

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

**ANTI DOPING DISCIPLINARY COMMITTEE**

**ATHLETE: Ms Cecilia Raath**

**SPORTS FEDERATION: Athletics South Africa**

**DATE: 2 February 2018**

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

**DISCIPLINARY PANEL ("Panel"):-**

**Ms Corinne Berg (Chairperson)**

**Dr Andy Branfield**

**Prof. Yoga Coopoo**

**PROSECUTOR: Ms Wafeekah Begg**

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

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**RULING**

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**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 impartial Anti-Doping Disciplinary Panel (“the Panel”) has been appointed by SAIDS 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, accompanied by her attorney, Mr Jan Nel, attended the hearing held on 2 February 2018. On behalf of the Athlete, the Athlete’s attorney confirmed the Athlete’s admission of guilt in a letter, addressed to SAIDS, dated 13 November 2017, which admission of guilt was confirmed in the Athlete’s Submissions dated 10 January 2018 and also on the day of the hearing. Accordingly, the Athlete’s attorney only addressed the Panel in respect of mitigating factors and the sanction to be imposed.

## **3. THE CHARGE**

The charge against the Athlete was set out in a letter, dated 20 July 2017, addressed to the Athlete. The letter sets out, in paragraph 4, that the analytical report received from the Laboratory confirmed the presence of Metabolites of Testosterone viz. 5 $\alpha$ -androstane-3 $\alpha$ , 17 $\beta$ -diol (5 $\alpha$ Adiol) and 5 $\beta$ androstane-3 $\alpha$ , 17 $\beta$ -diol (5 $\beta$ Adiol), Androsterone and Eticholanone, in the Athlete’s Sample A urine sample (sample number 4011921), which Sample was collected on 4 June 2017 In-Competition. The Athlete elected not to have her Sample B tested.

## **4. EVIDENCE OF THE ATHLETE**

4.1 Written Submissions for the Athlete were submitted by Mr Nel.

- 4.2 The Athlete is an adult female Physiotherapist currently practising as such at the offices of “My Sexual Health” in Pretoria.
- 4.3 The Athlete applied for a Therapeutic Use Exemption (“TUE”) but this was denied by SAIDS on 25 October 2017. The Athlete elected not to appeal the decision.
- 4.4 Mr Nel confirmed that the Athlete was satisfied with the Doping Control Officer and the process followed on the day of sample collection. Neither the Athlete nor her attorney raised any issues regarding the chain of custody.
- 4.5 In light of the fact that the Athlete did not deny the presence of Metabolites of Testosterone viz.  $5\alpha$ -androstane- $3\alpha$ ,  $17\beta$ -diol ( $5\alpha$ Adiol) and  $5\beta$ androstane- $3\alpha$ ,  $17\beta$ -diol ( $5\beta$ Adiol), Androsterone and Eticholanone, in the Athlete’s Sample A urine sample (sample number 4011921), the Athlete pleaded **guilty** to the doping charge on the day of the hearing.
- 4.6 The Athlete started road running in and during 2013. Initially for weight loss and now she runs for enjoyment. The Athlete first started running for the Pretoria Marathon Club in 2015. In 2016 she ran for the Nedbank Running Club for 1 (one) year and last year she joined the Pretoria Marathon Club again. She is not a professional Athlete but rather an age group athlete who runs for enjoyment and to improve her personal best times.
- 4.7 The Athlete was able to advise the Panel how the prohibited substances entered her system and explained why the medication (trans dermal testosterone treatment) prescribed by her doctor (Dr. Elna Rudolph), which contained the prohibited substances, was not used to enhance her performance, but rather to improve her energy levels, libido and all-round quality of life. This is confirmed by Dr. Rudolph in an Affidavit dated 15 January 2018 and was again confirmed by Dr. Rudolph telephonically on the day of the hearing, after taking the oath. A Confirmatory Affidavit deposed to by Doctor Merchen Naude, dated 24 January 2018, was also submitted by the Athlete.

