

REASONED DECISION

of the

INDEPENDENT DOPING HEARING PANEL

comprised of

John Bush lawyer member and chairperson
Christa Janse van Rensburg medical practitioner member
Leon Fleiser administrator member

In the matter between

SAIDS

and

GEORGE LYON

concerning the charge relating to the presence Methylhexaneamine found to be in his system following and in-competition test after an ice-hockey league game on 8 August 2015.

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

THE SOUTH AFRICAN INSTITUTE FOR DRUG FREE SPORT

“SAIDS”

brought against

GEORGE LYON

“Mr Lyon”

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

after Mr Lyon had been notified of the adverse analytical finding - which had resulted from the in-competition testing of his urine sample provided after an ice hockey league game on 8 August 2015.

A. THE CHARGE & INITIAL DECISION

1. On the 2 February 2015 the hearing panel reached a unanimous decision in the light of the evidence led, the Rules and precedent - in particular that relating to the international harmonisation of decisions and the applicable sanction for anti-doping violations – concerning Mr Lyon having committed the anti-doping violation for which he had been charged, as well as its determination of the appropriate sanction to be applied, following Mr Lyon having pleaded not guilty to the following charge brought against him, arising from his participation in a South African Ice Hockey Super League game on 8 August 2015.

“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 8 August 2015 you provided a urine sample (3922934) 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 substance identified in your sample was Methylhexanemine (Dimethylpentylamine). This substance is categorised under Class S6 Stimulants on the World Anti-Doping Code 2015 Prohibited List International Standard”*

** “the Cologne lab”.*

2. The *ex tempore* decision delivered by the Chairperson provided that Mr Lyon had committed the anti-doping violation for which he had been charged and he be sanctioned with a 1 (one) year period of ineligibility. It was noted that this would have commenced on the 16th November 2015 (being the date upon which Mr Lyon was notified of the adverse analytical finding against him) and end at midnight on 15 November 2016, allowing a credit for time served under provisional suspension.

Although not specifically stated it was implicit that Mr Lyon would suffer the sanction of all the other Consequences of the Anti-Doping Rule Violation, as provided in the Article 10, read with the Definitions.

6. The panel's decision followed Mr Lyon's
 - 6.1 commitment to attend the hearing by way of the telephone conference set up for such purposes with his prior understanding and agreement;
 - 6.3 insistence that he was not guilty of the charge because the label on the Hyper Burn product, which he had alleged probably contained the offending Methylhexaneamine (Dimethylpentylamine) "MHA", did not list MHA as one of its ingredients
 - 6.3 acceptance of the panel's jurisdiction to hear the matter;
 - 6.3 further acceptance and thus willingness not to contest any of the elements of the sample collection process, or testing methods and/or procedures adopted by SAIDS and/or the Cologne lab.

B. THE REASONED DECISION

B1. Introduction

7. Under the Rules (Article 8.3) the Chairperson is required to issue a written dated and signed decision (either unanimously or by majority) 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.
8. The following sets out the full reasons for the decision and the sanction imposed, having regard to the strict liability provisions of the Rules, all of the evidence adduced before the panel, as well as the totality of the circumstances relating to the charge, with reference to those aspects of Mr Lyon's uncontroverted evidence concerning his apparent inadvertent 'use' of the MHA found to be in his system, his credibility as a witness and the reliability of his evidence.

B2. Contextual and jurisdictional summary

9. Mr Lyon testified that he had played in an ice hockey game on the 8 August 2015.

10. At the time of his participation Mr Lyon was as a member of a club and as such he and his club fell under the jurisdiction of the South African Ice Hockey Association "SAIHA".
13. Mr Lyon was thus subject to the rules governing his being an ice hockey player registered at club and/or provincial level under the jurisdiction of SAIHA, which association falls under the jurisdiction of
 - 13.1 the International Ice Hockey Federation ("IIHF") which has adopted the World Anti-Doping Code 2015 "the Code";
 - 13.2 the South African Sports Confederation and Olympic Committee, "SASCOC", a signatory to the World Anti-Doping Code "the Code" as amended - as a member of SASCOC.
14. Although apparently not specifically catered for under its constitution, SAIHA - as the national federation governing ice hockey in South Africa - had agreed to adopt and implement SAIDS anti-doping policies and rules which conform to the Code and the Rules, by virtue of its status as a national federation under the IIHF, as a signatory to the Code and through its membership of SASCOC.
15. Under its constitution adopted on the 20 November 2013 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."

16. Although it is common cause and accepted without any qualification whatsoever, that the Rules apply to this matter, as accepted by Mr Lyon himself, it is pertinent to note that the panel's jurisdiction to hear this matter arises through SAIDS, as follows.
 - 16.1 The South African Institute for Drug-Free Sport, "SAIDS" is a corporate body established under section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, "the Act".
 - 16.2 The main objective which SAIDS has is 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.

- 16.3 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.
- 16.4 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, the South African Sports Confederation and Olympic Committee, or any national sports federation.
- 16.5 The Anti-Doping Rules 2015, as published by SAIDS, (“the Rules”), which are applicable to the present proceedings, 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 replace those published and of force dated 2009.
- 16.6 Article 8.1.1 of the Rules provides for the Registrar to appoint an independent doping hearing panel to hear and adjudicate cases.

B3. The panel, prosecution, defence representation and witnesses.

