

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT ("SAIDS")

ANTI DOPING DISCIPLINARY COMMITTEE

ATHLETE: Mr Timothy Abbott

SPORTS FEDERATION: Cycling South Africa

DATE: 23 February 2017

PLACE OF HEARING: Rosebank Holiday Inn, Oxford Road, Johannesburg

INDEPENDENT DOPING HEARING PANEL ("Panel"):

Ms Corinne Berg (Chairperson)

Dr Andy Branfield (Medical Representative)

Prof. Yoga Coopoo (Sport Administrator Representative)

PROSECUTOR: Mr Michael Murphy

ANTI-DOPING RULE VIOLATION: Anti-doping rule violation in terms of Article 2.1 of the SAIDS Anti-Doping Rules.

RULING

1. COMPOSITION OF PANEL

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended in 2006). SAIDS formally accepted the World Anti-Doping Agency ("WADA") code in 2005. 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. These proceedings are governed by the 2015 SAIDS Anti-Doping Rules ("the Rules").

This SAIDS Independent Doping Hearing Panel ("the Panel") has been appointed in accordance with Article 8 of the Rules, to adjudicate and to ascertain whether or not the Athlete has violated the said Rules, and if so, to determine the sanction applicable.

2. PROCEDURAL MATTERS

The Athlete attended the hearing held on 23 February 2017, accompanied by his Legal representative, Mr Paul Crosland from Webber Wentzel and His Legal Counsel, Mr Justin Bitter. The athlete did not deny that the presence of the prohibited substance in his urine sample collected on the 26th December 2015, and thereafter sent to the WADA accredited laboratory, Deutsche Sportochschule Koin Institut für Biochemie, for testing. Counsel for the Athlete confirmed that the Athlete only intends dealing with the consequences of the doping violation at the hearing.

3. THE CHARGE

- 3.1 The charge against the Athlete was set out in a letter, dated 11 July 2016, addressed to the Athlete. The letter sets out, in paragraph 4, that the analytical report received from the Laboratory confirmed the presence of the prohibited substances, 5alpha-androstane-3-alpha, 17 beta-diol (5alphaAdiol) and 5beta-androstane-3alpha, 17 beta-diol (5betaAdiol), which are metabolites of Testosterone, in the Athlete's Sample A urine sample (sample number 3926869).

- 3.2 The Athlete requested SAIDS to conduct testing on the B Sample on the 11th of July 2016. Proof of payment for the testing of the B Sample was sent to the SAIDS on 15 July 2016. The B Sample testing was conducted on the 9th of August 2016.
- 3.3 The results from the laboratory confirmed the presence of 5alphaAdiol and 5betaAdiol, in the Athlete's urine sample (Sample B). A letter, dated 19 August 2016, was sent to the Athlete, confirming that the B sample confirmed the presence of the prohibited substances in the Athletes urine sample.
- 3.4 After having received confirmation that the B Sample results confirmed the A Sample results, the Athlete's legal representative at the time, Mr Christopher Kok, confirmed that the Athlete does not intend disputing the fact that the prohibited substances was found in his urine sample and accordingly, the Athlete will only deal with the mitigating factors and consequences of the doping violation at the hearing.

4. EVIDENCE OF THE ATHLETE

- 4.1 The Athlete is a 56 (fifty-six) year old male, currently residing in Kyalami. He competes as a master athlete in cycling events, and, in particular, track cycling events. He has represented South Africa at World Track Cycling in the past and he intended qualifying again in 2016.
- 4.2 The Athlete regards himself as an amateur cyclist as he does not earn an income from cycling.
- 4.3 The Athlete did not, at the hearing, deny the presence of the prohibited substances, 5alphaAdiol and 5betaAdiol which were found in his A and B Samples. In other words, the Athlete admits guilt.
- 4.4 Counsel confirmed that he, on behalf of the Athlete, only intends on dealing with the consequences of the doping violation.

- 4.5 The Athlete competed in a track cycling event, known as the Paarl Boxing Day, in Paarl, on the 26th of December 2015. The Athlete raced in the Veterans category. He advised the Panel Members that he finished first in the Veterans category.
- 4.6 The Athlete advised the Panel Members that he was tested after the race, on the 26th of December 2015.
- 4.7 Neither the Athlete nor his Counsel raised any issues regarding the Doping Control Officer or the Doping control process and chain of custody. The only possible issue raised by Counsel was the time it took to test the A sample.
- 4.8 The Athlete told the Panel Members that he went to see his doctor in and during September 2016 in order to find out what why he was continuously feeling tired and why he was not recovering well after training.
- 4.9 The Athlete advised the Panel members that Dr Oliver usually conducts two blood tests a year to check what his body is lacking.
- 4.10 According to the Athlete's evidence, Dr Mark Oliver conducted blood tests and ascertained that the Athlete's testosterone levels were low and, accordingly, prescribed supplements such as ZMA.
- 4.11 The Athlete told the Panel Members that Dr Mark Oliver is aware of the fact that he competes and always prescribes medication that is not contaminated with any prohibited substances.
- 4.12 According to the Athlete's evidence, the supplements prescribed by Dr Mark Oliver and other supplements he used are supplements which can be purchased "over-the-counter". The Athlete told the Panel Members that he normally purchases his supplements at a Dis-Chem or Clicks store.
- 4.13 Counsel handed up a doctor's script, dated the 12th of October 2016 and signed by Dr Mark Oliver.

