



## **DECISION of the FEI TRIBUNAL**

**dated 23 October 2015**

**Human Anti-Doping Case No.:** 2014/01

**Athlete/NF:** Pablo Barrios / VEN

**FEI ID:** 10002446

**Event:** Central American and Caribbean Games, Veracruz, Mexico

**Date:** 26 – 29 November 2014

**Prohibited Substance:** Hydrochlorothiazide

### **I. COMPOSITION OF PANEL**

Mr. Pierre Ketterer, Chair  
Mr. Erik Elstad, Member  
Dr. Armand Leone, Member

### **II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by the Athlete:**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the Athlete.

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

- 1. Articles of the Statutes/ Regulations which are applicable or have been infringed:**

General Regulations of the Central American and Caribbean Sports Organisation, Art. 26.

Technical Manual Equestrian XXII Central American and Caribbean Games, Veracruz 2014.

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 16 January 2014, Arts. 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal 2<sup>nd</sup> edition, 1 January 2012 ("IRs").

FEI Anti-Doping Rules for Human Athletes, 1 January 2011, updates effective 1 January 2014 ("ADRHA").

World Anti-Doping Code 2009.

2014 Prohibited List of the World Anti-Doping Agency ("the List").

**2. The Athlete:** Mr. Pablo Barrios

**3. Justification for sanction:**

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

Art. 2.1.1 ADRHA: "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 violation under Article 2.1."

Art. 4.1 ADRHA: "These Anti-Doping Rules incorporate the *Prohibited List* which is published and revised by *WADA* as described in Article 4.1 of the Code. The *FEI* will make the current *Prohibited List* available to each *National Federation* by means of publication on the [www.fei.org](http://www.fei.org) website, and each *National Federation* shall ensure that the current *Prohibited List* is available to its members and constituents."

#### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

## **1. Factual Background**

- 1.1 Mr. Pablo Barrios (the "Athlete") participated at the Central American and Caribbean Games, in Veracruz, Mexico from 26 to 29 November 2014 (the "Event"), in the discipline of Jumping.
- 1.2 On 29 November 2014, the Athlete was selected for in-competition testing. On his Doping Control Form the Athlete declared having used "ADVIL" and "CLONAZEPAM" in the last seven days.
- 1.3 Analysis of urine sample no. 6127216 taken from the Athlete at the Event was performed at the WADA accredited laboratory, Laboratorio Nacional de Prevencion y Control del Dopaje – CONADE, in Mexico. The analysis of the urine sample revealed the presence of Hydrochlorothiazide, which is a Prohibited Substance under the 2014 Prohibited List of the World Anti-Doping Agency ("WADA") (the "List"), in force at the time of sample collection.
- 1.4 The Prohibited Substance detected is listed in class S5 "Diuretics and other Masking Agents" of Prohibited Substances and is considered a "Specified Substance" under the List. It is prohibited at all times (in- and out-of-competition).
- 1.5 At the time of the Event no valid Therapeutic Use Exemption ("TUE") under Article 4.4 of the ADRHA had been granted to the Athlete for the use of Hydrochlorothiazide. Therefore, the positive finding for Hydrochlorothiazide gives rise to an Anti-Doping Rule Violation under the ADRHA.

## **2. Proceedings by the Organising Committee of the Event**

- 2.1 Initial proceedings had been conducted - in accordance with Article 7.3 of the ADRHA - by the Organising Committee of the Event, the Central American and Caribbean Sports Organization ("CASCO" or "ODECABE"). Specifically, on 5 December 2014, the Medical Committee of ODECABE had notified the Athlete of the positive finding, and had further granted him the right to the B-Sample analysis.
- 2.2 In the following the Medical Committee of ODECABE decided that the Athlete had committed a violation of Article 2.1 of the ADRHA, and recommended to the Executive Committee of ODECABE to disqualify the Athlete from the entire Event.
- 2.3 On 13 February 2015, the Executive Committee of ODECABE confirmed the disqualification of the Athlete from the entire Event. Furthermore, the results of the team of the Athlete have been recalculated following the decision by the Executive Committee of ODECABE, and the Venezuelan team was placed third (instead of first).

### **3. Proceedings by the FEI**

- 3.1 On 9 February 2015, the Athlete requested the FEI for a retroactive TUE for Hydrochlorothiazide, which request had not been granted. The Athlete however obtained a TUE for the future use of Hydrochlorothiazide, effective as of 27 March 2015.
- 3.2 On 25 June 2015, the FEI charged the Athlete with a violation of Article 2.1 of the ADRHA.

