

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: TYRONNE WHITE

SPORTS FEDERATION: CYLCING SOUTH AFRICA

DATES OF HEARING: 24 OCTOBER 2016;

PLACE OF HEARING: HOLIDAY INN EXPRESS UHMLANGA
2 NCONDO PLACE
UMHLANGA
DURBAN

PANEL MEETING: 16 NOVEMBER 2016

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL
REPRESENTATIVE)
DR MIKE MARSHALL (PANEL MEMBER)
MS B PETERS (PANEL MEMBER)

PROSECUTOR: ADVOCATE AYANDA NJILO

UNION REPRESENTATIVE: NOT PRESENT

ATHLETE'S REPRESENTATIVE: ADV R WILSON
JUSTIN DUCIE
CHAYSE KRIEL

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

PROCEDURAL MATTERS:

The hearing commenced on the 24th of October 2016.

1. JURISDICTION

In terms of section 10(1) (e) of the South African Institute for Drug-Free Sport Act No.14 of 2007. National Sports Federation must adopt and implement Anti-doping Policies and rules that conform with the World Anti-doping Code ("The Code") and with the requirements as set out in the SAIDS Anti-doping Rules.

SAIDS

A statutory body established by the South African Government with the Responsibility to promote and support the elimination of doping in sport in South Africa.

The Anti-doping rules, so adopted by SAIDS, are sports rules governing the conditions under which athletes participate in the sport of Cycling. Participants in said sport, like the Respondent, accept these rules as a condition of participation and are bound by them.

2. APPLICABLE LAW

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

jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so, the consequences of such a violation.

The Hearing commenced on the **24 October 2016** at 16:30 PM. The Panel thereafter met to arrive at a Decision on the **16 November 2016** at 17:30 PM.

3. PROCEDURAL MATTERS

The Athlete was in attendance at the hearing. Advocate R Wilson, instructed by Attorney Justin Ducie and Chayse Kriel, represented him at the hearing.

4. THE CHARGE

The Charge against the athlete was described as follows:

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 Institution for Drug-Free Sport. (SAIDS).

On the 30th April 2016, you provided a urine sample (4004585) during an in-competition test. Upon analysis, the Anti-Doping Laboratory Qatar reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was

Dexamethasone. This substance is categorised under **Class S9 - Glucocorticoids** on the World Anti-Doping Code 2016 Prohibited List International Standard.

5. THE RIGHT TO HAVE A B SAMPLE TESTED

The Athlete has the right to have the B-Sample tested and had accordingly exercised that right by way of email on the 15th of July 2016.

6. THE ATHLETE'S RESPONSE TO THE CHARGE:

The Athlete pleaded guilty to the charge and through his Advocate he contended that he did not dispute that the Prohibited Substance was found in his system. It was further contended that the Athlete would lead evidence to show that there was no fault or negligence on the part of the Athlete and accordingly the athlete should be entitled to a reduction in the sanction to be imposed.

7. EVIDENCE AT THE HEARING:

7.1 THE SUMMARY OF RELEVANT FACTS:

Below is a summary of the relevant facts and allegations that emerged from the parties at the hearing. On the 30th of April 2016, the Athlete underwent an anti doping control test, carried out during an in-competition Cycling race. After the analysis of the Athlete's urine sample, the substance identified in the sample was Dexamethasone. This substance is catergorised under **Class S9 - Glucocorticoids** on the World Anti-Doping Code 2016 Prohibited List International Standard.

On the **08th July 2016**, the Athlete was notified of his adverse analytical finding in his A-sample and on the **15th July 2016** the Athlete exercised his right to have his B-sample tested by way of email.

Initially the Prosecutor conceded that the Athlete did not intentionally take the substance to enhance his performance. However, upon further analysis of her contention it became clear

that the SAIDS position was that whilst they were not leading any specific evidence on the fact that the Athlete had consumed the Prohibited Substance for performance enhancing purposes, SAIDS will attempt to prove this through the Athlete's own testimony.

