

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

ATHLETE : **MARK DOFFAY**

SPORTS FEDERATION : **CYCLING**

DATES OF HEARING : **21 SEPTEMBER 2017**

PLACE OF HEARING : **HOLIDAY INN EXPRESS, UMHLANGA
2 NCONDO PLACE
UMHLANGA
DURBAN**

DISCIPLINARY PANEL : **MR VASAVAN SAMUEL (CHAIRPERSON)
DR MIKE MARSHALL (PANEL MEMBER)
MR RISHI HANSRAJ (PANEL MEMBER)**

PROSECUTOR : **WAFEEKAH BEGG**

UNION REPRESENTATIVE : **NOT PRESENT**

ATHLETE'S REPRESENTATIVE : **NOT PRESENT**

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 21st September 2017.

1. JURISDICTION

In terms of section 10(1)(e) of the South African Institute for Drug-Free Sports Act No.14 of 2007, National Sports Federations 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 the 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 Africa Institution 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 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 on whether the Athlete has violated the said Rules, and if so, the consequences of such violation.

The Hearing commenced on the 21st September 2017 at 17:00 PM.

3. PROCEDURAL MATTERS

The Athlete was in attendance at the hearing. The Athlete was unrepresented 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 of Drug-Free Sport.

On the 13th May 2016, you provided a urine sample (sample number 4014230) during an in-competition test. Upon analysis, the Doping Control Laboratory Ghent, reported the presence of a prohibited substances in your urine sample. The substances identified in your sample was 5alpha-androstane-3-alpha, 17beta-diol (5alphaAdiol) and 5beta-androstane-3alpha,17beta-diol (5betaAdiol) which are metabolites of testosterone. This substance is categorised under Class S1-Anabolic Agents on the World Anti-Doping Code 2016 Prohibited List International Standard.

The Prosecutor applied for the charge sheet to be amended to read:-

On the 13th May 2016, you provided a urine sample (sample number 4014230) during an in-competition test. Upon analysis, the Doping Control Laboratory in Qatar reported the presence of a prohibited substances and the Doping Control Laboratory in Rome, conducting an IRMS analysis also reported the presence of prohibited substances in your urine sample.

The athlete did not object to the Application by the Prosecutor. In view of the athlete's defence there was no prejudice to the Athlete and the charge sheet was amended.

5. THE RIGHT TO HAVE A “B” SAMPLE TESTED

The Athlete did not elect to have his “B” sample tested and accordingly waived his rights.

6. THE ATHLETE’S RESPONSE TO THE CHARGE:

The Athlete pleaded not guilty to the charge, and reserved his right to set out the basis of his defence until the hearing stage.

7. EVIDENCE AT THE HEARING:

7.1. THE SUMMARY OF RELEVANT FACTS

Below is the summary of the relevant facts and allegations that emerged from the parties at the hearing.

On or about the 13th May 2016, the Athlete underwent an Anti-Doping Control Target Test carried out during an in-competition cycling race. After the analysis of the Athlete’s urine sample, the substances identified in his sample was 5alpha-androstane-3-alpha, 17beta-diol (5alphaAdiol) and 5beta-androstane-3alpha,17beta-diol (5betaAdiol) which are metabolites of testosterone. This substance is categorised under Class S1 Anabolic Agents on the World Anti-Doping Code 2016 Prohibited List International Standard.

On or about 26th September 2016, the Athlete was notified of his adverse analytical finding in his A-Sample. The Athlete waived his right to have his B-Sample tested.

7.2. THE ATHLETE ADMITTED INTO EVIDENCE, THE FOLLOWING DOCUMENTS:

7.2.1. “A”- Adverse Analytical findings (sample number:4014230);

7.2.2. “B”- Doping Control Form;

7.2.3. “C”- ADAMS Analytical Test Report;

7.2.4. “D”- ADAMS Analytical Test Report ;

- 7.2.5. "E"- FMSI Anti-Doping Laboratory Test Report;
- 7.2.6. "F"- Chain of Custody;
- 7.2.7. "G1-G2"- Letter dated 18 November 2016 denying Therapeutic Use Exemption (TUE);
- 7.2.8. "H1-H2"- Letter dated 30th May 2017 denying TUE;
- 7.2.9. "I"- Notice of Appeal dated 19th June 2017;
- 7.2.10. "J"- Appeal denial dated 20th August 2017;
- 7.2.11. "K"- Letter dated 30th August 2017, Charge against Marc Doffay;
- 7.2.12. "L-M"- Email Correspondence between Wafeekah Begg and Mark Doffay;
- 7.2.13. "N"- Affidavit from Mogamat Fahmy Galant.

