



**DECISION of the FEI TRIBUNAL**

**dated 2 September 2009**

**Positive Medication Case No.:** 2009/18

**Horse:** WHISPER 156

**FEI Passport No:** GER 42294

**Person Responsible:** Isabell Werth

**Event:** CDI 4\* Wiesbaden, GER

**Prohibited Substance:** Fluphenazine

**1. COMPOSITION OF PANEL**

Mr Erik Elstad  
Mr Patrick A. Boelens  
Mr Pierre Ketterer

**2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case:** By Legal Department.

**2.2 Summary information provided by Person Responsible (PR):**  
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 PR.

**2.3 Oral hearing:** 21 July 2009: in person (Lausanne, Switzerland).

**Present:**

For the PR: Ms. Isabell Werth  
Dr. Ulf Walz, Counsel for PR  
Dr. Hans-Georg Stihl, Veterinarian for PR

For the FEI: Lisa F. Lazarus, General Counsel  
Graeme Cooke, Veterinary Director  
Carolin Fischer, Legal Counsel

Catherine Bollon, Legal Coordinator  
Dr. A. Kent Allen, FEI Veterinarian (by telephone)

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

#### **3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, Arts. 118, 143.1 and 169 ("**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

#### **3.2 Person Responsible:** Ms Isabell Werth.

#### **3.3 Justification for sanction:**

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EADMCR Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

## 4. DECISION

### 4.1 Factual Background

1. WHISPER 156 (the "**Horse**") participated at the CDI 4\* in Wiesbaden, Germany, on 29 May 2009 (the "**Event**"), in the small tour competitions in the discipline of Dressage. The Horse was ridden by Isabell Werth, who is the Person Responsible in accordance with Article 118 GR (the "**PR**").
2. The Horse was selected for sampling on 30 May 2009.
3. Analysis of the urine sample no. FEI-0082332 taken from the Horse was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**"), in Paris, by Jean Guineton, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director of the Laboratory. The analysis revealed the presence of Fluphenazine (Certificate of Analysis dated 12 June 2009).
4. The Prohibited Substance detected is Fluphenazine. Fluphenazine is an antipsychotic having long acting sedative or behaviour modifying effects. This substance, when present in a Horse's body, is classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "*Doping*".
5. No request had been made to administer Fluphenazine to the Horse, and no medication form had been submitted for the Prohibited Substance.

### 4.2 The Preliminary Hearing

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences involved were officially notified to the PR by the FEI Legal Department on 23 June 2009.
7. The Notification Letter of 23 June 2009 included notice that the Person Responsible was provisionally suspended and granted her the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
8. The PR confirmed that she wished to be heard at a Preliminary Hearing. Therefore, the Preliminary Hearing was scheduled for 25 June 2009 to be held by telephone conference call. Prior to the Preliminary Hearing, the PR submitted two documents for consideration: (1) a press release issued by the PR dated 24 June 2009; and (2) the US Equestrian Federation's Guidelines for Drugs

and Medications. In the press release, the PR explained that the Horse suffers from the so-called Shivering Syndrome and that this syndrome affects the central nervous system and causes imbalance if the Horse has to stand on three legs for a period of time, for example when being groomed, bandaged or shod. Feeling insecure in such situations, the Horse begins to shiver and lunges uncontrollably for fear of losing its balance and keeling over. That consequently, the Horse, upon the advice of the Horse owner's Veterinarian, Dr. Hans-Georg Stihl, was treated with the substance Modecate on 16 May 2009. The press release further explains that Dr. Stihl advised the PR that according to his experience, a settling time of six (6) days would be enough "but one could never be completely sure." To be "on the safe side," the PR and Dr. Stihl together concluded that the Horse could compete on 30 May 2009. The PR further explained in this public statement that only "traces" of Fluphenazine were found in the sample and that "one reason [that the lab was able to detect the traces] may be that the lab has used new analyzing methods." In describing her suspension, the press release complains that: "The fact that only ineffective traces of the drug were found does not matter according to these rules . . . I wish the rules were revised as quickly as possible in a way that allows reasonable treatment of sport horses without risking long suspensions because the settling times change constantly with each new method of analysis and become literally "incalculable.""

9. On the date of the Preliminary Hearing, with all participants including Mr. Ken E. Lalo, the Preliminary Hearing Panel member, on the telephone, the PR's counsel withdrew the request for a Preliminary Hearing. Instead, he informed the Preliminary Hearing Panel member that the PR was acknowledging the violation under EADMCR Article 2.1 as Dr. Stihl had miscalculated the withdrawal time. Specifically, the PR relied on the USEF's published ninety (90) day detection time for Fluphenazine as the explanation for her change of heart, as she competed with the Horse within only fourteen (14) days of administration of Fluphenazine to the Horse.