17. The anti-doping hearing panel appointed to adjudicate whether Mr Lyon had violated the Rules and, if so, what the consequences should be, consisted of Mr John Bush (Chairperson), Dr Christa Janse van Rensburg and Leon Fleisher.
18. Mr Farai Razano was the prosecutor on behalf of SAIDS.
19. Mr Lyon represented himself and apart from the advice provided by the panel concerning
 - 19.1 his attendance at the hearing by way of a teleconference call in his best interests;
 - 19.2 procedural matters and his rights within the context of the hearing,he did not have or seek any legal representation.
20. Mr Lyon testified himself after having committed to tell the truth and the whole truth.
21. Although the prosecution submitted that the persons mentioned in Mr Lyon’s testimony be called as witnesses the panel decided it was not necessary for the purpose of reaching any finding and/or decision.
22. The proceedings were recorded and a transcript prepared by Veritas, a division of EOH Legal Services (Pty) Ltd, represented by Sam Mahai. 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.

B.4 Matters for adjudication by the panel

23. The panel had to determine - in the light of the totality of the evidence led, with due regard for the applicable Rules, common law and the South African Constitution - whether Mr Lyon

- 23.1 was guilty of the anti-doping rule violation for which he had been charged ?
 - 23.2 was entitled to any reduction of any period of ineligibility in accordance with the Rules, if he was found to be guilty? Furthermore what such period ought to have been, considering the specific circumstances,
 - 23.2.1 in accordance with the principles governing fairness;
 - 23.2.2 by reference to decided case precedent within the context of the requirement for the harmonisation of anti-doping decisions involving MHA across the sporting world.
24. In seeking the answers to such questions the panel was required to meet two essential hurdles by determining
- 24.1 *First hurdle*
 - 24.1.1 How had the MHA entered Mr Lyon's system ?
 - 24.1.2 At the very minimum the likely source or origin and manner of ingestion for the MHA found to be present needed to be explained to the panel.
 - 24.2 *Second hurdle*

Once Mr Lyon had passed the first hurdle the questions to be asked and steps to follow, required for the determination of a possible reduction or elimination of any period of ineligibility, were -

 - 24.2.1 Was the ingestion of MHA intentional or not?
 - 24.2.2 If intentional then the period of ineligibility that had to be applied was 4 years?
 - 24.2.3 If the ingestion was unintentional - often termed *inadvertent use* - had Mr Lyon been at fault or negligent in any way?
 - 24.2.4 If Mr Lyon had no fault or negligence attributable to him at all then the period of ineligibility could have been eliminated in totality.
 - 24.2.5 If he was negligent - had such fault or negligence, taking into account the totality of the circumstances, been significant in the totality of the circumstances, specific and relevant to the anti-doping rule violation?
 - 24.2.6 If the fault or negligence was significant the period of ineligibility of 2 years would not have been reduced.
 - 24.2.7 If the fault or negligence it was not significant then

21.2.7.1 if a Specified Substance or Contaminated Product was involved - the period could be reduced to a reprimand and no period of ineligibility, or a maximum period of ineligibility of 2 years, depending on Mr Lyon's degree of fault or negligence;

24.2.7.2 in instances where no specified substance or contaminated product was involved the period of ineligibility could be reduced to not less than half the period of ineligibility.

24.2.8 Only when the degree of fault or negligence had been established through using objective criteria could an appropriate reduction in the period of ineligibility be determined. This could be reached in accordance with the fair principles of proportionality having regard to the totality of the circumstances, which included the evaluation of both objective and subjective criteria.

B5. Applicable rules

The applicable articles of the Rules which considered by the panel were.

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.

10.3not applicable.....

10.4 Elimination of the Period of *Ineligibility* where there is *No Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, then the otherwise applicable period of *Ineligibility* shall be eliminated.

10.5 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

10.5.1 Reduction of Sanctions for *Specified Substances* or *Contaminated Products* for Violations of Article 2.1, 2.2 or 2.6.

10.5.1.1 *Specified Substances*

Where the anti-doping rule violation involves a *Specified Substance*, and the *Athlete* or other *Person* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years of *Ineligibility*, depending on the *Athlete's* or other *Person's* degree of *Fault*.

10.5.1.2 *Contaminated Products*

In cases where the *Athlete* or other *Person* can establish *No Significant Fault or Negligence* and that the detected *Prohibited Substance* came from a *Contaminated Product*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years *Ineligibility*, depending on the *Athlete's* or other *Person's* degree of *Fault*.

10.5.2 Application of *No Significant Fault or Negligence* beyond the Application of Article 10.5.1.

If an *Athlete* or other *Person* establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears *No Significant Fault or Negligence*, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person's* degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one (1)-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than eight (8) years.

No Fault or Negligence:

The *Athlete* or other *Person's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an anti-doping rule. Except in the case of a *Minor*, for any violation of Article 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered his or her system.

No Significant Fault or Negligence:

The *Athlete* or other *Person's* establishing that his or her *Fault* or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault* or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a *Minor*, for any violation of Article 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered his or her system.

[Comment: For Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance.]

Fault:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Athlete* or other *Person's* degree of *Fault* include, for example, the *Athlete's* or other *Person's* experience, whether the *Athlete* or other *Person* is a *Minor*, special considerations such as impairment, the degree of risk that should have been perceived by the *Athlete* and the level of care and investigation exercised by the *Athlete* in relation to what should have been the perceived level of risk.

In assessing the *Athlete's* or other *Person's* degree of *Fault*, the circumstances considered must be specific and relevant to explain the *Athlete's* or other *Person's* departure from the expected standard of behaviour. Thus, for example, the fact that an *Athlete* would lose the opportunity to earn large sums of money during a period of *Ineligibility*, or the fact that the *Athlete* only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of *Ineligibility* under Article 10.5.1 or 10.5.2.