- 4.8 The Athlete told the Panel members that she had never been tested for prohibited substances prior to 4 June 2017.
- 4.9 All supplements and medication used by the Athlete were listed on the Doping Control Form. The Athlete told the Panel Members that she never thought that a topical cream would be regarded as a prohibited substance and therefore, had no issue listing the medication. She was of the view that she had nothing to be concerned about as she had never intended on doping to improve her running. The Athlete told the Panel that she runs for the enjoyment of it and that it helps her relieve stress (especially after the loss of close friends).
- 4.10 The Athlete had taken the loss of her friends hard and is still very emotional about the incidents that took her friends lives. The Athlete is currently also taking an antidepressant, Welburtin.
- 4.11 Mr Nel advised the Panel that he did not at the time, completely understand the wide application of “provisional suspension” and therefore failed to properly clarify which events the Athlete may or may not participate in. So, according to Mr Nel’s evidence and that of the Athlete’s, the only reason why she participated in those events was due to the fact that she was not aware of the fact that she was not allowed to participate in those events.
- 4.12 As soon as Mr Nel was made aware of the wide application of “provisional suspension”, he informed the Athlete not to participate in any events authorised or organised by amateur or professional League or national or international level events.
- 4.13 SAIDS tested the Athlete based on information received from an anonymous informant. The Athlete told the Panel Members that she can only think of one person who might have sent through a doping complaint about her. According to the Athlete, this particular individual (who was a patient) may have sent through a complaint to SAIDS because he was upset with the Athlete because she would not leave her husband for him. And accordingly, the Athlete is of the view that

the doping complaint which was submitted to SAIDS was vindictive. The Athlete cannot think of anyone else that would have given information of this kind to SAIDS.

4.14 The Athlete showed remorse throughout the hearing and she assured the Panel Members that she had no intention of cheating.

4.15 Mr Nel requested that the Panel Members take into consideration all of the mitigating factors in arriving at the appropriate sanction. He further recommended that the sanction should be reduced from 4 (four) years to 2 (two) years and that the 2 (two) years be further reduced with a minimum of 12 (twelve) months.

4.16 Mr Nel referred to the following Rules in support of her request for the reduction of his sanction:-

10.2.2;

10.2.3;

10.5.2;

10.10.3.1;

10.11.2.

4.12 The following cases were also referred to by Mr Nel, in support of the Athlete's evidence:-

*Arijan Ademi v Union of European Football Associations CAS/2016/A/N4674;*

*Marin Cilic v International Tennis Federation (ITF) CAS 2013/A/3327;*

*International Tennis Federation (ITF) v Marin Cilic CAS 2013/A/3335;*

*Maria Sharapova v International Tennis Federation (ITF) CAS 2016/A/4643;*

*The Football Association v Mr Jake Livermore CAS*

**5. EVIDENCE OF THE SAIDS PROSECUTOR, MS BEGG**

- 5.1 Ms Begg, on behalf of SAIDS, submitted submissions in support of her arguments.
- 5.2 Ms Begg advised the Panel Members that she had a telephonic discussion with the Athlete's husband, Mr Duard Raath, soon after the Athlete received the notification letter from SAIDS. Ms Begg confirmed that she had advised Mr Raath of the fact that the Athlete may not compete in any races that are sanctioned with Athletics South Africa. Surely this would have been relayed to the Athlete. Therefore, the Athlete should have known that she may not participate in those events.
- 5.3 Ms Begg confirmed that the reason for testing the Athlete on 4 June 2017 was due to the fact that SAIDS received information from an anonymous individual claiming that the Athlete is doping. SAIDS is obliged to investigate all doping complaints received from informants. This is confirmed in an Affidavit deposed to by Mr Mogmat Fahmy Galant, the General Manager of SAIDS.
- 5.4 Ms Begg referred the Panel Members to the Athletics South Africa 2017 Licence Form and to the Pretoria Marathon Club 2017 Form, copies of which are attached to Ms Begg's submissions. Both forms stipulate that the Athlete agrees to abide by the Rules and Regulations of Athletics South Africa and the International Association of Athletics Federations.
- 5.5 Ms Begg highlighted that the Athlete is responsible for ensuring that no prohibited substances enter her body. She must take the "utmost care" in ensuring that no prohibited substances enter her body.
- 5.6 Ms Begg referred to both the objective and subjective elements of fault.
- 5.7 Ms Begg called Dr. Jeroen Swart as a witness to give evidence in respect of the Athlete's alleged female hypogonadism. Mr Swart gave his evidence telephonically. According to Dr. Swart, it is very difficult to diagnose androgen