### **4. Written submissions by the Athlete**

- 4.1 On 14 August 2015, the Athlete submitted his explanations to the positive finding. Together with his submission, the Athlete submitted a letter by his doctor, Dr. Javier Prettel, MD of the Prettel Center for Family Health, in Loxahatchee, Florida, dated 25 February 2015. Dr. Prettel explained that the Athlete had been diagnosed with hypertension in 2012, and that at the time it had been agreed that the Athlete would try to control his condition with additional (compared to his then current regime) physical exercise, and strict control of nutritional intake. Furthermore that, after a reasonable period of time it had been determined, via clinical and laboratory testing, that these changes had proven unsuccessful and were unsatisfactory for the prevention of the potentially tragic consequences of this condition, in particular for a man of the Athlete's age, with a strong family history of hypertension. That in August 2014, it had therefore been agreed that the Athlete was to begin a medication protocol. That he had prescribed the medication that he had felt was necessary, in order for the Athlete's condition to improve immediately. That therefore the Athlete had been prescribed Lisinopril. That the prescription had been sent - as it was usual practice in the United States - to the Athlete's pharmacy, where it had been approved by the Athlete's insurance and dispensed in August 2014. Finally, Dr. Prettel stated that it was, and continued to be, his determination that the Athlete needed the medication as prescribed by him, including the diuretic component. That the Athlete's blood pressure was under excellent control, and that he recommended that the Athlete continued on the same medication, to prevent any cardiovascular events.
- 4.2 The Athlete also submitted medical reports regarding (amongst others) his hypertension condition, issued on 5 August 2014 by the Prettel Center, and with regards to his back pain, issued on 13 October 2011 by Dr. Carlos Jimenez, MD. In addition, the Athlete submitted a picture of a medication box, on which "LISINOPRIL HCTZ 20/12.5 MG Tablets" is inscribed. The medication box did however not contain any information with regards to the ingredients of the medication.
- 4.3 In essence the Athlete submitted that:
  - a) He has had a career of over 40 years, has won 15 gold medals, 3 silver medals and 3 bronze medals in International events, and that neither he or his horses, which had been subject to doping control, had previously ever tested positive. Furthermore that he was familiar with

the ADRHA, the List and the procedures regarding TUEs. That in 2011, he had undergone treatment for some back pain, and that at the time he had requested a TUE for the treatment in question, which had been granted.

- b) In 2012 he had been diagnosed with, among others, Hyperlipidemia, which essentially meant hypertension (high blood pressure), and that in 2014 his doctor, Dr. Prettel – who knew that he was a professional athlete – had told him that he would be prescribing Lisinopril, without providing him with any further details on the medication, other than its name. That at the time he had not known all the substances prohibited by WADA and the FEI. That he had however been aware that he had to verify that what had been prescribed to him was not prohibited. That he had consulted Anti-Doping data banks and verified that he could use Lisinopril without compromising his anti-doping commitment to his sport and professional career. That he had therefore purchased the medication and started using it.
- c) In the United States, medications were usually dispensed in boxes with limited information. That also in his case, the label on the box of medication received by him had not contained any information regarding the active substances, rather only the name “Lisinopril HCTZ”, some information about dosage, and a description about the shape and color of the tablet.
- d) He had not realized that the “HCTZ” in the name of the medication referred to a second active ingredient, i.e. Hydrochlorothiazide. That only after he had been notified of the positive finding and following further research regarding the substance he had learned that HCTZ was a diuretic and that diuretics were standard and common substances used in hypertension protocols. That in fact a version of Lisinopril, i.e. the medication he had been taking, existed that contained Hydrochlorothiazide. That as soon as he had found out that the medication he had been taking contained Hydrochlorothiazide, he had promptly admitted using Hydrochlorothiazide, and had requested for a TUE, which had been granted on 27 March 2015.
- e) He had therefore established how the Prohibited Substance had entered his body, i.e. by means of the medication as prescribed by Dr. Prettel.
- f) There had not been any intent to enhance his performance, or to mask the Use of a performance enhancing substance, and that neither the nature of the substance and the timing of ingestion would have been beneficial to him. That he had taken the medication because of his life threatening medical condition.
- g) Since he had been misled by his doctor stating that he would prescribe Lisinopril (only), and as medications in the United States were not provided with original packaging and package leaflet, he had failed to apply for a TUE that would in his opinion certainly have been granted. That therefore his fault seemed minor, and that when taking into

consideration identical cases previously decided by the FEI Tribunal, a sanction of only a reprimand and no period of ineligibility would be justified.