[Comment: The criteria for assessing an Athlete's degree of Fault are the same under all Articles where Fault is to be considered. However, under Article 10.5.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved.]

B6. The evidence

Anti-doping rule violation

Mr Lyon's testimony

23. Mr Lyon did not admit the anti-doping rule violation and pleaded not guilty to the charge set out the letter SAIDS sent to him dated 22 December 2015 and Article 2.1 read to him by the Prosecutor.

24. Mr Lyon testified in his defence that although he had waived his right to a hearing he had (in doing so) not admitted to the anti-doping rule violation and had subsequently pleaded not guilty to the charge because

24.1 he had not taken anything (the prohibited substance MHA) knowingly;

24.2 the MHA had not shown on any of the labels of the products he had used.

Panel finding

The panel found Mr Lyon guilty of having indeed committed the anti-doping rule violation under Article 2.1 of the Rules. (line 5 page 9 of the transcript)

The reason for this, despite Mr Lyon's submission to the contrary, was that Mr Lyon failed to lead any evidence whatsoever - both initially in dealing with the charge, as set out above and thereafter in mitigation of sanction - which in the Panel's view was capable of rebutting (on a balance of probability) the presumption of his having committed the anti-doping rule violation by virtue of the MHA found to have been present in his system, as analysed by the Cologne lab and reported under sample 3922934,

Exhibits

25. The pack which had been prepared by SAIDS for the hearing was received into the evidence along with a later e-mail from Mr Lyon to SAIDS by the panel as exhibits.

1. Letter SAIDS to Mr Lyon – 16/11/15 - Notification of AAF (3 pages)
2. Letter from Mr Lyon to SAIDS - 22/11/15 (2 pages)
3. Doping Control Form 64107
4. Analytical Report Deutsche Sporthochschule Koln, Instituut fur Biochemie (2 pages)
5. E-mails originating from SAIDS –Fahmy Galant, ENS Michael Murphy and Mr Lyon
6. Letter SAIDS to Mr Lyon – 22 December 2015 – Charge : Anti-doping rule violation
7. Chain of custody form signed by Courier IT dated 11082015

In mitigation of sanction & consequences

26. The panel considered the following evidence led by Mr Lyon in his evidence-in-chief and under cross-examination as relevant to its determination of the appropriate sanction. In doing so the panel also considered the impact of such evidence upon Mr Lyon's credibility as a witness and the reliability of his evidence having regard to speculative comment, conjecture and inferences capable of being drawn within the surrounding context of such evidence being provided.

Evidence-in-chief

27. Mr Lyon then read the content of his letter – exhibit 1 – into evidence. Those more essential aspects (appearing from page 15 of the transcript) - including his *ad lib* statements – were that Mr Lyon

- 27.1 had been “surprised and equally saddened to learn that he had been tested positive for a banned substance”;
- 27.2 had found it too expensive for him to have his B-sample tested;
- 27.3 waived his right to a hearing and accepted the consequences;
- 27.4 had unintentionally and unknowingly used a substance which contained Methylhexanamine;
- 27.5 had waived his right to the hearing due to his lack of knowledge of what the procedures were and how matters worked;
- 27.6 had used supplements always through a very careful process;
- 27.7 always checked what was in the product before he used them;
- 27.8 chose premium products as his health was something he took very seriously;
- 27.9 used Optimum Nutrition’s Omega Energy and Gold Standard Whey as a protein supplement and a pre-workout supplement before and after ice hockey matches;
- 27.10 stated that both of such products were NCAA approved and he could not see that they contained the substance he had been tested for (ie. MHA);
- 27.11 had also checked the nutritional facts on the containers on many occasions;
- 27.12 had been advised by whom he assumed was a very knowledgeable consultant on what to use to speed up his metabolism, before the game he had played in this particular competition;
- 27.13 had been advised by the consultant that he use a fat burner called Hyper Burn One in order to try and activate his metabolism;
- 27.14 had used this for a week;
- 27.15 had stopped using it a week before the tournament, mainly because
 - 27.15.1 of the high caffeine levels that were in it
 - 27.15.2 his not having wanted any advantage because of that;
 - 27.15.3 it had dehydrated one a lot.
- 27.16 had been advised by a few people, including the consultant to stop using the supplement if he were to have competed soon thereafter. It appeared that the consultant also advised that it would only have been a problem if he had taken it 3-5 days before a match;
- 27.17 was against cheating of any form. He had no reason to cheat. Ice-Hockey was a very amateur sport. There was no payment. He did for the love of the game. He had never cheated before. He’d been tested in numerous IIHF tournaments when he was younger, international tournaments. He had been playing with the

senior national team for ten years now. He therefore had no reason to jeopardise that or to cheat for anything. (*ad lib* see page 17 of transcript)

- 27.18 had checked the label on Hyper Burn and had not seen the MHA on the label (at the time). He now realised that substance might not have appeared on the label (as an ingredient);
- 27.18 had subsequently done research on the internet and had also been told that fat burners might contain the substance (MHA);
- 27.19 was not sure if it was the Hyper Burn, as he had stopped taking it a week before the competition, but that there was nothing else which he had taken;
- 27.20 had not intended to cheat and had no knowledge that anything he had taken had any banned substance in it;
- 27.21 had used the fat burners to help get rid of his belly of which he was self – conscious of;
- 27.22 loved ice-hockey even though it was an amateur sport;
- 27.23 felt extremely remorseful for what had happened;
- 27.24 was now much more informed of his responsibilities as an athlete and had asked the SAIHA to assist him/other athletes with a course on what they should be careful of;
- 27.25 apologised to SAIDS, the SAIHA for the adverse finding under what he hoped was an amateur mistake and in no way intentional.