- 4.14 Counsel for the Athlete advised the Panel Members that Dr Oliver sent an email confirming the reasons for prescribing the supplements listed in his script, dated 12 October 2016.
- 4.15 Counsel for the Athlete explained what the supplements do. ZMA enhances testosterone production, STIMino Growth enhances Growth Hormone Faction and vitamin D krill oil and whey protein assist the athlete's nutritional profile. (see paragraphs 14-19 of the transcript)
- 4.16 The Athlete claims that he did not use the prohibited substances intentionally to enhance his performance.
- 4.17 Counsel and the Athlete were unable to show the Panel Members how the prohibited substance entered the Athlete's system. They failed to furnish the Panel Members with any evidence, explaining how the prohibited substance entered his body.
- 4.18 The Athlete confirmed that he has been tested on a number of occasions and further that he was banned for 18 (eighteen) months in and during 1989 when he tested positive for nandrolone.
- 4.19 When the Athlete was asked by Counsel what he has learnt from this experience, he replied saying that he will be more careful.
- 4.20 The Athlete agreed that he is responsible for what he ingests.
- 4.21 The Athlete referred to the following Rules in support of his request for the reduction of his sanction:-
- 10.2.2;
- 10.10.1;
- 10.10.2

4.22 Counsel, on behalf of the Athlete, requested a reduction of the sanction period from 4 (four) years to 18 (eighteen) months, commencing from date of sample collection, being 26 December 2015.

5. EVIDENCE OF THE SAIDS PROSECUTOR, MR MURPHY

5.1 Mr Murphy confirmed his discussions with Mr Kok regarding the Athlete's decision to admit the presence of the prohibited substances in his system and, to deal only with the consequences of the doping offence at the hearing.

5.2 Mr Murphy asked the Athlete whether he is able to ascertain which supplement contained the prohibited substances. The Athlete was unable to give Mr Murphy a definite answer.

6. APPLICABLE RULES

6.1 Article 2.1 provides as follows: -

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

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

presence of a prohibited substance or its metabolites or markers in the Athlete's A Sample ...

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

2.1.4 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."

6.2 Article 3 reads as follows: -

"3.1 Burdens and Standards of Proof

SAIDS shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation, which is made.

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

3.2 Methods of Establishing Facts and Presumptions

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

3.2.1 ...

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

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

3.2.3 ...

3.2.4 ...

3.2.5 *The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the athlete or other person who is asserted to have committed an anti-doping rule violation based on the athlete's or other person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or SAIDS. (The emphasis is added)."*

6.3 Applicable provisions of Article 10 of the Rules read as follows:

"10.2.1 The period of Ineligibility shall be four (4) years where: -

10.2.1.1 The anti-doping rule violation does not involve a specified substance, unless the athlete or other person can establish that the anti-doping rule violation was not intentional.

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

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

10.2.3 As set out in Article 10.2.3 of the Anti-Doping Rules 2015, 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;

10.4 Elimination of 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 significant fault or negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5.1 Reduction of Sanctions for Specified Substances of Contaminated Products for Violations of Article 2.1, 2.1 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 Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility and at a maximum of 2 (two) years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

10.7 Multiple Violations

10.7.1 For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:
(a) six (6) months;

b) one (1)-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.6; or
(c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6. The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

10.7.2 A third anti-doping rule violation will always result in a lifetime period of Ineligibility, except if the third violation fulfils the condition for elimination or reduction of the period of Ineligibility under Article 10.4 or 10.5, or involves a violation of Article 2.4. In these particular cases, the period of Ineligibility shall be from eight (8) years to lifetime Ineligibility.

10.7.3 An anti-doping rule violation for which an Athlete or other Person has established No Fault or Negligence shall not be considered a prior violation for purposes of this Article.

10.7.4 Additional Rules for Certain Potential Multiple Violations.

10.7.4.1 For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a second violation if SAIDS can establish that the Athlete or other Person committed the second antidoping rule violation after the Athlete or other Person received notice pursuant to Article 7, or after SAIDS made reasonable efforts to give notice, of the first anti-doping rule violation. If SAIDS cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

10.7.4.2 If, after the imposition of a sanction for a first anti-doping rule violation, SAIDS discovers facts involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification regarding the first violation, then SAIDS shall

impose an additional sanction based on the sanction that could have been imposed if the two (2) violations had been adjudicated at the same time. Results in all Competitions dating back to the earlier antidoping rule violation will be Disqualified as provided in Article 10.8.