The Prosecutor was well within her rights to adopt such a position, bearing in mind the relationship between Dexamethasone and Cycling which is well documented.

7.2 THE ATHLETE ADMITTED INTO EVIDENCE, THE FOLLOWING DOCUMENTS:

7.2.1 "A1 – A2" – Letter dated 30th September 2016 from Fahmy Galant to Tyrone White re:
Charge: Anti-doping rule violation

7.2.2 "B1" - Email from Fahmy Galant to Chayse Kriel dated 30 September 2016.

"B2" – Email from Fahmy Galant to William Newman dated 08 July 2016.

"B3" – Email from William Newman to Fahmy Galant dated 08 July 2016.

7.2.3 "C1 – C6" – Letter dated 08 July 2016 from Fahmy Galant to Tyrone White re:
Adverse Analytical (sample number: 4004585)

7.2.4 "D1" – ADAMS Analytical Test Report

7.2.5 "E1" – Doping Control form

7.2.6 "F1" – Chain of Custody Form

7.2.7 "G1 - G6" - Email from Tyrone White to Fahmy Galant dated 15 July 2016.

7.2.7 "H1- H2" – Letter dated 18th July 2016 from Dr G. Lindsay to Tyrone White

7.2.8 "I1 – I7" – Concise Curriculum Vitae of Dr. Grant Lindsay

7.2.9 "J1 – J2" - Emails from Fahmy Galant to Tyrone White dated 19 July 2016.
25 July 2016

7.2.9 "K" – Letter dated 25th July 2016 from Fahmy Galant to Tyrone White re: Adverse Analytical finding: B-Sample Analytical urine test report for sample number B4O04585.

7.2.10 "L" – Doping Control form

7.2.11 "M1- M2" – Test Report– B Sample

7.2.12 "N1" – Email from Michael Murphy to Fahmy Galant dated 26 July 2016

"N2" – Letter dated 02nd August 2016 from Chayse Kriel to Fahmy Galant re: Tyrone White // Adverse Analytical Finding A & B Urine Sample Tests.

7.2.13 "O" – Emails from Chayse Kriel to Fahmy Galant dated 21 September 2016

The Athlete admitted the correctness of these documents and confirmed that the documents were what they purported to be. He also admitted that the contents of the documents were correct in all material respects, especially those documents that were pertinent to the collection and the analysis of the specimen sample from him on the day in question. The documents were accordingly accepted as evidence in the hearing. The chain of custody was not in dispute either.

7.3 EVIDENCE ADDUCED AT THE HEARING:

TYRONNE WHITE'S EVIDENCE:

7.3.1 He participated in the JoBurg-to-sea nine-day race alongside his race partner Andrew Hill. The race started in Heidelberg and finished in Scottsburg.

- 7.3.2 On the 29th of April 2016, in the afternoon he felt ill. He displayed symptoms of vomiting, nausea and diarrhoea that became more marked towards the evening.
- 7.3.3 He had suffered from these symptoms until approximately 02h00 on the morning of the 30th of April 2016 and thereafter finally managed to get some sleep until 05h00.
- 7.3.4 Andrew Hill tried waking him up at 05h00 however he was too ill to get out of bed, Andrew Hill then contacted Tyrone White's father who thereafter made a herbal shake for his son. When the shake failed to alleviate the problem, Andrew Hill and Mr. White (Senior) took him to the medical doctor on duty at the race.
- 7.3.5 The Athlete indicated that his symptoms were so severe that his father and Andrew Hill had to sit him on his bicycle and push him to the Shed that was being used as a Medical clinic for race participants.
- 7.3.6 The name of the Shed was called "Jolivet." He entered and requested to see a doctor and Dr. Lindsay attended him to.
- 7.3.7 Dr Lindsay found that the Athlete was severely dehydrated and was concerned about the possibility of kidney failure.
- 7.3.8 The Athlete was told to have fluids and was thereafter put on a drip. Dr. Lindsay told him that he could not continue without it, as it would be dangerous to his health.
- 7.3.9 He was given a glucose IV with some vitamins and an anti-emetic (Promethazine).
- 7.3.10 He indicated that at that time, the doctor did not explain what an "anti-emetic" was; however, he did ask him twice about whether everything that was being administered was "a non-banned substance" and asked "is it safe to have?"
- 7.3.11 The Athlete indicated that the doctor told him: "don't worry, it is all fine and everything was okay."
- 7.3.12 The Athlete indicated that he did trust the Doctor due to the fact that he was the Doctor for the event.

