



## **DECISION of the FEI TRIBUNAL**

**dated 14 July 2017**

**Positive Anti-Doping Case No.:** 2017/BS12

**Horse:** LUKE SKYWALKER 46

**FEI Passport No:** 103XB94/USA

**Person Responsible/NF/ID:** Paige Johnson/USA/10013411

**Represented by:** Lisa F. Lazarus, Esq.

**Event/ID:** CSI2\* - Wellington FL (USA) - 2017\_CI\_1201\_S\_S\_01

**Date:** 17 – 22 January 2017

**Prohibited Substance:** Pramoxine

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

Mr. Erik Elstad, chair  
Mr. Laurent Niddam, member  
Mr. Henrik Arle, member

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

- 1. Memorandum of case:** By Legal Department.
- 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 and during the oral hearing, as also made available by and to the PR.
- 3. Oral hearing:** 26 June 2017 – FEI Headquarters, Lausanne, Switzerland.

Present:

The FEI Tribunal Panel  
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Paige Johnson, PR  
Ms. Lisa Lazarus, Legal Counsel  
Dr. John Nolan, veterinarian  
Mr. Friedrich Drummer, witness  
Mr. Sergio Molinero, witness (via telephone)

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel  
Mr. Mikael Rentsch, FEI Legal Director

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

#### **1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

#### **2. Person Responsible:** Ms. Paige Johnson

#### **3. Justification for sanction:**

GRs 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)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be

present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1.”

#### EADCMRs APPENDIX 1 – Definitions:

“Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system.”

## IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the oral hearing. 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 fully 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 LUKE SKYWALKER 46 (the "**Horse**") participated at the CSI2\* in Wellington, Florida, United States of America ("**USA**"), from 17 to 22 January 2017 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Ms. Paige Johnson who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event, on 21 January 2017.
- 1.3 Analysis of the urine and plasma sample with bar code no. C19791 taken from the Horse at the Event was performed at the FEI approved laboratory, the USEF Laboratory, in Lexington, Kentucky (**the "Laboratory"**). The analysis of the sample revealed the presence of Pramoxine in both, the urine and plasma. The Analysis Report included the following comment with regard to "*Sample receipt*": "*All security seals for the sample were intact, however, the security seals for the cooler were not intact.*"
- 1.4 The Prohibited Substance detected is Pramoxine. Pramoxine is a local anaesthetic used to relieve pain and itching classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Pramoxine in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

### 2. The Further Proceedings

- 2.1 On 5 April 2017, the FEI Legal Department officially notified the PR and the Owner of the Horse through the United States National Federation ("**USANF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 5 April 2017, until 4 June 2017. The above Provisional Suspension of the Horse has been

challenged, but was maintained, and the Horse has served the entire period of Provisional Suspension.

### **3. The B-Sample analysis**

- 3.1 Together with the Notification Letter of 5 April 2017, the PR and the Owner of the Horse were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 According to the FEI Response of 22 June 2017, the PR requested the B sample analysis on 28 April 2017, but withdraw the request at a later stage. Hence, both the PR and the Owner of the Horse accepted the results of the A-Sample analysis.

### **4. Preliminary Decision**

- 4.1 On 20 April 2017, a Preliminary Hearing was held during which the lifting of the Provisional Suspensions for both the PR and the Horse was requested. The lifting requests were based on Articles 7.4.4 (i) and (iii) of EAD Rules. Basically, the arguments brought forward on behalf of the PR and Owner of the Horse were that they could establish to the comfortable satisfaction of the Tribunal that a) the allegation that an EAD Rule violation has been committed has no reasonable prospect of being upheld, and that b) exceptional circumstances existed in the case at hand, that made it clearly unfair, taking into account all of the circumstances of the present case, to impose a Provisional Suspension prior to the final hearing of the FEI Tribunal.
- 4.2 During the Preliminary Hearing, and in further submissions thereafter, with regard to Article 7.4.4 (i) of the EAD Rules, the arguments brought forward were that both, a departure from the FEI Standard of Laboratories which could reasonably have caused the AAF, in accordance with Article 3.2.1 of the EAD Rules, and a departure from other FEI standard, FEI Rule or Regulation, FEI Manual or policy which could reasonably have caused the EAD Rule violation based on the Adverse Analytical Finding, in accordance with Article 3.2.2 of the EAD Rules, had occurred in the present case. The arguments were mainly based on the comments by the Laboratory with regard to "Sample receipt". The PR no longer maintained these arguments in the further proceedings and during the final hearing. Thus, for the present decision it is not necessary to outline these arguments in detail.
- 4.3 The FEI argued, in essence, that Article 3.2.2 of the EAD Rules was applicable in the case at hand. That the PR had not established by a balance of probability – as required under the EAD Rules – that a departure of the procedure or standards could have caused the positive finding. That therefore the result of the samples should not be invalidated. As a result,

the Provisional Suspensions of both, the PR and the Horse, had to be maintained.

