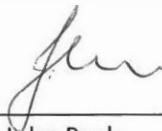
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