- 4.4 On 13 September 2015, the Athlete submitted further medical records and reports, as well as various laboratory results evidencing the Athlete's condition of hypertension.

## **5. Written submission by the FEI**

- 5.1 On 15 September 2015, the FEI submitted its Response to the Athlete's explanations.

- 5.2 In essence the FEI argued that:

- a) Since the Athlete had not disputed that Hydrochlorothiazide was present in the sample collected from him at the Event, it had discharged its burden of establishing that the Athlete had violated Article 2.1 of the ADRHA. Further that a period of Ineligibility of two years according to Article 10.2 of the ADRHA should be imposed, unless the conditions for eliminating, reducing or increasing that period as set out in Articles 10.4, 10.5 and 10.6 of the ADRHA were met.
- b) Article 10.4 of the ADRHA was applicable in the case at hand since the Prohibited Substance detected – Hydrochlorothiazide – was classified as a Specified Substance. That further the FEI accepted that the evidence produced on behalf of the Athlete was likely to prove, by a balance of probability as requested by Article 3.1 of the ADRHA, that the Hydrochlorothiazide in the Athlete's sample resulted from the medication the Athlete had received from Dr. Pretzelt. That further the documentation provided by the Athlete concerning the medication Lisinopril HCTZ as well as a simple internet search allowed the conclusion that Lisinopril HCTZ does indeed contain Hydrochlorothiazide.
- c) Based on the medical records provided by the Athlete, i.e. the letter by Dr. Pretzelt, the FEI was of the opinion that the Athlete's contemporaneous medical records established that the use of Hydrochlorothiazide was for medical reasons. That on this basis it could be concluded that he had not had any intent to enhance his sport performance, or to mask the use of a performance enhancing substance.
- d) Finally the FEI argued that until that point in time of the proceedings, no detail had been provided by the Athlete establishing any steps undertaken by him to avoid the positive finding, which would allow to assess the Athlete's level of fault or negligence for the rule violation. That the FEI was however of the opinion that the fact that the Athlete had relied on treatment and medication prescribed by his doctor did not amount to a finding of reduced negligence. The FEI argued that

in the context of previous case law, it had been established that an Athlete could not simply transfer his duty of care to a third party. Rather that the Athlete's duty of care was even higher if – as in the case at hand – the doctor was not a specialist in sports medicine and not aware of anti-doping regulations, and that therefore the Athlete had to be "significantly more diligent" to ensure that the medication administered was not in conflict with the applicable rules of the sport. Furthermore that it was of little relevance to the determination of fault that the product had been prescribed with "professional diligence" and "with a clear therapeutic intention".

## **6. Supplemental submission by the Athlete**

- 6.1 On 20 September 2015, the Athlete further explained that it was not correct – as contented by the FEI – that he had relied on Dr. Prettel only with regards to the question whether the medication contained any Prohibited Substances. That he had performed some research on the website of GlobalDro, a website aiming at providing athletes and support personnel with information about the prohibited status of medications sold in the United Kingdom, Canada, the United States and Japan. That the search result on GlobalDro for "Lisinopril HCTZ" had been the following:

***"Your search did not return an exact match! The absence of a result for your search term does not mean the substance is permitted in sport. Confirm the spelling of your search term. If you still cannot find an exact match, you should contact us to find out if the product you are searching for is prohibited in sport. Other possible matches are displayed below."***

That in the search result it had clearly been indicated that "other possible matches are displayed below", which clearly meant that he could trust that the list would contain any medications with similar spelling. That the list with the alternative matches displayed 6 different Lisinopril products and information about "different names" for Lisinopril. That for all results of the list it was clearly stated that "all possible matches" to "Lisinopril HCTZ" do not contain any Prohibited Substances. That even the result for "other names" had not given any indication of a Prohibited Substance, and that the results for all had said "not prohibited" in- and out of competition. That based on these facts it was established that he had not been at fault or negligent, as he could not have done more than "(a) check the official website brought by USADA for exactly the purpose of finding out about prohibited substances and (b) type in "Lisinopril HCTZ" and, after there was no exact match, (c) also look at all the possible matches." The Athlete concluded that there had been "absolutely no indication" that when taking the Lisinopril HCTZ he could have been exposed to a Prohibited Substance. Lastly the Athlete argued that in case a fine should be imposed on him, it should not exceed one thousand five hundred Swiss Francs (CHF 1'500).