- 4.4 On 12 May 2017, the Preliminary Hearing Panel issued a Preliminary Decision concerning the lifting requests.
- 4.5 Based on the statements and documentation presented during and following the Preliminary Hearing, the Preliminary Hearing Panel found that the PR and the Owner of the Horse had not established a material defect in the evidence on which the alleged Anti-Doping Rule violation was based or any reason for which the allegation would have no reasonable prospect of being upheld. The Preliminary Hearing Panel further held that no exceptional circumstances had been presented that made it clearly unfair to impose or maintain a Provisional Suspension prior to a final hearing in front of the Tribunal.
- 4.6 The Preliminary Hearing Panel therefore found that, at the time, the requirements of Articles 7.4.4 (i) and (iii) of the EAD Rules for the lifting of the Provisional Suspensions have not been met.
- 4.7 In view of that finding, the Provisional Suspension of the PR was maintained. In addition, the Provisional Suspension of the Horse was also maintained until 4 June 2017, midnight CET.

## **5. Written submissions by and on behalf of the PR**

- 5.1 On 12 June 2017, the PR provided her explanations to the positive finding. Together with her explanations, the PR provided – among others - statements by Dr. John Nolan, veterinarian and by Mr. Sergio Molinero, groom.
- 5.2 Mr. Molinero stated that he had been working as a groom for the PR for the last fifteen (15) years, and that he has been the Horse's groom since it was bought in 2013. Regarding the source of the Pramoxine Mr. Molinero stated as follows:

*"(...) Luke has been in good health and has not needed much veterinary care since he came to us. But like all horses, he sometimes gets minor cuts. Luke had some minor cuts in January 2017 when we were stabled in Wellington, Florida for the Winter Equestrian Festival.*

*All of the grooms have been told by Dr. Nolan that we should use a triple antibiotic on the competition horses if they have minor cuts because it helps the horse and is okay under the anti-doping rules. This ointment can be bought in any grocery store without a prescription and we have been using it at Salamander Farm for many years. It is made for people, but can be used safely on horses. It can be purchased in the United States for less than USD \$4.00 per tube. We usually keep some extra tubes around but in early January 2017 when Luke first had his cuts there was none left.*

*So on January 5, 2017, I went to Walmart with my Salamander Farm credit card to purchase a few things we needed including the triple antibiotic for*

*Luke's minor cuts. On that day, I found the triple antibiotic on the shelves in the same spot it always is and pulled four (4) tubes of it off the shelves. (Please see Exhibit 1, which are photos of Walmart where the cream was purchased, including a photo of the triple antibiotic which is allowed and the one that isn't on the Walmart shelf side by side.) I believed at the time I was buying the same triple antibiotic we always buy which is okay under the anti-doping rules. I now realize after Paige was able to find my receipt for the purchase that I made a mistake and pulled the wrong tube off the shelf because it looked so much like the one we always use. (Please see Exhibit 2, which is the receipt for the purchase.) I now see that I mistakenly bought triple antibiotic with pain relief, and the pain relief contains Pramoxine. Luke had some small cuts on his flank where I used the triple antibiotic in January leading up to the Event where Luke was tested. The Pramoxine must have gotten into his blood stream via these superficial cuts (I never used the triple antibiotic with pain relief on Luke's legs, only on his flank.) This was a total mistake to use the triple antibiotic with pain relief on Luke. (...)"*

- 5.3 Dr. Nolan stated that he was the Chief Veterinarian for Salamander Farms, owned by Ms. Sheila Johnson, the PR's mother, and operated by the PR, for approximately six (6) years. That in this capacity he oversaw the treatment and care of the PR's horses, approximately six (6) competition horses and eleven (11) retired horses. Regarding the PR's stable management, Dr. Nolan stated that the PR managed all of her barn activities to the highest possible standard, with policies and procedures in place to ensure compliance with all applicable FEI and USEF rules. In this regard, Dr. Nolan explained that the PR had the following procedures in place:

*"First, the retired horses are generally stabled in the upper barn away from the competition horses in order to allow for a heightened level of scrutiny over the competition horses. Second, all medications and treatments stored in the barn whether prohibited or not are meticulously labeled. Third, there is a dry erase white board in the main barn to clearly indicate treatments or medications being administered to any of the horses which is visible throughout the day to the entire support staff. Fourth, all of the competition horses have their own individually labelled feed buckets which are carefully washed each day. Fifth, only the barn manager and the competition horse grooms are authorized to prepare the competition horse feed. Sixth, for any horse (retired or competition) receiving a topical treatment all grooms must use doctor grade gloves to apply it, discard the gloves, and then wash their hands before making contact with any other horse. Seventh and finally, any horses receiving topical treatments are washed at the end of each day after the other horses and then the wash stall in the main barn is disinfected."*