The Athlete admitted the correctness of these documents and confirmed that the documents were what they purported to be. He also admitted that the documents were correct in all material respects, especially those documents that were pertinent to the collection and the analysis of the specimen sample taken from him on that 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:

MARK DOFFAY'S EVIDENCE

- 7.3.1. In 2012, he began consulting with a doctor due to the negative effect that his sexual inactivity was having on his marriage.
- 7.3.2. He was suffering from low libido and his doctor had recommended he begin a course of Nebido in intervals of three months.
- 7.3.3. He admits that he has not stopped using Nebido from 2012 and it has significantly impacted his sexual life. He believes that this increase in his libido was one of the main reasons that his marriage lasted two years more.
- 7.3.4. The doctor, in question, was not present for today's proceedings, as the Athlete is of the belief that the doctor has been involved enough in the matter and did not wish to further include the doctor in his "battles".
- 7.3.5. He started cycling in 2005, and is a registered member of Cycling South Africa.

- 7.3.6. He had received all newsletters, notifications, articles and applications from Cycling South Africa prior to his suspension.
- 7.3.7. The first time that his private doctor drew blood from him was during 2012, he is unsure of the exact date. After that the next time the doctor drew his blood was in 2014. The last time his doctor had drawn blood was in 2016 or late 2015.
- 7.3.8. From 2012, the Nebido was administered in doses of 1000 milligrams, every three months, by a nurse at his pharmacy.
- 7.3.9. He admits that one ampoule of the Nebido would last three months in his system.
- 7.3.10. The last occasion that Nebido had been administered upon him was in 2016, before the first appeal for his matter in October 2016.
- 7.3.11. Nebido had been administered between the months of January to May 2016.
- 7.3.12. He understands that the reasons why his TUE application was denied was because Nebido is a prohibited substance.
- 7.3.13. He had not conducted any research into the drug prior to using it and only became fully aware of its contents after the start of these proceedings against him.
- 7.3.14. He contends that the only reason for the intake of this drug was for the enhancement of his sexual performance and that it had nothing to do with cycling.
- 7.3.15. The Athlete admitted to knowing Stuart Roos, a cyclist who was charged with a similar offense and who also suffered from low libido.
- 7.3.16. The Athlete believes that the anonymous tip-off made against him, and against Mr Roos, was in fact made by his ex-wife who holds a grudge against him.
- 7.3.17. The Athlete admitted to knowing Brandon Stuart, a cyclist who was charged with a similar offense. The Athlete does not know the reason why Mr Stuart took these drugs.
- 7.3.18. The Athlete did not apply for TUE initially, as he didn't expect to become dependent on the drug.
- 7.3.19. He is aware that Nebido contains testosterone and that testosterone is a prohibited substance.
- 7.3.20. He understands that if he got tested at any time whilst he was on the Nebido, it would have been a problem.
- 7.3.21. He admits that although the Nebido was taken solely for sexual performance reasons, it did affect his performance in cycling.
- 7.3.22. He believed that the Nebido merely increased his excessively low testosterone levels to a normal level and thus would not show as abnormal in a blood test. Therefore he did not disclose such in his Doping Control Form,
- 7.3.23. He cannot recall why the drug was still in his system, six months after his last dosage in 2015, however states that there could have been another dose administered to him in February / March 2016.