deficiency in females as it is not a well-defined syndrome. Dr. Swart also testified that the method by which testosterone measurements have been performed is not further specified other than "an assay using accurate and reliable method". Dr. Swart advised the Panel Members that decreased testosterone may be caused by psychological stress or overtraining and that rest is probably the best remedy.

5.8 Ms Begg, on behalf of SAIDS, suggested that a sanction period of 4 (four) years be imposed.

5.9 It was also recommended by Ms Begg that the Athlete's individual results from 4 June 2018 be disqualified and further that any medals and/or prize monies (if any) be forfeited.

5.10 Ms Begg relied on the following Rules:-

2.1;

3.1;

3.2;

10.2.1;

10.2.1.1;

10.2.3;

10.5.2;

10.10.3.1;

22.1.4

5.11 The following cases were referred to by Ms Begg:-

*World Anti-Doping Agency (“WADA”) v Gharbi CAS 2017/A/4962;*

*WADA v Alvarez CAS 2016/A/4377;*

*WADA v Damar Robinson CAS 2014/A/3820*

*Cilic v International Tennis Federation CAS 2013/A/3327;*

*FIS v Johaug CAS 2017/A/5015 and CAS 2017/A/5110;*

*WADA v CISM & Federico Turrini CAS 2008/A/1565;*

*P v International Tennis Federation CAS 2008/A/1488.*

## **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.*

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

*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 (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 (8) years."*

*10.8 "Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Violation"*

*In addition to the automatic Disqualification of the results in competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall unless fairness requires otherwise, be disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."*

*10.10 "Commencement of Ineligibility Period"*

*Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."*

6.4 Article 10.12 and 14.3 entitles SAIDS to publish the outcome of the Ruling.

## **7. 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.

## **8. SANCTION**

8.1 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 to explain how the prohibited substance entered her body, that the prohibited substance was not used to enhance her performance and to establish that there was not intent.

- 8.2 The Athlete presented her case and provided mitigating factors as to why she believes that her sanction should be reduced in terms of Article 10.2.2, and reduced further in terms of Article 10.5.2. The Athlete also referred to Article 10.11.2, requesting that the period of Ineligibility commence from the date of Sample collection (4 June 2017).
- 8.3 The Athlete elected to use the medication prescribed to her by Dr. Rudolph and accordingly, the prohibited substances specified in paragraph 3 above were detected in her A Sample which she provided on 4 June 2017.
- 8.4 The Athlete promptly admitted guilt.
- 8.5 The Athlete was able to explain how the prohibited substance entered her body and she further explained that the prohibited substances ingested were not used intentionally to cheat or to enhance her performance.
- 8.6 The TUE submitted by the Athlete was denied by SAIDS.
- 8.7 The Athlete was provisionally suspended from the date of sample collection, being the 4<sup>th</sup> of June 2017. However, the Athlete did continue compete in road running events from July 2017 up to and including November 2017. She ran a total of 7 (seven) races which were all organised and sanctioned events falling under the auspices of Athletics South Africa.
- 8.8 The Athlete did elect to consult a Doctor (instead of merely purchasing a product over the counter). However, the Athlete should have informed her Doctor that she is an athlete who competes in events that are sanctioned with Athletics South Africa. The Athlete should also have checked the ingredients of the medication and if she was still unsure, she should have conducted a search on the internet or, she should have consulted with another expert;
- 8.9 The Athlete is a Physiotherapist and should have been more careful and more responsible when using medication that may contain substances that are prohibited in sport.
- 8.10 The Athlete's testosterone level as at 4 June 2017 is still well within the norm of testosterone levels of females. However, the Athlete's testosterone level when tested was not at that level due to natural reasons but due to external factors (medication prescribed by Dr. Rudolph).