Evidence under cross-examination

- 28. In response to questions posed by the Prosecutor Mr Lyon provided the following further testimony, which has been summarised.
 - 28.1 Mr Lyon checked the product labels for banned substances because he knew he was responsible for the products that went into his body and thus had to know what was ingested.
 - 28.2 He therefore knew that he had a duty to make sure that whatever entered his system would not be a prohibited substance.
 - 28.3 He initially thought that the best way to check whether a supplement had a prohibited substance was to check the label. He now knew that he needed to do more research on a product before he used it.
 - 28.4 He checked the Hyper Burn label when he got the product from the consultant who had told him he should try it to boost his metabolism.
 - 28.5 The high caffeine in the Hyper Burn concerned him. He stopped taking it a week before the tournament because he hadn't wanted high caffeine levels and to get dehydrated because of that.

- 28.6 The consultant's name was Dirk and he worked for Chrome, which had shops and Menlyn and Centurion.
- 28.7 Dirk delivered the Hyper Burn to Mr Lyon at the gym as this was convenient.
- 28.8 Mr Lyon had no more of the Hyper Burn left. He had thrown it away after he had used it for a week during which time his belly had started going away.
- 28.9 As he was not a big fan of fat burners. After never having used them and having tried them, he decided to stop using them and threw them away.
- 28.10 He had stopped using the Hyper Burn a week before the competition because of the high caffeine levels of 200mg.
- 28.11 Dirk and another person at the gym had told him to stop taking it (the Hyper Burn) "if he was to compete soon". His decision to stop was because he did not want to compete with high levels of caffeine not because there may have been any prohibited substance in it.
- 28.12 He was sure there were no banned substances in the Hyper Burn. This was because, after looking at the label, he had referred the list of ingredients on the label to his coach Andre Marais. He was not a sports scientist or a pharmacologist and had the WADA list. He told Mr Lyon that he had checked the list of ingredients on the label which Mr Lyon had given to him on the internet. The search had not been done in Mr Lyon's presence.
- 28.13 It was not true that Mr Lyon had stopped taking the fat burner because he knew there was a prohibited substance in it. As the season was 'done' after that there would have been no reason for him to have stopped taking what would have been a prohibited substance. He stopped because he had no longer wanted to use the Hyper Burner fat burner.
- 28.14 Mr Lyon had not designedly thrown the container away (three weeks after the game) to hide anything and in so doing avoid having to have produced the container before the Tribunal in order to prove that Mr Lyon had known he had been taking the product (ie. intentional use).
- 28.15 He was still not certain that it was the Hyper Burn which contained the MHA which he had tested positive test for. In his view the MHA had not originated from his pre-workout or my protein shake, as the only other options, because those were NCAA approved.

Note: A visit to the NCAA site regarding approved supplements revealed the following

Before consuming any nutritional/dietary supplement product, review the product with the appropriate or designated athletics department staff. There are no NCAA approved supplement products. Dietary supplements, including vitamins and minerals, are not well regulated and may cause a positive drug test result.

- 28.16 It would have been a fair conclusion to have drawn that if the Hyper Burn had not contained the MHA some other product which Mr Lyon would have taken contained the MHA.
- 28.17 Mr Lyon stated "in all honesty" that he had not taken anything else other than the referred to three supplements at the time of testing.

- 28.18 The consultant (Dirk) had not told Mr Lyon how long the Hyper Burn would remain in his system but advised that he stop using the Hyper Burn five days before he was going to compete because he would then not have had problems with the caffeine.
- 28.19 He had only asked his coach to check for banned substances not caffeine.
- 28.20 The aid which he mentioned in his letter referred to the boost which he felt caffeine would have given him. He had not wanted extra aid.
- 28.21 He had not purchased the product containing an illegal substance through Dirk without an invoice or receipt to avoid detection but for convenience so he did not have to go and fetch it at the store.
- 29.22 He mentioned that he did not feel he needed a receipt in such circumstances and offered to go to the store to purchase the fat burner which he got through Dirk.
- The Chairperson alluded to Mr Lyon not having been as careful as he stated he was in 27.6 in his use of supplements through a careful process.
- 29.23 He stopped using the product on the Friday before the game which would mean that he had not taken it from the Saturday before to the Saturday of the game.

Responses to panel members' questions

- 29.24 The high caffeine was the only possible problem which the consultant mentioned to Mr Lyon (about the fat burner he had recommended)
- 29.25 He had not had any side effects other than dehydration because of the high caffeine content. No heart palpitations only that he got very thirsty - when he drank coffee.
- 29.26 He thought a very high level of caffeine might have been picked up as something else so he was concerned.
- 29.27 He did not know the South African Institute for Drug-Free Sports' position on supplements 100 %. He was aware of the strict liability position having read about the Chiliboy (Ralepelle and Bjorn Basson) SARU case.
- 29.28 Mr Lyon now also knew that as the supplement industry was not regulated it was not required that manufacturers list all the ingredients on the label. He noted that even though a product was NCAA approved this did not mean that the three products mentioned were not tainted too.
- 29.29 He advised that the SAIHA had sent out an email to club level advising that players only use certain products if they were to use anything.
- 29.30 He understood the SASSCOC directive not to use supplements. The advice was that athlete's see a dietician and eat properly.

- 29.31 The team he played in was a Super League game and at the time of playing was bottom position in the league.
- 29.32 The reason why he was concerned about caffeine was that he remembered when he had started (playing) caffeine was an issue and he was not 100% clear on the fact that caffeine was no longer an issue.