- 7.3.24. Although he is an avid cyclist, he does not believe that he is a “podium finisher” and therefore the drug was not effecting his cycling dramatically and this shows that he only used it to solve his low libido problem.
- 7.3.25. The doctor that was treating him, was unaware that he was a competitive cyclist, but knew he cycled and was only aiming to solve his immediate problem of low libido.
- 7.3.26. He had never seen this doctor with regard to any cycling problems; he had only visited his General Practitioner with cycling related issues.
- 7.3.27. The doctor in question, had to do a full blood count every time he drew blood.
- 7.3.28. He has stopped the drug this year, due to the hearing, further he wanted to establish for himself if he could maintain his cycling and his private relationship without the use of Nebido, as the drug could have harmful consequences. However if at any stage he needed to go back on the drug, his prescription was readily available.
- 7.3.29. At the time he started taking the drug, he did not understand the consequences of it on his cycling. It never occurred to him that he would get into trouble for his actions. However in retrospect after the proceedings against him, he does understand the full consequences of his actions.
- 7.3.30. He admits that had he not been targeted and found to have the drug in his system, he would have continued to use it.
- 7.3.31. After he received a letter of suspension, he has not participated in any cycling event.
- 7.3.32. He was aware that Nebido contained testosterone.
- 7.3.33. He does concede that when administered the Nebido, injection, makes his testosterone levels exceedingly high.
- 7.3.34. The intramuscular injections of Nebido were administered to him by a nursing sister at a Dischem Pharmacy.
- 7.3.35. He knows that Nebido is a banned substance.
- 7.3.36. The Athlete admitted that he had applied for a retroactive TUE when he tested positive. This Application was refused, he also admitted that the appeal against the decision was refused.

8. ANALYSIS OF EVIDENCE

- 8.1. In assessing the evidence it is clear that SAIDS had proved that the Athlete had used a prohibited substance.
- 8.2. The evidence of the Athlete was the only evidence presented before the Panel as the Athlete chose to exclude the Doctor’s evidence. The panel therefore cannot infer any

- oversight on the part of the doctor. The athlete's evidence however exonerates the doctor as he indicates that he did not tell the doctor that he was a competitive athlete.
- 8.3. The failure of the athlete to lead the evidence of the doctor, leaves the panel with only the Athlete's version as to why the substance was found in his system.
 - 8.4. The Athlete also failed to state at the time of his testing that he had been using a banned substance. The Athlete has stated that he was aware that Nebido contained testosterone and testosterone was a banned substance. The Athlete also stated that Nebido not only helped his libido but also enhanced his performance in the cycle race.
 - 8.5. It is clear from the Athlete's own evidence that he was in breach of the anti-doping rule and was accordingly found guilty of this offense.

9. FINDINGS OF THE PANEL

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 can establish that the anti-doping rule was intentional.

It is clear from the evidence of the Athlete that this was not a case in which the Panel had to consider, the possibility that either there was no fault or negligence or there was no significant fault or negligence on the part of the Athlete. The athlete was aware at all times that the drug Nebido contained a banned substance, namely testosterone. The athlete knew that his testosterone levels would rise due to the use of Nebido. The athlete also knew that Nebido would remain in his system for a period of three months and if he was tested during that period he was likely to be in violation of the anti-doping rules. The athlete admitted that testosterone enhanced his performance in the race even though he had taken it to improve his libido.

In the circumstances, the Panel finds that the Athlete was in breach of 10.2. 1 of the SAIDS rules, which states the following:-

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 can establish that the anti-doping rule was intentional..

10. SANCTION

The panel having determined that Article 10.2.1 of the SAIDS rules was the applicable section and therefore imposed the following sanction:-

The athlete is sanctioned to a period of ineligibility of 4 years, which was to commence retroactively from the date of the letter of suspension being 26th September 2016 until 25th September 2020.

SOUTH AFRICAN FOR DRUG-FREE SPORT (SAIDS)

DISCIPLINARY PANEL

DATED AT DURBAN ON THIS THE 15th OF December 2017.

SIVEN SAMUEL(CHAIRPERSON)



MIKE MARSHALL

RISHI HANSRAJH



In the circumstances, the Panel finds that the Athlete was in breach of 10.2.1 of the SAIDS rules, which states the following:-

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 can establish that the anti-doping rule was intentional.

10. SANCTION

The panel having determined that Article 10.2.1 of the SAIDS rules was the applicable section and therefore imposed the following sanction:-

The athlete is sanctioned to a period of ineligibility of 4 years, which was to commence retroactively from the date of the letter of suspension being 26th September 2016 until 25th September 2020.

SOUTH AFRICAN FOR DRUG-FREE SPORT (SAIDS)

DISCIPLINARY PANEL

DATED AT DURBAN ON THIS THE 11 OF DECEMBER 2017.

SIVEN SAMUEL(CHAIRPERSON)

MIKE MARSHALL

RISHI HANSRAJ

M. Marshall