- 7.3.13 The Athlete's health improved and the Athlete then indicated to the doctor that he intends on competing as he had completed all eight days of the competition and did not want to give up at the last stage.
- 7.3.14 He and Andrew Hill started the last stage of the race at 07h00.
- 7.3.15 After he and his race partner had managed to complete the race, the Athlete was tested during the in-competition test. He subsequently tested positive for Dexamethasone in his Urine Sample.
- 7.3.16 Under cross-examination he was asked to explain how the substance entered his body, he speculated that the nurses administered either the wrong medication to him or that the medication administered to him was contaminated.
- 7.3.17 He explained that the contamination could have occurred when the IV that was prepared for someone else was accidentally given to him or that due to miscommunication the Doctor had mentioned a particular substance to be entered into the IV whilst the nurse inserted a totally different substance.
- 7.3.18 He also indicated that he had tried to obtain the medical records of the medication administered on the day in question to himself and others and it has apparently been destroyed.
- 7.3.19 Under cross-examination he conceded that he had failed to list the substance given to him on the doping control form even though he had read the form and understood it to say that he had to list all medication and nutritional substances taken during the past seven days.
- 7.3.20 He indicated that it was an error on his part and stated that this error was due to him being new to the process and also indicated that he was "struggling" which was an apparent reference to the way he felt due to his medical condition.
- 7.3.21 He also stated during cross-examination that he had questioned the Doctor about the legality of the substances but did not have his phone to be able to access the website that confirm its legality.

- 7.3.22 During questioning by the Panel, he conceded that he was unaware that since he had taken such substantial amounts of fluid through the IV, he needed to apply for a Retro Active Therapeutic Use Exemption (TUE).
- 7.3.23 He also could not explain in the light of his traumatic medical experiences in the hours preceding the race how he would simply forget that medication had been administered to him.
- 7.3.24 He also stated that it took him a while to provide a urine sample as he was dehydrated and he had to consume water to be able to do so.
- 7.3.25 He handed in, through his Advocate exhibit "P" the Old Mutual Johannesburg Cycling races.

DR. GRANT LINDSAY'S EVIDENCE:

- 7.3.26 The doctor indicated that he is a registered medical practitioner, practicing in emergency medicine and events care;
- 7.3.27 He indicated that has worked at numerous high profiled sport events as the medical doctor on site and he is familiar with the WADA prohibited substance list.
- 7.3.28 On the Morning of the 30th of April 2016, at approximately 06h20, Tyrone White was brought to the Shed (Medical Centre) by Andrew Hill and Tyrone White's father.
- 7.3.29 The doctor indicated that Tyrone White displayed symptoms of "dry mucosa, sunken sort of look, his tongue was dry, rapid pulse." Therefore the doctor

concluded that Tyronne White was severely dehydrated and was concerned with possible Kidney failure.

7.3.30 As a result the doctor gave Tyronne White 1000mls of saline, however he was still vomiting, therefore he gave Tyronne White an anti-emetic.

7.3.31 The doctor indicated that the Medical Centre was extremely busy on that particular morning. Approximately 6-8 Athletes were lying alongside Tyronne White on mattresses.

7.3.32 The doctor indicated that he prescribed vitamins, Ringers Lactate and Promethazine as the anti-emetic. These were not prohibited substances.

7.3.33 After the Athlete was placed on the drip for approximately 20-25 minutes, the Athlete looked and felt better. He indicated that he wanted to proceed with the race.