B7. Submissions concerning sanction

30. Prosecutor

- 30.1 The prosecutor opened his submission in having declared that Mr Lyon had not being truthful. The reasons he stated for this were.
- 30.1.1 Other than naming the consultant - Dirk and his coach - Andre Marais and mentioning the other person at the gym, but not by name, he failed to provide the other names of the few people that he mentioned in his letter he had spoken to.
- 30.1.2 From his experience as a prosecutor it is always the other guy at the gym who was blamed but not named. This would not have been helpful to the panel having confidence to believe that there really was another person at the gym.
- 30.1.3 The timing (and reason for Mr Lyon's stopping the fat burner was highly questionable. Initially this was because he had stated that he was not a fan of fat burners; then he added that he did not believe in them; adding further that as a diuretic these had made him very thirsty; and continuing with the high caffeine content and his knowledge that in the past caffeine had been a problem.
- 30.1.4 These were excuses not facts. The first being the person at the gym then caffeine, which his coach could have told him was not on the list.
- 30.1.5 The reason for Mr Lyon stopping Hyper Burn was not because of the caffeine but rather because he had been aware before he started taking it that it contained a prohibited substance in it.
- 30.1.6 Knowing that this was so was the reason why he close to buy it through the backdoor, "a dark street" - figuratively speaking, rather than directly from the Chrome nutrition store, where he would have received an invoice which he could have produced to the panel.

31. Matter in limine – Speculative statements/comment leading to circumstantial evidence

- 31.1 The prosecutor, Mr Lyon and the Chairperson discussed whether the named persons should be called to testify as witnesses in order to deal with comments and/or statements of a purely speculative nature.

- 31.2 The reason for this was that the chairperson had been concerned that such statements and/or comments may have caused possible prejudice and were thus possibly unfair to either the prosecution or Mr Lyon. This, notwithstanding the prosecutor's assertion that it might be argued that such statements/ comments related purely to matters of circumstantial evidence which required that the panel exercise its discretion to draw such inferences as the panel might find reasonable in considering the merit and weight to be given thereto.
- 31.3 The panel deliberated on this matter and found that the hearing should not be adjourned for the purpose of hearing the testimony of the persons named by Mr Lyon. This was because the panel had decided to accept Mr Lyon's evidence as it had not been established that Mr Lyon had sought to enhance his performance and had cheated. The reasons for this were
- 31.3.1 it was a league game;
 - 31.3.2 Mr Lyon's team was at the bottom of the league;
 - 31.3.3 his performance would not have been enhanced;
 - 31.3.4 the saving of time and money;
 - 31.3.5 that the panel still had (the opportunity to) listen to and take in the Prosecutor's submissions and then deliberate on reaching a decision on sanction.

32. *Prosecutor's further submission*

- 32.1 The only inference or reasonable inference to be drawn from the fact that Mr Lyon had failed to call the witnesses he had been named or have provided their phone numbers was because he had something to hide.
- 32.2 As circumstantial as all the evidence before the panel was, it was indicative of someone who had deliberately set out to cheat or intentionally dope. The reasons for this were that
- 32.2.1 the substance was not produced but thrown away –even accepting that Mr Lyon did not know (whether the Hyper Burn contained the MHA);
 - 32.2.2 the Hyper Burn fat burner was only taken for a week;
 - 32.2.3 the timing of Mr Lyon's having stopped taking the Hyper Burn given that he had been made aware that there would have clearly been problem had he taken it later than between 3-5 days before a match;
 - 32.2.4 all (these factors) added up to a well-orchestrated move to actually avoid detection of the substance.

- 32.2.5 the averment that Mr Lyon's coach had been busy and could not have come to the phone was an excuse made to avoid having the truth revealed.
- 32.3 Although the evidence was indeed circumstantial when it came to having to prove intention, the only reasonable inference having regard to the facts alluded to was intentional use (of a prohibited substance being MHA) by Mr Lyon.
- 32.4 Mr Lyon had (furthermore) not discharged the onus of having proved that there had not been significant fault or negligence on his part. The reasons advanced for this were that
- 32.4.1 he was a meticulous person yet he had failed to make further inquiry as to the nature of the problem raised by the consultant (Dirk)(and others) were Mr Lyon to have taken the Hyper Burn later than 3-5 days before competition ;
- 32.4.2 such advice should have 'raised red flags' for Mr Lyon;
- 32.4.3 Mr Lyon had lied in his having suggested that the problem had been the high caffeine levels (in the Hyper Burn);
- 32.4.4 he failed to take adequate precautions or measures that a reasonable person in his situation, knowing about the dangers of doping, would have taken to ensure that the MHA did not end up in his system.

Credibility as a witness

- 32.5 Mr Lyon's evidence was such that he had not been truthful. The reasons advanced for this were.
- 32.5.1 He made up and changed his evidence as he went along.
- 32.5.2 He had started off with his having stopped (the fat burner Hyper Burn) because caffeine had a diuretic effect;
- 32.5.3 Then he stated that he had done so because he was concerned that caffeine used to be on the (prohibited) list - once he had been questioned further;
- 32.5.3 He failed to mention caffeine or name the persons he referred to in his letter - exhibit 1.
- 32.5.4 He had added to his story as he went along, having realised that it was not as convincing as it ought to have been.
- 32.5.5 There was more to his story that the panel had not been told.

Appropriate sanction

- 32.6 As sanction the prosecutor asked for a period of ineligibility of
- 32.6.1 4 (four) years on his main submission because Mr Lyon's use of MHA, as a cheat, had been intentional, due to his having known that there was a significant risk that his conduct might have constituted or resulted in an anti-doping rule violation;

and if the panel found that this was not so,

32.6.2 2 (two) years, because there had been significant fault or negligence on Mr Lyon's part.