10. In light of the above, the Provisional Suspension against the PR was maintained. The acknowledgment of the withdrawal of the request for a Preliminary Hearing and the continued enforcement of the Provisional Suspension was notified to the PR on 29 June 2009.

#### **4.3 The B-Sample Analysis**

11. Together with the Notification Letter of 23 June 2009, the PR also received notice that she was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of her right to attend or be represented at the

identification and opening of the B-Sample.

12. The PR declined to exercise her right to have the B-Sample confirmatory analysis performed.

#### **4.4 The further proceedings**

13. On 14 July 2009 (received by the FEI on 15 July 2009), the PR submitted her written explanations to the FEI. The submission contained six (7) supportive statements: Dr. Hans-Georg Stihl; Dr. Udo Zehl; Franz Helmke (farrier/black smith); Anna Kleniuk (groom); Wolfram Wittig (trainer); Iris Maresch (owner of a horse affected by Shivering Syndrome); and George Stumpf (owner of a horse affected by Shivering Syndrome), along with three (3) paragraphs addressing the PR's response to the allegations. In the response, the PR admits the violation and acknowledges the Fluphenazine finding. However, the PR explained that she was relying entirely on the erroneous advice of Dr. Stihl who reported to her that she could compete with the Horse following a six (6) day settling time of the substance. By waiting fourteen (14) days before competing with WHISPER, the PR believed she was acting responsibly and that the substance would have left the Horse's system. The PR claimed that "there is a new analyzing method for Fluphenazine which allows to detect traces of this substance until 90 days after application." The PR explained that once she learned of this 90 day detection period, she withdrew her opposition to the Provisional Suspension and waived her right to the B Sample. In the submission, the PR acknowledges the strict liability rule under the EADMCRs, but she explains her violation as misplaced trust in the Horse owner's treating Veterinarian. Further, she justifies her lack of knowledge regarding the withdrawal times for Fluphenazine on "the FEI-Regulations [because they] do not give this information." The PR further argued in her submission that she obtained "no unfair advantage by the treatment, that there was no maltreatment of the Horse, that no dignity or integrity of any person involved in the sport has been affected and that there was no fraud, violence, or abuse or criminal acts involved." Finally, the PR explains that she had not even intended to enter into the competition with WHISPER 156 and that she only did so once a different horse, DER STERN, broke his splint bone on 27 May 2009. The PR asks the Tribunal to take these purported mitigating circumstances into consideration.
14. Upon request of the FEI, the PR, on 20 July 2009, submitted a Medical Report for the Horse listing treatments received by the Horse during the period commencing April 2006 through July 2009.

15. The Final Tribunal Hearing took place on 21 July 2009. Prior to the Final Hearing, the FEI submitted several documents: (1) Veterinary Statement by John McEwen BVMS MRCVS; (2) AVMA Abstract – Case study Fluphenazine -- Complete text: "Adverse extrapyramidal effects in four horses given fluphenazine decanoate."; (3) Article entitled "Fluphenazine in horses"; (4) Translated press release of the German NF dated 24 June 2009; (5) Extract of statements by Ms. Werth published on ARD website "Reiten-ein Spritzensport" dated 17 May 2009 (translation); (6) Press release on ZDF website entitled "Doping im Reitsport" ("Doping in Horse Sport") dated 29 June 2009 (translated); (7) Statement by Ms. Susanne Asendorf, Susanne Asendorf Sportservice, dated 20 July 2009; and (8) Various FEI Tribunal decisions.
16. In the course of the Final Hearing, the FEI argued the PR has admitted to a violation of Article 2.1 of the EADMCRs, so the only question before the Tribunal is whether or not the sanction should be reduced pursuant to EADMCR Article 10.5.
17. With regards to EADMCR Article 10.5 the FEI contended that the PR was at fault for relying on the advice of one sole Veterinarian with regards to a Prohibited Substance which was clearly banned by the prevailing doping rules. (In fact, the FEI demonstrated that Fluphenazine was one of the few substances that is actually named as an example on the *Equine Prohibited List*.) This reliance was further misplaced as the evidence showed that Dr. Stihl had previously advised other PRs who were subsequently sanctioned under the EADMCRs (or their antecedent rules.) *See previous FEI Tribunal decisions, CARRIERE ZWEI* (10 August 2007); *RUSTY 47* (28 March 2003).
18. The FEI also highlighted the pernicious effects of Fluphenazine as a human anti-psychotic medication that is not licensed for use in horses. In his statement, John McEwen, Chair of the Veterinary Committee, supported the FEI's position, whereby he described Fluphenazine as "long acting", "potent", and "performance effecting". More specifically, Mr. McEwen states that: "This medication has no place in the performance horse close to competition due to its potent mind altering effects as a dopamine receptor blocking agent. Dopamine is a neurotransmitter known to be involved in regulating mood and behaviour. It has a calming effect and controls aggression." Dr. Kent Allen, also a member of the Veterinary Committee and Chair of the USEF Equine Drugs and Medications Committee and member of the USEF Board of Directors, concurred with Mr. McEwen's opinion and further explained that in his view Fluphenazine had no appropriate use in