10.7.5 Multiple Anti-Doping Rule Violations during Ten (10)-Year Period.

For purposes of Article 10.7, each anti-doping rule violation must take place within the same ten (10)-year period in order to be considered multiple violations.

10.10.1 Delays Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, SAIDS may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.10.2 Timely Admission

Where an Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits that anti-doping rule violation after being confronted with the anti-doping rule violation by SAIDS, the period of ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation occurred...

10.10.3.1 Credit for Provisional Suspension or Period of Ineligibility

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

6. FINDING ON THE CHARGE

The Panel Members have determined that the Athlete is in fact guilty of the charge set out in paragraph 3 above.

7. SANCTION

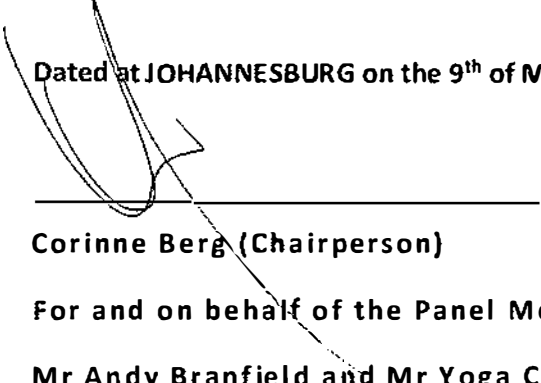
- 7.1 The Athlete ingested the substances SalphaAdiol and SbetaAdiol, which substances are not regarded as Specified Substances in terms of the definition of "Specified Substance" as set out in the SAIDS Rules.
- 7.2 Administrative action must be lawful, reasonable, and procedurally fair. For the Panel to be in a position to consider a reduction would require that the athlete in question explains how the prohibited substance entered his body, that the prohibited substance was not used to enhance his performance and to establish that there was no intent.
- 7.3 The Athlete was provisionally suspended, in terms of the SAIDS Rules, from the date of communication of the Athlete's analytical finding, being the 11 July 2016.
- 7.4 SAIDS charged the Athlete in terms of Article 2.1 and, in accordance with Article 10.2.1, the period of ineligibility should be 4 (four) years.
- 7.5 Article 10.2.2 allows for the reduction of the sanction period referred to in Article 10.2.1 from 4 (four) years to 2 (two) years if Article 10.2.1 is not applicable.
- 7.6 However, the Panel Members are of the view that the Athlete is not eligible for a reduction in terms of Rule 10.2.2. Accordingly, the Athlete should be banned for a period of 4 (Four) years.

8. CONCLUSION

- 8.1 The Athlete presented his case and provided mitigating factors as to why he believes his sanction should be reduced in terms of Article 10.2.2 and why the sanction should commence from the date of sample collection (Articles 10.10.1 and 10.10.2)

- 8.2 The Athlete was unable to explain how the prohibited substances entered his body and furthermore, he was unable to prove that the prohibited substances did not enhance his performance in any way.
- 8.3 No TUE form was ever submitted to SAIDS in respect of the Athlete's low testosterone levels and/or severe fatigue.
- 8.4 The Athlete has been tested by SAIDS in the past on different occasions, both in and out of competition.
- 8.5 This is the Athlete's second doping offence. Although the doping offences are not within the same ten-year period (Article 10.7.5), the Panel Members have elected to take the first doping offence in consideration when making a ruling of the sanction period.
- 8.6 The Athlete was negligent in that he failed to take all of the necessary precautions to avoid any prohibited substances from entering his body. Especially after having served a period of ineligibility in 1989. The Athlete should have known better. Any other reasonable Athlete in these circumstances would have learnt his/her lesson and would accordingly, take the necessary precautions to ensure that all supplements ingested are free from any prohibited substances.
- 8.7 The Athlete did admit guilt after he received the B sample results, which confirmed the results of the A sample.
- 8.8 Certain delays were experienced which were not due to the fault of the Athlete.
- 8.9 The Panel Members have deliberated and have come to the conclusion that the period of ineligibility will be **4 (four) years, from date of sample collection**, being the 26th of December 2016 (in terms of Articles 10.2.1; 10.10.1 and 10.10.2).
- 8.10 The period of ineligibility will accordingly, commence from **26 December 2015** and will come to an end on **25 December 2019**.
- 8.11 In terms of Article 10.8 the Athlete's results achieved in the event (and any subsequent events from sample collection and before his suspension) shall be disqualified and all medals and prizes, if any, shall be forfeited.
- 8.12 The Athlete's sanction will be published in terms of Rule 14.3.

Dated at JOHANNESBURG on the 9th of March 2017.



Corinne Berg (Chairperson)

For and on behalf of the Panel Members:

Mr Andy Branfield and Mr Yoga Coopoo