32.7 The prosecutor also asked for the sanction of public disclosure - a further consequence of the anti-doping rule violation - provided for under the Rules.

33. *Mr Lyon's submissions*

33.1 Mr Lyon submitted in his defence regarding sanction that there was absolutely no reason for him to have cheated. The reasons he advanced for this were that

33.1.1 (ice hockey) was an amateur sport;

33.1.2 he had been playing (ice hockey) for 15 years;

33.1.3 he paid R2,000 a month to practice and be able to play (ice hockey);

33.1.4 he had not benefitted financially in any way from the sport.

33.1.5 he was not going to make more money, win a title and make a million rand

33.2 He stated further that he

33.2.1 had not taken the enhancement (MHA) intentionally;

33.2.2 still did not know whether it (MHA) was in the Hyper Burn;

33.2.3 had learned from his mistake and realised that he needed to do more research and not take supplements when competing.

33.3 in response to questions raised by the chairperson Mr Lyon advised that he

33.3.1 had been dope tested once, when a member of the (South African) national junior team;

33.3.2 he had received anti-doping education over ten years before and did not remember who gave him this;

33.3.3 had a diploma in business management and entrepreneurship.

Appropriate sanction

33.4 Mr Lyon stated that he felt he should not be "banned" for 4 years or 2 years and proposed a reprimand as the appropriate sanction.

B8. Evaluation of the evidence - credibility and reliability

34. *Introduction*

34.1 Exhibit 1 and the further letter which Mr Lyon had addressed to SAIDS immediately before the hearing, both of which form part of the record, provided

that Mr Lyon waived his right to a hearing and was prepared to take the consequences meted out to him.

- 34.2 As Mr Lyon had not admitted he was guilty of the anti-doping violation relating to the notification of the adverse analytical finding and the charge the matter could not be dealt expeditiously by SAIDS under Article 7.10 of the Rules – Resolution of without a hearing.
- 34.3 At the 11th hour Mr Lyon was persuaded through the efforts of the prosecutor and the chairperson to attend the hearing by way of a polycon teleconference call.
- 34.4 The transcript of the hearing does not record the preliminaries which led to this.
- 34.5 Mr Lyon’s testimony and those of the prosecutor’s speculative comments and conjecture – made without evidential value, as having been unsupported, or uncorroborated by such other witness as had been named, or factual circumstance, as would have enabled the panel to have drawn such reasonable inferences it could in support of the versions put by either Mr Lyon or the prosecutor were considered against such backdrop.

35. ***Panel’s findings***

The panel reached the following relevant summarised findings - concerning the testimony led by Mr Lyon and/or the prosecutor’s allegations/averments regarding matters of an evidentiary nature, which would have enabled the panel to have drawn reasonable inferences relating to circumstantial evidence in support of or against Mr Lyon.

35.1 Mr Lyon

- 35.1.1 was a truthful and credible witness, whose evidence - despite the prosecutor’s essentially speculative assertions to the contrary - could be relied upon;
- 35.1.2 had not intended to ingest MHA;
- 35.1.3 had therefore not known that his conduct in ingesting Hyper Burn would have constituted an anti-doping violation, or known that there was a significant risk that such conduct might have constituted, or resulted in an anti-doping rule violation and manifestly disregarded such risk;
- 35.1.4 had admitted to his having been at fault or negligent in the manner in which he had been offered and procured the fat burner Hyper Burn from the consultant named Dirk;
- 35.1.5 had not deliberately thrown away the Hyper Burn container to avoid detection of his having knowingly having intentioned to use MHA;

35.1.6 had not deliberately failed, or refused to call the witnesses named by him, being Dirk and his coach Andre Marais, as well as the other person at the gym whose name was not made known because he had something to hide;

35.1.7 and the prosecutor had had sufficient time and opportunity to have communicated with each other, under the provisions of Article 8.1.3 of the Rules, before the hearing, in order to have ensured that Mr Lyon and such witnesses as they each intended to call would have attended the hearing and in doing so “know what evidence would be presented at the hearing”. Despite this they simply failed to do so.

In any event the panel having raised the possibility that the hearing be adjourned for such purposes ruled it was not necessary to do so in order to have such witnesses testify. This was because the panel had, inter alia, decided

35.1.7.1 to accept Mr Lyon’s testimony;

35.1.7.2 both Mr Lyon and the prosecutor were equally at fault in their having failed to call witnesses;

35.1.7.3 such approach was fair as being in accordance with the principles of natural justice;

35.1.7.4 a postponement of the hearing in order to determine whether Mr Lyon was a credible witness, would have been an unnecessary waste of time and money, as the panel would still have been able to consider the prosecutor’s submissions.