equine medicine whatsoever. Dr. Allen clarified that notwithstanding the fact that the USEF publishes a withdrawal time for Fluphenazine, it is absolutely prohibited under the USEF system and such publication should not be viewed as permission or endorsement to use the substance on a horse. In fact, the FEI produced a video submitted by Dr. Allen and narrated by him during the Final Hearing demonstrating the severe and alarming side effects that Fluphenazine may have on a horse. Significantly, Dr. Allen testified that Fluphenazine is precisely the sort of Prohibited Substance that would benefit the performance of a dressage horse, as its effect is to make the horse calmer, more compliant, and less anxious.

19. With regards to the evidence presented on Shivering Syndrome, the FEI argued that there were medications and methods appropriate to dealing with Shivering Syndrome that were not Prohibited Substances under the EADMCRs. This was confirmed by Dr. Allen's testimony. It was the FEI's position that Dr. Stihl did not adequately establish that sufficient efforts were made to cure the Horse of the Shivering Syndrome without resorting to a Prohibited Substance. In any event, the FEI contended, using a Prohibited Substance (especially a doping substance) to address a horse's medical condition is never a defence to an anti-doping violation.
20. The PR argued that her actions in this case were an honest mistake as it is common within equestrian sport for a PR to rely entirely on the Veterinarian for instructions related to medicating horses. She stated that when Dr. Stihl proposed to treat the Horse with Modecate, she was not aware of the fact that this medication contained Fluphenazine. She admitted that she did not ask Dr. Stihl more thoroughly about the treatment, because she relied on him as an experienced Veterinarian. At the hearing she raised as mitigating factors that she acknowledged the violation quickly, has provided evidence to show that the medication was provided as therapy to cure the Horse's Shivering Syndrome, and that she will in the future be more diligent with regards to substances provided to any of her horses.

#### **4.5 Jurisdiction**

21. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.6 The Person Responsible**

22. The PR is the Person Responsible for the Horse, in accordance with

GR Art. 118, as she was the rider of the Horse at the Event.

#### **4.7 The Decision**

23. The Tribunal is satisfied that the Laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of LCH are accurate. The Tribunal is also satisfied that the test results evidence the presence of Fluphenazine, which is a Prohibited Substance, in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding.
24. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Article 3. The Prohibited Substance in this case, when present in a Sample, is classified as a "Doping" Prohibited Substance. Significantly, the PR has acknowledged the EADMCR violation, so there is no dispute on this point. Consequently, the only question before the Tribunal is whether the Sanction should be eliminated or reduced pursuant to EADMCR Article 10.5.
25. The PR therefore has the burden of proof to show that she bears No Fault or No Negligence for the positive findings, EADMCR Article 10.5.1, or No Significant Fault or No Significant Negligence, EADMCR Article 10.5.2. Significantly, in order to avail herself of those defences set forth in Articles 10.5.1 and 10.5.2 of the EADMCRs, the PR must also establish how the Prohibited Substance entered into the Horse's system.
26. The PR has established the first prerequisite of EADMCR Article 10.5.1 and 10.5.2 by explaining to the satisfaction of the Tribunal that the Prohibited Substance entered the Horse's system via a treatment by Dr. Stihl intended to manage the effects of Shivering Syndrome.
27. With regards to the question of fault, the Tribunal finds that the PR cannot absolve herself of fault under the circumstances. First, the Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all substances administered to horses which are destined for participation in international events and to ensure that such horses do not have any Prohibited Substances in their systems. The competitors are also responsible for how their staff care for the horses and administer medical treatment to them, which includes veterinarians.
28. Second, with regards to the specific reliance on Dr. Stihl and his



advice, the Tribunal finds that this reliance was misplaced. Fluphenazine is a Prohibited Substance specifically named in the *Equine Prohibited List*. It is the PR's responsibility to become acquainted with the *Equine Prohibited List* and the actual treatment of the Horse. Had the PR done so, she would have been aware Fluphenazine was prohibited and could have taken further precautions. In addition, the PR should have been aware of Dr. Stihl's former involvements with riders who were found to have violated the EADMCRs based on his advice. Also, it is quite shocking that Dr. Stihl believed the detection time for Fluphenazine to be a mere six (6) days. As Dr. Allen testified, the USEF has published a ninety (90) day detection time since April 2006 and between 2001 and 2006, the USEF published detection time was forty-five (45) days. Further, Dr. Allen confirmed that the significant withdrawal period for Fluphenazine was well-known within the veterinary community and even published in a renowned veterinary magazine that is commonly read by veterinarians practicing in equine sport. Finally, the highly publicized case involving Cian O'Connor at the Athens Olympics similarly involved the Prohibited Substance Fluphenazine and was well-known within the equestrian sporting community. For those reasons, the Tribunal finds that the PR was at least negligent in relying on Dr. Stihl and the Tribunal finds Dr. Stihl's erroneous advice regarding Fluphenazine to be unacceptable.