- 6.2 Together with his Supplemental submission the Athlete provided excerpts of the GlobalDro website regarding search results for "Lisinopril HCTZ", printed on 18 September 2015.

## **7. Supplemental submission by the FEI**

- 7.1 On 28 September 2015, the FEI provided its Response to the Athlete's Supplemental submission. Together with its Response, the FEI submitted a copy of the Notification Letter by ODECABE, dated 5 December 2014. The Notification Letter stated, amongst others, that:

*"The Medical Commission recommends that the Executive Committee of CASCO, in accordance with Articles 9 and 10.1 of the World Anti Doping Code, ask for the medal obtained by the athlete in these Games to be returned, and that according to Article 7.5.1 there be applied a mandatory provisional suspension for the use of an unspecified, banned substance."*

- 7.2 To start with, the FEI pointed out that the excerpts of the GlobalDro website provided by the Athlete had been printed on 18 September 2015, and not at the time of the actual search allegedly performed by the Athlete. Moreover, that apparently the Athlete had not – as suggested by the results of the search performed by him - contacted GlobalDro; nor had he undertaken any further measures to avoid the positive finding. That the Athlete had been clearly negligent with regards to the use of the Lisinopril HCTZ, as (i) all the documentation of the GlobalDro website, especially with regards to "Other possible matches" was related to Lisinopril, and not Lisinopril HCTZ; (ii) since the Athlete, in the absence of a clear match on GlobalDro, had not contacted GlobalDro, despite the invitation to do so; (iii) since the Athlete had neither contacted the FEI, nor WADA or his NADO; and (iv) as he had apparently not specifically inquired with his doctor or his pharmacist whether he could use the medication. Furthermore, that the Athlete himself had explained that once he had been notified of the positive finding his internet search had led him to understand that Lisinopril HCTZ contained Hydrochlorothiazide, which confirmed that he could have found this information earlier provided he had done a more thorough internet search earlier.
- 7.3 Finally, the FEI agreed that a reprimand was the adequate sanction in the case at hand, however not based on the submissions made by the Athlete, but only when considering the entire circumstances of the case at hand. In this context the FEI underlined that ODECABE had imposed a Provisional Suspension on the Athlete and that the Athlete seemed to have complied with the terms of the Provisional Suspension, despite the fact that it had never been formally entered into the FEI database. That therefore, taking into account that the Athlete had already been provisionally suspended for more or less 1.5 months, the FEI agreed that it was sufficient – at this stage – to impose a warning on the Athlete.

## **8. Jurisdiction**

- 8.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and the ADRHA. Specifically, as set forth in Article 7.3 of the ADRHA, results management and the conduct of hearings from a test by a Major Event Organization, shall be managed, as far as sanctions beyond Disqualification from the Event or the results of the Event, by the FEI.

## **9. The Decision**

- 9.1 As already rightfully held by the ODECABE, the Athlete has committed a violation under Article 2.1 of the ADRHA. The Tribunal comes to this conclusion for the reasons set out below. As set forth in Article 2.1.2 of the ADRHA, sufficient proof of an anti-doping rule violation under Article 2.1 of the ADRHA is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A-Sample where the Athlete waives analysis of the B-Sample and the B-Sample is not analysed or the B-Sample confirms the A-Sample. The Tribunal understands that the Athlete waived his right to the B-Sample analysis, and is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical test was performed in an acceptable manner and that the findings of the laboratory, Laboratorio Nacional de Prevencion y Control del Dopaje – CONADE, in Mexico are accurate. Further that the test results evidence the presence of Hydrochlorothiazide in the Sample taken from the Athlete at the Event. Hydrochlorothiazide is listed as Prohibited Substance on the WADA Prohibited List. No TUE had been provided for the Prohibited Substance, and the Athlete's request for a retroactive TUE had been denied. The Athlete did not contest the accuracy of the test results or the positive finding.
- 9.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ADRHA.
- 9.3 In cases brought under the ADRHA, a strict liability principle applies as described in Article 2.1.1 of the ADRHA. Once an anti-doping rule violation has been established by the FEI, pursuant to Article 10.2 of the ADRHA, the mandatory period for a first breach of the ADRHA is a period of two (2) years Ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of Ineligibility is possible under Articles 10.4 and 10.5 of the ADRHA. Article 10.4 of the ADRHA is generally applicable to the case at hand since Hydrochlorothiazide is classified as a "Specified Substance". In order to benefit from a reduction under Article 10.4 of the ADRHA of the otherwise applicable period of Ineligibility, the Athlete must establish how the Specified Substance entered his or her body. The Athlete also has to establish that such Specified Substance was not intended to enhance his or her sport performance, or to mask the use of a performance-enhancing substance. To justify any elimination or reduction under Article 10.4 of the ADRHA, the Athlete must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the