35.2 These findings were supported by the panel’s further finding that Mr Lyon’s version of the circumstances surrounding his use of and decision to stop taking Hyper Burn was both reasonably probable and true, because

35.2.1 Mr Lyon was an amateur ice hockey player, having played a game at the end of the season competition in which he would not have received any financial benefit whatsoever;

35.2.2 he had no motive for cheating;

35.2.3 he had sought to deal with his weight through the speeding up his metabolism through the use of the fat burner;

35.2.4 he had not had doping education or kept up to date with doping for over 10 years;

35.2.5 he thus mistakenly believed the advice he had received that the high caffeine would have been a problem had he taken it later than 3-5 days before competition;

- 35.2.6 the additions to his story, as initially set out in his letter - exhibit 1, were not meant to build a more convincing 'piece meal' defence built as he went along, but rather to support the more fully comprehensive and cohesive explanation for his conduct in the totality of the circumstances surrounding his use of the Hyper Burn, which the panel had found on a balance of probability to have contained the MHA;
- 35.2.7 the prosecutor's motive to discredit Mr Lyon by attacking his credibility in order to have established intentional use of MHA by Mr Lyon appeared to the panel to have been an ill-founded mischief, having regard to
 - 35.2.7.1 the evidence of inadvertent use before the panel;
 - 35.2.7.2 the prosecutor's failure to have called witnesses and/or provide any other evidence in support of such an approach;
 - 35.2.7.3 the prosecutor's seeming reliance upon either pure conjecture, or slight possibility, in leaving the panel the task of having to sift through circumstantial evidence in order to have drawn such inferences as may have been reasonable for such purposes;
 - 35.2.7.4 the panel's sense that in such circumstances the only weapon available to the prosecutor was an attack on Mr Lyon's credibility.

B9. Panel's findings & reasons concerning appropriate sanction

36. *The first hurdle: Proof as to how the MHA entered his system.*

36.1 The panel found that although Mr Lyon was not sure whether the Hyper Burn contained the MHA it was satisfied that he had met the first hurdle, as described in 24.1, in having establishing how the MHA had entered his system on a balance of probability.

36.2 The panel's reasons for this flow from the assessment of the probabilities of the source or origin of the MHA arising from the totality of the admissible evidence relied upon by the panel, having regard to

36.2.1 the following civil standard of proof (as read with article 3.1 of the Rules) laid down by Lord Denning in *Miller v Minister of Pensions* {1947} All E.R. 372 @ 374, as was adopted by Ogilvie Thompson J.A. in *Ocean Accident & Guarantee Corporation Ltd v Koch (4) SA 147 (AD) at p 157 D.*

"It must carry a reasonable degree of probability but not so high as required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not', the burden is discharged, but if the probabilities are equal it is not."

36.2.2 the preponderance of probability in favour of the Hyper Burn being strong, rather than the other NCAA approved supplements which had been mentioned by Mr Lyon.

Refer page 366 of Hoffmann, South African Law of Evidence (second edition) in quoting from the decision of *Kotze J in West Rand Estates Ltd. V New Zealand Insurance Co., Ltd.* 1925 AD 245 @ 263 as follows.

“It is not a mere conjecture or slight probability that will suffice. The probability must be of sufficient force to raise a reasonable presumption in favour of the party who relies upon it. It must be of sufficient weight to throw the onus on the other side to rebut it.”

36.2.3 the statement in Hoffman on page 366 that “courts should not be too ready to make findings on probability on insufficient evidence” and that of Wessels J.A. in *National Employers Mutual General Insurance Association v Gany* 1931 A.D. 187 @ p 199

“When there are two stories mutually destructive, before the onus is discharged, the court must be satisfied that the story of the litigant upon whom the onus rests is true and the other false”.

36.3 The panel having found that it was satisfied that it could reasonably assume on the balance of probability (even as a low as a mere 51%) that the Hyper Burn product, which Mr Lyon alleged was the likely source, was the probable source of the Methylhexanemine found to have been in his system. This was true even though Mr Lyon remained uncertain about it.

36.4 The panel’s reasons for this were based upon the panel’s findings and reasoning set out in 34 above, that Mr Lyon was

36.4.1 not a liar and an untruthful witness, as had been submitted by the prosecutor;

36.4.2 an honest witness whose evidence could be relied upon,

when the panel weighed up the probabilities of the source of MHA, against the other products Mr Lyon submitted he had used on the Doping Control Form and the Hyper Burn, being the only evidence before the Panel as to the possible source of the MHA.

37. *Second hurdle: Mitigation of sanction - Proof of intentional use / no fault or negligence / no significant fault or negligence*

37.1 The panel’s finding, as regards the possibility that Mr Lyon had intentionally used MHA was that the panel accepted Mr Lyon’s testimony that he had had not committed the anti-doping violation intentionally.

37.2 The reasons for this finding are set out in 35.1 above.

37.3 The panel further findings concerning fault or negligence and significant fault or negligence were that

37.3.1 Mr Lyon was certainly at fault or negligent;

37.3.2 such fault or negligence was not significant in relationship to the anti-doping rule violation when viewed in the totality of the circumstances and taking into account the criteria for no fault or negligence.

37.4 The panel's reasons for such findings were that

37.4.1 Mr Lyon had breached the duty of care which (objectively speaking) could reasonably have been expected of him regarding his use of Hyper Burn as a fat burner, whilst he played ice hockey ie in-competition, by

37.4.1.1 his having relied upon the advice of a consultant Dirk, who was not acting in a professional capacity as a salesman for Chrome supplements and nutrition, for whom he worked, but rather in his personal capacity, in having recommended and then provided Mr Lyon with the fat burner Hyper Burn, for the purpose of speeding up Mr Lyon's metabolism in order to deal with his concern about his weight;

37.4.1.2 having only referred to his coach Andre Marais in order for him conduct an internet search against the listed ingredients of Hyper Burn to determine whether they were on the WADA prohibited list or not;

37.4.1.3 not having conducted further research and/or consulted with a recognised sports scientist, health care professional involved in sport or pharmacist/pharmacologist, in order to more fully establish whether or not the possibility existed that such Hyper Burn may have contained MHA, under such other of its names, whether listed as ingredients on the label or not;

37.4.1.4 not having kept himself informed and up to date about anti-doping developments;