7.3.34 The doctor indicates that Tyronne White's father had telephoned him to inform him that Tyronne White had been tested. We wish to refer to his evidence verbatim as it has some significance:

"I knew that he had been tested because Russell (Tyronne White's father) phoned me from the, I was still at Jolivet because we had a team and I was sort of packing up and getting down to the end and Russell phoned me and said he tested. I said well that's fine he said what do we do I said there's nothing we can do just wait and see what happens."

7.3.35 When asked how the Dexamethasone would have gotten into his system, he indicated that he thought that there was a mix up. He indicated that he uses Dexamethasone as an anti-emetic for people who have epilepsy and "things like that."

7.3.36 He indicated that Dexamethasone is a “really good anti-emetic for chemotherapy patients, altitude sickness, vomiting.”

7.3.37 When asked how a mix up between Dexamethasone and Promethazine could occur he indicated:

“Ja so you get it ready and you mix it you get distracted somebody else picks it up and mixes it and gives it to a patient. We have a black pen and we just write on white stickers what’s in the fluid. So that’s the one possibility.”

7.3.38 He also indicated that:

“Dexamethasone and Promethazine they’re normally clear, clear glass amps and they’ve got writing on the thing and the ones that we had at that thing were Dexamethasone white and green on the label and then the Promethazine was white with green and blue on the label.

7.3.39 Under cross-examination he indicated that he believed that the Dexamethasone was injected into the IV.

7.3.40 He also indicated that he did not have the medical records for the event in question as he had a dispute with the company that handled the Medical Centers and he could not access these medical records.

7.3.41 He conceded that these medical records needed to be kept for five (5) years but he was not able to provide them for reasons mentioned earlier.

7.3.42 He was reluctant to concede that Dexamethasone is performance enhancing.

7.3.43 When questioned by the Panel as to what anti-emetic would he administer to an epileptic, he indicated that it would be Dexamethasone.

- 7.3.44 When he was asked whether he would tell the Athlete not to participate in the race, his response was that he would inform the Athlete that he had administered a "banned substance" which was on the Prohibited List, but it was up to the Athlete to take the decision on whether to participate or not.
- 7.3.45 The doctor was questioned about the lifespan of Dexamethasone in the body. He indicated that in his opinion, the half-life is around 5-7 hours.
- 7.3.46 He also conceded that he does not hold himself out to be a doctor who is an expert on Sport Medicine, but rather a doctor who holds himself out to be an emergency doctor.
- 7.3.47 He also conceded that he believed that Dexamethasone is a better anti-emetic than Promethazine as it provides quicker and more effective relief, but he denied that he had prescribed this for Tyrone White, despite his severe condition a short while before the race.

ANDREW HILLS' EVIDENCE:

- 7.3.48 He stated that the Athlete fell extremely ill on the 29th of April 2016, with severe symptoms of nausea, vomiting and Diarrhoea.
- 7.3.49 He stated that on the 30th of April 2016, at approximately 05h00, he tried to wake the Athlete, but had extreme difficulty.
- 7.3.50 He thereafter went to fetch the Athlete's father for assistance.
- 7.3.51 He stated that Mr. White (Senior) gave the Athlete a herbal shake that worked "but not really great."
- 7.3.52 He stated that the Athlete could not walk and was stumbling; therefore they had to push him on his bicycle to the medical Shed to be treated by a doctor.

- 7.3.53 He stated that once he arrived at the Shed, Doctor Lindsay treated Tyronne.
- 7.3.54 He knew Dr. Lindsay from previous races and that he was even treated by the same doctor.
- 7.3.55 He was present during the examination of Tyronne White.
- 7.3.56 Mr. Hill indicated that they all inquired as to whether the medication administered was “fully legal and all the rest of it.” The doctor indicated that it was and that they wanted to ensure that Tyronne White was “*compos mentis*” before they could decide on whether to continue with the race or not.
- 7.3.57 He also indicated that Tyronne did inquire as to whether the substance administered to him was a banned substance and that he could 100% vouch for it.
- 7.3.58 Mr. Hill indicated that the doctor assured them that it was all safe.
- 7.3.59 He also indicated that about 15-30 minutes later, Tyronne White bounced back pretty well.