hearing panel the absence of intent to enhance sport performance or mask the use of a performance enhancing substance.

- 9.4 The Tribunal, in considering the Athlete's explanations and supporting evidence – in particular Dr. Prettelt's written statement, together with the picture of the medication box - finds that the Athlete has established "by a balance of probability", as required under Article 3.1 of the ADRHA, that the medication used by him, Lisinopril HCTZ, has caused the positive test result. The Tribunal is therefore satisfied that the Athlete has established how the Hydrochlorothiazide entered his system.
- 9.5 In a second step, the Tribunal has to determine whether the Athlete has established that the use of the Hydrochlorothiazide was not intended to enhance his sporting performance. Taking into account the medical records by the Athlete, the Tribunal is comfortably satisfied that the Athlete has used the Hydrochlorothiazide for medical reasons. The Tribunal is therefore comfortably satisfied that the Athlete produced corroborating evidence – in addition to his word – establishing the absence of intent to enhance sport performance or mask the use of a performance enhancing substance.
- 9.6 The Tribunal however finds that the Athlete was negligent in performing his duty of care as a competitor, since, even though he had apparently researched the medication on the GlobalDro website, he has not followed the recommendations provided, i.e. he has not contacted GlobalDro in follow up of his search result, i.e. no exact match for his entry. Furthermore, since he has apparently not conducted any further research, even though he has clearly been warned that the absence of a result for his search did not mean that the substance is permitted in sport.
- 9.7 The range of penalties for first time offenders – such as the Athlete – in connection with a proven violation relating to the presence of a Specified Substance during an Event is, at a minimum, a reprimand and no period of Ineligibility, and a maximum, two years of Ineligibility.
- 9.8 In this respect, the Tribunal takes note of the Parties' submissions that a reprimand would be the adequate sanction in the case at hand. The Tribunal further takes note that ODECABE had imposed a Provisional Suspension on the Athlete, and that the Athlete seemed to have complied with the terms of the Provisional Suspension for more or less 1.5 months. When deciding the sanctions, the Tribunal takes into account the entire circumstances of the case at hand, in particular the contemporaneous medical condition of the Athlete, the fact that the Athlete had now been provided with a TUE for the substance in question, that the Athlete has established the absence of intent to enhance sport performance or mask the use of a performance-enhancing substance to its comfortable satisfaction, and the period of Provisional Suspension complied with by the Athlete. As a result the Tribunal agrees with the Parties, and decides that the adequate sanction for the Athlete in the case at hand and at this point in time is a reprimand.

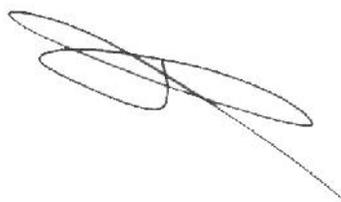
## 10. Sanctions

- 10.1 As a consequence of the foregoing, the Tribunal decides to impose the following sanctions on the Athlete, in accordance with Article 169 of the GRs and Article 10 of the ADRHA:
- 1) The Athlete shall be **reprimanded**.
  - 2) The Athlete is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
  - 3) The Athlete shall bear his own legal costs of the judicial procedure.
- 10.2 According to Article 168 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.
- 10.3 This decision can be appealed before the Court of Arbitration for Sport (CAS) within 30 days of the present notification as set out in Article 12 of the ADRHA.

## V. DECISION TO BE FORWARDED TO:

1. **The person sanctioned:** Yes
2. **The President of the NF of the person sanctioned:** Yes
3. **The President of the Organising Committee of the Event through his NF:** Yes
4. **Any other:** WADA

**FOR THE PANEL**



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**THE CHAIRMAN, Mr. Pierre Ketterer**