- 8.11 The reason for using the medication prescribed by Dr. Rudolph was to improve her living conditions and not to enhance her performance or to cheat.
- 8.12 The Athlete is not a professional Athlete.
- 8.13 Objectively speaking, the Athlete could have and should have checked the ingredients of the medication prior to using the medication and she should have conducted an internet search on the product. She also could have consulted another Doctor in order to ensure that she is in fact allowed to use this medication. She does have access to a sports physician.
- 8.14 Subjectively speaking, the Athlete is educated adult. The Athlete has never received any formal education on Drug-Free Sport and Prohibited substances. However, this is not an excuse. It is up to the Athlete to ensure no prohibited substances enter her body. She signed the Athletics South Africa licence form, as well as her running club's application form which forms both stipulate that the Athlete agrees to abide by the Athletics South Africa Rules and the International Association of Athletics Federation.
- 8.15 The Athlete has experienced a lot of emotional stress lately and had no reason to use any prohibited substances intentionally to enhance her performance. She is not a professional Athlete. She is a wife and mother of 3 (three) who works as a Physiotherapist and who runs with her friends for enjoyment and to better her personal running times.
- 8.16 The complaint to SAIDS was most likely submitted by a disgruntled patient.
- 8.17 This is the Athlete's first doping offence.
- 8.18 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 unless the Athlete can prove that the Rule violation was not intentional (Article 10.2.1.1).
- 8.19 Article 10.2.2 applies where Article 10.2.1 does not apply. Should Article 10.2.2 be applicable, the sanction period/Ineligibility period will be for a period of 2 (two) years.

- 8.20 When one considers the circumstances of this matter, a period of Ineligibility of 4 (four) years in terms of 10.2.1 would be unfair and too harsh. Each case must be looked at on its own merits. This Athlete had no reason to use the medication to enhance her running performance.
- 8.21 Although the Athlete may not have acted with intent, Article 10.5.2 cannot be applied as the Athlete was unable to prove that she had "No Significant Fault or Negligence".
- 8.22 Articles 10.10.1 - 10.10.3 are not applicable due to the fact that the Athlete continued to participate in running events during her provisional suspension period. Paragraph 8 (eight) of the notification letter from SAIDS, dated 20 July 2017, clearly stipulates that the Athlete is provisionally suspended from competing in any events authorised or organised by any amateur or professional league of national or international level event as from date of the notification of the adverse analytical finishing. In addition to the above, Article 10.11 of the Rules is very clear about the Athlete's status during the period of Ineligibility. The Athlete and/or Mr Nel could have contacted SAIDS if they were unsure.
- 8.23 The Athlete has already stopped using the medication and she has already downloaded the "DrugFreeSport" App on her mobile phone.
- 8.24 The Athlete has shown remorse and has assured the Panel Members that she will be more careful in the future.
- 8.25 The Panel Members are of the view that the Athlete was negligent and that she should have done more to ensure that no prohibited substances enter her body. However, The Panel Members are of the view that she did not intend to use the trans-dermal testosterone treatment to cheat or to improve her running performance.

## 9. CONCLUSION

- 9.1 The Panel Members have deliberated and have come to the conclusion that the period of Ineligibility will be **2 (two) years from the date of the hearing being 2 February 2018** (in terms of Articles 10.2.2 and 10.10).

9.2 In terms of Article 10.8 the Athlete's results achieved in the event (and any subsequent events from sample collection) shall be disqualified and all medals and prizes, if any, shall be forfeited.

9.3 The Athlete's sanction will be published in terms of Articles 10.12 and 14.3.

Dated at **JOHANNESBURG** on **9 February 2018**.



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**Corinne Berg (Chairperson)**

**For and on behalf of the Panel Members:**

**Mr Andy Branfield and Mr Yoga Coopoo**