DR JEROEN SWART'S EVIDENCE:

- 7.3.60 The SAIDS representative indicated that they would be calling their own witness, who is a medical practitioner.
- 7.3.61 The doctor indicated that he is a Sports physician and a medical science Scientist and has a postgraduate degree in sports science medicine and a PhD in sports science.
- 7.3.62 The doctor indicated that he was familiar with Dexamethasone.

7.3.63 The doctor indicated that corticosteroids in general are performance enhancing and have been used by cyclist for many decades.

7.3.64 He explained using a case study that a corticosteroid could rapidly enhance performance from 10% to 90%.

7.3.65 He indicated that:

“Dexamethasone is a fairly strong corticosteroid. If either injected intravenously or intramuscularly, or into a joint is similarly a performance enhancing substance before the competition or during strenuous competition lasting many days.”

7.3.66 Under cross-examination the doctor was asked to comment on what sort of performance enhancing effect the Dexamethasone would have had on Tyrone White's performance on the day in question, the doctor responded by saying that if he received intramuscular injection on the day of the competition it certainly would have been expected to give a performance enhancing power. It would have also given him a general euphoria or feeling of well being.

7.3.67 Under questioning from the Panel, the doctor was asked if he would prescribe Dexamethasone as an anti-emetic and he indicated that:

“It would not be prescribed as a first line drug. It may be used as an anti-emetic in other words to stop vomiting in people who are allergic to the more commonly used anti-emetics.”

7.3.68 He also indicated that he did not see any reason to prescribe Dexamethasone as an anti-emetic for epileptics as he did not see the relevance between the two.

7.3.69 He indicated a possible half-life of Dexamethasone would be between 3 - 4 hours and would have some therapeutic effect for at least 7 hours.

8. ANALYSIS OF EVIDENCE:

8.1 In arriving at a decision the panel's approach was firstly, to take into account the fact that the prohibited substances was found in a specimen sample taken from the Athlete on the day in question. This was admitted by the Athlete and accordingly he pleaded guilty to committing an Anti-doping rule violation. The next step was for the panel to determine the necessary sanction.

8.2 The SAIDS Anti-doping rules 2015 states as follows: -

Article 10.2.1 the period of Ineligibility shall be four (4) years where:

Article 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

Article 10.2.1.2 The anti-doping rule violation involves a specified substance and SAIDS can establish that the anti-doping rule was intentional.

In this case Article 10.2.1.2 would be applicable. The panel reviewed the evidence to determine whether SAIDS had proved on a balance of probabilities that the violation of the Anti-doping rule was intentional. The Prosecution relied on the following aspects of the Athlete's evidence to show that the Athlete may have intended to cheat, namely:-

1. That he failed to fill in the medication prescribed to him a few hours earlier when he was completing the doping control form and;
2. that the Athlete's inability to provide a urine sample after the race for a substantial period was proof that he intended to cheat.

The Prosecutor wanted the panel to conclude that the Athlete was pretending that he could not provide a urine sample as he was aware that he had taken a prohibited

substance. The Prosecutor failed to challenge the version of the Athlete, his riding partner and Doctor Lindsay, that in fact he was in a severe state of dehydration. It is not in dispute that the Athlete then rode in a race for several hours. It was clear to the panel that under these conditions no good purpose would be served in allowing the Prosecution to cross-examine the Athlete with this line of questioning without laying a proper foundation.

The panel also considered the Doctor's evidence that the father of the Athlete phoned the Doctor to inform him that the Athlete had been tested. The Doctor testified as follows;

"...Russel phoned me and said he tested. I said well that's fine, he said what do we do, I said there's nothing we can do, just wait and see what happens".