29. The other factors which the Tribunal finds to adversely affect the PR's case are: (1) Fluphenazine is a serious performance enhancing substance; (2) the risk to horse welfare by using Fluphenazine is significant; and (3) the misleading and inaccurate statements in the PR's press release relating to the case.
30. Fluphenazine is a human anti-psychotic drug that is not licensed in horses and can affect the performance of a dressage horse by regulating mood and behaviour. Fluphenazine has a calming effect and controls aggression.
31. The evidence presented during the Final Hearing established unequivocally that the side effects of Fluphenazine can be horrific for a horse. In fact, the PR herself submitted a document entitled "Equine Emergencies" by James A. Orsini (2002) that described the clinical signs of drug reaction and overdose information to be "bizarre behaviour, restlessness, recumbency, and seizure." The article entitled "Adverse extrapyramidal effects in four horses given fluphenazine decanoate", submitted by the FEI, documented the clinical findings of adverse reactions to be "restlessness, agitation, profuse sweating, hypermetria, aimless circling, intense pawing and striking with the thoracic limbs, and rhythmic swinging of the

head and neck alternating with episodes of sever stupor.” (cover page). While the Tribunal acknowledges that the PR would never intend such effects to her horses, this case highlights that negligence with regards to the administration of substances can pose serious welfare risks to the Horse.

32. Finally, the Tribunal is disappointed in the statements about “trace amounts” of the substance and “new laboratory methods” that make settling times “literally incalculable.” The evidence at the Final Hearing demonstrated that there is no new laboratory analyzing method for Fluphenazine and that the lengthy settling time has been known in the veterinary community for many years. Statements like these made by the PR, without any supporting evidence, publicly denigrate the FEI’s anti-doping program and cause harm to the sport. This is particularly true since the PR’s hope that the “rules were revised as quickly as possible in a way that allows for the reasonable treatment of sport horses without risking long suspensions” is at odds with her violation which was not a minor rule oversight but the administration of a Doping Prohibited Substance that is currently prohibited by not only the FEI, but as Dr. Allen testified, by all equine anti-doping programs of which he is aware.
33. On the other hand, the Tribunal finds the following factors to be mitigating: (1) the PR’s decision to quickly accept responsibility and acknowledge the violation; (2) the full explanation regarding how the substance entered the Horse’s system; (3) the cooperation provided by the PR during the investigation, including the transparency with which the PR disclosed what happened; and (4) the PR’s lengthy career and positive influence on the sport.
34. Accordingly, the Tribunal finds that a violation of EADMCR Article 2.1 occurred, but that the PR is entitled to some reduction of the Sanction under EADMCR Article 10.5.2 as set forth above. The Tribunal rejects the application of 10.5.1 which would allow for elimination of the Sanction.
35. Under EADMCR Article 9, disqualification from the event is automatic when there is a positive finding.
36. According to GR Article 173.4, the present decision is effective from the date of written notification to the persons and bodies concerned.
37. With regards to the costs for the legal procedure, including the oral hearing, the Tribunal is of the opinion that this case could have been decided based upon the written documents in the case.

#### **4.8 Disqualification**

38. As a result of the foregoing, the FEI Tribunal disqualifies the Horse and the PR from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCR Article 9.

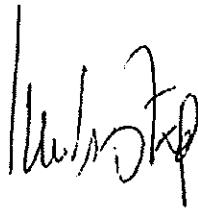
#### **4.9 Sanctions**

39. As a consequence of the foregoing, the FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with GR Article 169 and EADMCR Article 10:
- 1) The PR shall be suspended for a period of **Six (6) months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective since 23 June 2009, shall be credited against the period of ineligibility imposed in this decision.
  - 2) The PR is fined – **CHF 1,500.-**
  - 3) The PR shall contribute **CHF 2,000.-** towards the legal costs of the judicial procedure.

#### **5. DECISION TO BE FORWARDED TO:**

- 5.1 The person sanctioned:** Yes
- 5.2 The President of the NF of the person sanctioned:** Yes
- 5.3 The President of the Organising Committee of the event through his NF:** Yes
- 5.4 Any other:** No

**FOR THE PANEL**



---

**THE CHAIRMAN Mr Erik Elstad**