

**BEFORE THE ANTI-DOPING TRIBUNAL OF SOUTH AFRICA** (Instituted in terms of section 17(2) (a) of Act No. 14 of 1977, as amended by Act No. 25 of 2006)

**HELD IN CAPE TOWN**

**CASE NO. SAIDS/2016/TUE/A06**

**THINUS REDLINGHUYS**

**Appellant**

**and**

**THE SOUTH AFRICAN INSTITUTE FOR**

**DRUG FREE SPORT**

**Respondent**

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THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' APPEAL TRIBUNAL HELD ON TUESDAY 7 FEBRUARY 2017

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The Appeal Board consisted of the following Appeal Board Members -

Mr Raymond Hack - Chairperson

Dr. Ephraim Nematswerani - Member

Dr. Phathokuhle Zondi - Member

The aforementioned members were duly appointed to consider and adjudicate upon the merits of an appeal lodged by the Respondent against the Decision handed down by the South African Institute for Drug Free Sport (SAIDS) Therapeutic Use Exemption Commission on 17 March 2017.

## 1. INTRODUCTION

1.1 The appeal in question relates to the refusal of a Therapeutic Use Exemption ("TUE") application by the Commission that considers such applications. Specifically, the Appeal Board has been convened to review the decision to deny a Retrospective TUE and consider reasons cited for refusal by the TUE Committee against International Standards for Therapeutic Use Exemptions and medical evidence presented by or on behalf of the appellant.

1.2 As per Article 4.1 As per Article 4.1 of the World Anti-Doping Code International Standards on Therapeutic Use Exemptions (January 2016),

An Athlete may be granted a TUE if (and only if) he/she can show that each of the following conditions is met:

- a. The Prohibited Substance or Prohibited Method in question is needed to treat an acute or chronic medical condition, such that the Athlete would experience a significant impairment to health if the Prohibited Substance or Prohibited Method were to be withheld.
- b. The Therapeutic Use of the Prohibited Substance or Prohibited Method is highly unlikely to produce any additional enhancement of performance beyond what might be anticipated by a return to the Athlete's normal state of health following the treatment of the acute or chronic medical condition.
- c. There is no reasonable Therapeutic alternative to the Use of the Prohibited Substance or Prohibited Method.
- d. The necessity for the Use of the Prohibited Substance or Prohibited Method is not a consequence, wholly or in part, of the prior Use (without a TUE) of a substance or method which was prohibited at the time of such Use.

1.3 Reasons cited for refusal of the application by the TUE Committee include:

- The form asks for dates of treatment and this was incorrectly completed
- If the patient was that severely ill and had antibiotics, and required oral corticoids, there needs to be compelling evidence why he was in fact able to compete
- When was the antibiotic started and completed? Was any other treatment tried. There is not enough information to fulfill the criteria for granting the TUE

1.4 Medical evidence relevant to the TUE application submitted by the appellant includes

- A first TUE which the appellant concedes was inadequately completed
- A second TUE submitted by the appellant, in which dates were corrected and further medical details provided by the attending doctor.
- An explanatory email from the athlete
- A supporting letter giving additional medical motivation submitted by the treating doctor.

## 2. SUBMISSIONS BY THE APPLICANT

At the Appeal, questions were posed to both the appellant and Dr Van Niekerk to clarify and address medical details related to the TUE application and reasons cited for the application being denied.

Dr Van Niekerk presented evidence confirming that

- Dates are corrected and defined on the second TUE.
- Prior treatment was given and failed.
  - o In this letter, dated 13 October 2015, Dr Van Niekerk explains that the patient was initially treated with Clamentin (1000mg bd) and Ibumol (2 tablets bd) from 23 August 2015 – 28 August 2015. The patient failed to respond to treatment. The clinical rationale provided in the letter clearly documents the Doctor's thought process undertaken to prescribe a second antibiotic and prohibited substance (Prednisone). Dr van Niekerk refers to WADA guidelines (unreferenced) that state that glucocorticoids are permissible. This treatment was started on 27 August with the last dose prescribed to be taken on 29 August 2015.

Dr Van Niekerk also provided details describing the clinical presentation of the athlete. Details provided were based on examination and suggestive of severe acute upper respiratory tract infection (pharyngitis) with localized symptoms. Dr van Niekerk referred to his patient file and noted that no pulse or temperature was taken at the time of consultation and there was no indication of systemic or life threatening symptoms.

### 3. FINDINGS AND REASONS

After having deliberated and re-examined the documentation submitted in the form of the original communication thread related to the appellant being notified of an adverse analytical finding, the subsequent application for a retrospective TUE, the written Heads of Argument presented by the Applicant, and the Respondent's testimony, together with the responses received from the Respondent in terms of direct questions posed by members of the Appeal Board, the Appeal Board unanimously concluded that:

- The appellant's attending doctor was unable to provide evidence that his condition was such that the appellant would experience a significant impairment to health if the Prohibited Substance or Prohibited Method were to be withheld.
  - o The last page of TUE clearly states that evidence confirming the diagnosis must be attached and forwarded with each application. The note further explains that medical evidence should include comprehensive medical history, results of all relevant examinations, laboratory investigations and imaging studies.

- Dr Van Niekerk explained that no objective measurements or investigations were taken on the day of consultation. Objective measures would include pulse rate, temperature, inflammatory markers and other relevant blood tests, lung function tests (if clinically indicated).
- Dr van Niekerk and the athlete admittedly had access to the TUE form but failed to read through the document to understand the conditions that needed to be met in order to successfully apply for a TUE.
- The appellant's attending doctor did not consider other reasonable Therapeutic alternatives to the Use of the Prohibited Substance or Prohibited Method.
  - Other permissible options include nasal corticosteroids and anti-inflammatories for example.
- There was negligence in prescribing the Prohibited Substance for use on the day of the competition when it is in fact specifically prohibited in Competition (defined as 12 hours before the start of competition).

Based on these findings, the Appeal Board concluded that the appellant's submission did not meet the requirements as per Article 4.1 of the World Anti-Doping Code International Standards on Therapeutic Use Exemptions (January 2016) and, as such, a TUE cannot be granted.

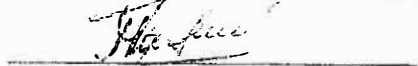
The appeal is dismissed with costs.

THUS DATED at JOHANNESBURG on this the 15<sup>th</sup> day of FEBRUARY 2017



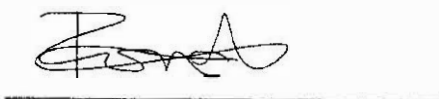
Raymond Hack (CHAIRPERSON)

THUS DATED at JOHANNESBURG on this the 15<sup>th</sup> day of FEBRUARY 2017



Dr. Ephraim Nematswerani

THUS DATED at JOHANNESBURG on this the 15<sup>th</sup> day of FEBRUARY 2017



Dr. Phathokuhle Zondi