This evidence by the Doctor may be interpreted in different ways. One of the ways of interpreting would be to ascribe knowledge to the Doctor and the Athlete's father that they were aware that the Athlete had been given a prohibited substance and accordingly the need for the telephone call and the exchange that followed, however this is not the only interpretation and the panel was of the view that in assessing all the evidence SAIDS had not proven on a balance of probabilities that the Athlete had intentionally violated the Anti-doping rules. This was in fact conceded by the Prosecutor in her Heads of Argument.

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

In this instance the panel accepted for reasons outlined above that Article 10.2.2 was the pertinent section to be applied to the Athlete's case.

The panel further considered whether Article 10.4 and 10.5 of the Anti-Doping rules are applicable, the Article states as follows: -

No Fault or Negligence

Article 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.

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

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 a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

The Prosecutor argued that the Athlete's failure to give direct evidence on how the prohibited substance entered the Athlete's system means that Article 10.4 and 10.5 do not apply. Implied in the Prosecutor's argument was the suggestion that there had to be direct evidence as to how the prohibited substance entered the Athlete's system.

The issue the panel had to decide was whether circumstantial evidence could be taken into account in determining how the prohibited substance entered the Athlete's system. The panel was of the view that nothing in the rules excluded the panel from taking into account circumstantial evidence. In fact the case of *WADA v Narsingh Yadav* was correctly cited by the Athlete's counsel as authority that the court of Arbitration for sport had in fact considered circumstantial evidence in a similar case. The panel accordingly considered circumstantial evidence. The Athlete was fairly ill

during the night before the testing and he had received medical attention which encompassed medication being administered to him a short while before the race commenced at 07:00am. A urine sample was taken at 10:47am. The SAIDS witness Doctor Swart indicated that half life for Dexamethasone was approximately 3-4 hours and Doctor Lindsay indicated that it was between 5-7 hours.

The panel finds that it is highly probable that the substance was taken by the athlete at the time he was being treated. The condition of the Athlete prior to him being brought to the medical centre for treatment would make it highly unlikely that the Athlete would have consumed the substance prior to the Athlete seeking medical attention. It would appear unlikely, though obviously not impossible, that the Athlete would administer a performance enhancing drug to himself while he was markedly ill (that is i.e during the evening of the 29th of April 2016 and the early morning of the 30th of April 2016). The timing of the medical intervention, including the possible inadvertent administration of the prohibited substance, would fit in with the result of the Anti-doping rule violation. Dexamethasone has a short half-life, so one would anticipate that this drug would have entered the Athlete's system sometime during his acute illness and the treatment thereof, rather than before this time

The uncontested evidence of the Athlete, Andrew Hill and Doctor Lindsay about the Athlete's condition and the medication prescribed strengthens this proposition and accordingly the panel finds that the Athlete has shown on a balance of probabilities that the Dexamethasone was administered to him in the medical centre by adducing circumstantial evidence.

The next issue for the panel to decide on was whether the Athlete has on a balance of probabilities established no fault or negligence on his part or no significant fault or negligence on his part. The medical centre described by Doctor Lindsay is a cause for concern. The Athlete, Andrew Hill and Doctor Lindsay testified that the medical centre appeared to be chaotic with limited medical staff attending to a number of people and during this period the Athlete was most probably negligently administered the prohibited substance.

Whilst the panel accepts that the medical centre was not ideal and reliance was placed by the Athlete on the Doctor's word that the medication administered was not prohibited, the panel finds that there are some glaring deficiencies in the Athlete's evidence namely:-

- 1) The medical records of the Athlete were not produced at the hearing. There is a duty on medical practitioners to retain medical files of the patients for a number of years, the explanation tendered for the medical records not being produced is not very convincing.
- 2) The Athlete did not sufficiently acquaint himself with the medication administered. Had he sufficiently acquainted himself he would have remembered the names of the medication administered to him and ensured it was written in the doping control form. He would have also taken steps after the race to do the necessary research on the website to verify its status.
- 3) The Athlete does not explain sufficiently why he failed to disclose the medication administered to him on the doping control form a few hours earlier.