37.4.1.5 his not having recognised the possibility that such Hyper Burn could have been contaminated and thus the degree of risk there was in taking a supplement - in an unregulated market - which may have contained a prohibited substance;

37.4.1.6 Mr Lyon having been tested previously although this had been when he was in the junior national side;

37.4.1.7 his having played for the senior south African national ice hockey team for ten years;

- 37.4.1.8 the fact that his coach had the prohibited list and had advised on what the players could take before playing.
- 37.4.2 Having established that Mr Lyon had breached the objective standard of care expected of him, the panel thereafter considered his specific circumstances on a subjectively basis and decided upon one year as the appropriately fair reduction of the period of ineligibility to apply in his case.
- 37.4.3 This finding was based upon
- 37.4.3.1 Mr Lyon’s status as an amateur ice hockey player;
- 37.4.3.2 The fact that what education he had about doping had taken place over ten years ago;
- 37.4.3.3 His lack of knowledge and experience, as well as naivete as an amateur in not having considered and/or researched the problematical use of supplements in greater depth;
- 37.4.3.4 that he was clearly not up to date about doping in sport, the nature of the risks and what were his responsibilities as an athlete in relation thereto;
- 37.4.3.5 the apparent lack of SAIHA input and attention to educating its registered provincial associations and clubs and players about doping. See in this regard the SAIHA constitution and web site;
- 37.4.6 case precedent in matters involving MHA and the determination of an equitable reduction in the period of ineligibility for inadvertent use, where the SARU case of Cilliboy Ralepele was noteworthy.

South African cases - involving Methylhexanemine	
SAIDS v Cornel Welgemoed	<i>3 months</i>
SAIDS v Dante Muller	<i>6 months</i>
SAIDS v Darron Ornatius	<i>6 months</i>
SAIDS v Earl Snyman	<i>6 months</i>
SAIDS v Ian Furman	<i>7 months</i>
SAIDS v Jaco van Niekerk	<i>3 months</i>
SAIDS v Johan Pieterse	<i>4 months</i>
SAIDS v Johan Pieterse	<i>24 months</i>
SAIDS v Lebogang Phalula	<i>3 months</i>

Applying

USADA v ASFAW American Arbitration Association - AAA Case No. 01-14-0001-4332 at pages 16-17

Analysis of Fault

- 5.30 Pursuant to Article 10.4 of the Code, if an athlete who has tested positive for a Specified Substance carries both her burden of establishing the source of her positive test and an absence of intent to enhance performance or mask the use of a prohibited substance then the athlete's "degree of fault shall be the criterion considered in assessing any reduction of the period of *Ineligibility*."
- 5.31 In analyzing the degree of fault under Article 10.4, the Panel is guided by the multi-part analysis set forth by the Court of Arbitration for Sport Panel in *Cilic v. ITF, CAS 2013/A/3327, 3335*.
- 5.32 The *Cilic* Panel recognized the following degrees of fault:
1. "Significant degree of or considerable fault," for which the sanction range would be 16-24 months ineligibility and a "standard" sanction would be 20 months;
 2. "Normal degree of fault," for which the sanction range would be 8-16 months ineligibility and a "standard" sanction would be 12 months;
 3. "Light degree of fault," for which the sanction range would be 0-8 months ineligibility and a "standard" sanction would be 4 months.
- 5.33 According to the decision in *Cilic*, both the objective and subjective level of fault may be considered in assessing into which of the three relevant categories of fault a particular case falls. However, "the objective element should be foremost" in making this assessment.

Generally, the subjective element should only "be used to move a particular athlete up or down within that category," i.e., within the three categories set forth above. "[I]n exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however." The Panel is not convinced that any subjective element pertaining to Respondent's circumstances is so exceptional that it would justify deviation from the *Cilic* objective fault categories.

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 George Lyon
 - 1.1 having been found guilty of having committed the anti-doping rule violation for which he had been charge under Article 2.1 of the Rules;
 - 1.2 having established that the anti-doping rule violation was not intentional in accordance with Articles 10.2.1 and 10.2.3 of the Rules;
 - 1.3 having further established on a balance of probability to the satisfaction of the Panel,
 - 1.3.1 how the Methylhexaneamine had entered his system;
 - 1.3.2 no significant fault or negligence,in accordance with the provisions of Articles 10.2.2 and 10.5 of the Rules, as read with the definitions for no significant fault or negligence,

is required to serve a 1(one) 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 2 February 2016 and ended on 1 February 2017 the panel decided that because the period of provisional suspension had been respected by Mr Lyon, it should -
 - 2.2.1 be deemed to have commenced on the date of notification of the adverse analytical finding and Mr Lyon's provisional suspension, being the 16 November 2015;
 - 2.2.2 end at midnight on 15 November 2016,on the understanding that the time Mr Lyon served under provisional suspension from 16 November 2015 be credited to such 1(one) year period of ineligibility.
3. During such period of ineligibility Mr Lyon 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 the South Africa Ice Hockey Association (SAIHA) 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. A further consequence of such anti-doping rule violation 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 Lyon may return to train with a team or to use the facilities of a club or other member organisation of SAIDS's member organisation during the shorter of:

- (1) the last two (2) months of his period of *Ineligibility*, or
- (2) the last one (1)quarter of the period of *Ineligibility* imposed.

6. Mr Lyon, 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

March 2016

Christa Janse van Rensburg

Member

Leon Fleisher

Member

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.

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30 March 2016

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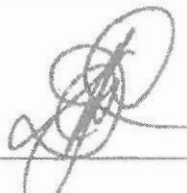
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30 March 2016