The rules require the Athlete to exercise utmost caution which is a very high standard. Athlete's must therefore show that they exercise a very high degree of diligence or "extreme prudence". In taking into account the principle of utmost caution it must be noted that the exercise of utmost caution is not time-limited, "it must be shown at each stage of the stages of the treatment process which the Athlete undergoes: choice of physician, information provided to the physician, general conduct of the Athlete during and even before the treatment etc" (*Anti-doping hearing of FISA, FISA v. O. (09.02.2005)*). The duty of diligence was judged for example to have been sufficiently met and the Athlete exempted from suspension in a case in which she limited herself to the following advice of the team physician at the Olympic Games. As the Athlete had not chosen her physician, who was "imposed", as it were, by her National Olympic committee, she had been unable to exercise diligence in choosing her practitioner, and her responsibility was diminished. The competent authority moreover found that the Athlete had followed her team physicians' advice in good faith.

However in ATP Anti-doping tribunal, *ATP v Vlasov* (24.03.2005) an Athlete was considered to be negligent when he consulted the physician in the emergency department of a public hospital without informing him of his status as a professional athlete: "yet he knew the Doctor was not a sport medicine Doctor. He also knew that he had not told his Doctor that he was a professional Athlete who plays tennis under the ATP, Anti-doping program".

In this matter the Athlete had been ill and relied on the advice of the Doctor at the sports event who the hearing got to know had no qualification in sports medicine but is really an emergency Doctor. The Athlete's reliance on the Doctor's advice that the medication did not contain prohibited substances, did not render him faultless but meets the test of no significant fault.

In the case of *Sheikh El Nahyan*, the Athlete was only given a 6 month reduction by the CAS, even though he employed highly qualified, properly instructed staff and implemented a significant range of procedures to avoid positive tests, because he failed to supervise the staff in carrying out those procedures.

In the case of *Maria Sharapova v International Tennis Federation CAS 2016/A/4643*, her sanction was reduced to fifteen months as the court found that there was no significant fault on her part. The court found that where parties delegate elements of the Anti – doping obligation to someone else, the court must assess their own fault or negligence.

It was found that Sharapova's fault was not significant, taking all the circumstances into account. The sanction was reduced from a period of 24 months to a period of suspension of 15 months.

In this matter one would have expected the Athlete to have ensured that the medication given to him was made known to him prior to him deciding to participate on the day in question especially in light of the fact that the medical centre appeared to be chaotic and there was a risk posed to him.

9. SANCTION

The panel having determined that Article 10.5.1.1 was the applicable section, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and a maximum, two (2) years of Ineligibility.

The panel imposed a period of suspension of eighteen (18) months. The Athlete is accordingly sanctioned to a period of ineligibility of eighteen (18) months, which is to commence from the date of the decision being **14th of December 2016 until the 13th of June 2018.**

10. RECOMMENDATIONS

The panel makes the following recommendations through SAIDS to the various role players:-

1. The medical personal providing care at sport events must maintain a high level of medical and administrative propriety, in spite of their surroundings and facilities available to them, with particular reference to:-
 - a) Double checking medicines before their administration;
 - b) Keeping accurate and comprehensive medical records;
2. Multi-stage cycle race organizers are advised to limit their liability in these matters by providing adequate staffing and appropriate funding of the medical service at these events.

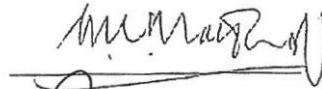
South African Institute for Drug-Free Sport (SAIDS)
Disciplinary Panel

DATED AT DURBAN ON THIS THE 14TH DAY OF DECEMBER 2016.

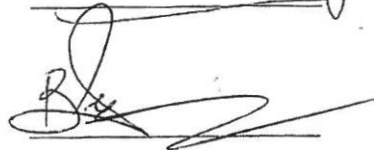
SIVEN SAMUEL (Chairperson)

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MIKE MARSHALL

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BEVERLY PETERS

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