- 5.4 Moreover, Dr. Nolan stated that the PR was meticulous about her procedure in the barn and continually demanded a higher level of caution than he even recommended, and provided examples in this respect. That he had worked with many professional equestrian athletes over the years, and that he could say without reservations that the PR was the most careful and ethical rider with whom he had ever worked. That he said this in particular because

of the organized and careful way in which the PR runs the barn and her unwavering commitment to her horses. Moreover, that the PR was very knowledgeable about the FEI anti-doping rules and that if she was ever unsure of anything, she called him to ask or verify. She then did not stop with his recommendations, and always double-checked to make sure that everything was in order and rule compliant.

- 5.5 In addition, Dr. Nolan stated that part of his role was to train and then direct the grooms when and if there were any medication needed for the horses. That the grooms at Salamander Farms were very ethical and the tenor in the barn was very professional. In his view this was because of the example that the PR sets and also the awareness amongst the grooms that the PR always wanted what was best for the horses. That he had not observed any cheating or compromising horses' welfare at the Salamander Farms, nor was it something that would be tolerated by the PR or the members of her support staff. Furthermore, that he had been working with Mr. Molinero for the six (6) years, and that he and Mr. Molinero communicated regularly about the FEI anti-doping rules and that Mr. Molinero was well aware of the rules and extremely careful to be sure they were implemented.
- 5.6 Regarding the triple antibiotic, Mr. Molinero and he had discussed on multiple occasions that over the counter triple antibiotics (Bacitracin zinc, Neomycin Sulfate, and Polymyxin B sulfate) were not prohibited under the anti-doping rules and treated superficial cuts and abrasions on the competition horses. That he had advised Mr. Molinero that he may use a triple antibiotic on the horse, *"but he should avoid any corticosteroid or pain relieve in the ointment."* Mr. Molinero was well-aware, and had been for quite some time, that a triple antibiotic was permissible but it should not have any additional ingredients, particularly pain relief. That if Mr. Molinero had purchased the wrong triple antibiotic on the occasion in the case at hand, it was an error and not because he was not properly educated or trained.
- 5.7 Finally, Dr. Nolan confirmed that the Horse had required very little veterinary intervention and had been consistently in good health since it was bought by Salamander Farms in 2013. In this respect Dr. Nolan also provided a veterinary history of the Horse.
- 5.8 Furthermore, the PR provided statements by Mr. Teddy Reikai-Nuttall, barn manager, Ms. Lauren Dreyer, former groom, Mr. Friedrich Drummer, former barn manager, Mr. Kent Farrington, trainer of the PR and Mr. Joe Fargis, former trainer of the PR. These statements mainly accounted for the PR's character, and confirmed the policies and procedures in place at the Salamander Farms, as well as professionalism and cautions taken by Mr. Molinero.
- 5.9 In addition, the PR provided – among others - a Walmart (Florida) invoice, dated 5 January 2017, listing four (4) items of the product "EQ TRIP PLUS", as well as several pictures of a Walmart pharmacy shelf, showing several "equate" products standing next to each other.



5.10 In essence, the PR submitted that:

- a) She has been riding horses since she was six (6), and started competing when she was eight (8) years old. In 1996, her family purchased Salamander Farms to give her the opportunity to pursue her passion and her talents. From the age of 22, she assumed full responsibility for running the barn at Salamander Farms which she took extremely serious, and when she was 24 years old she become a professional rider. She further explained that from her young adult years, she had known her horses intimately and had been involved in every aspect of their training and care. She had never been someone who fully delegated horse care to her support staff; she knew her horses well and kept a close eye on them. Furthermore, she was passionately committed to animal welfare, working as an ASPCA ambassador for the past four (4) years and also as an "Equustar" for the Equus Foundation whose mission is to bring awareness to horse slaughter and to stop it. Since November 2016, she had been working on launching her own charity called "The Voice Rescue" whose mission was it to find permanent homes for abused or abandoned animals, starting with dogs.
- b) She was very thoughtful about the policies and procedures she put in place to run the barn, where her 17 horses are stabled. For her this started with competent and reliable staff that was well-trained in how to manage and groom horses. She had personally hired all of the members of her staff based on their prior experience and approach to horse welfare. For all of the employees, she also checked their credentials, references and past experience, interviewed the candidate and was assured that their approach to the horses matched her high ethical standards. Whenever an employee started working in the barn at Salamander Farms, they were taught exactly how things are done, especially with the competition horses. They were carefully monitored and directed to ensure compliance with all barn rules and procedures. Mr. Molinero was part of her staff. He has been working at Salamander Farms for 15 years as a competition horse groom. He was a trusted employee and dedicated to the horses. He shared her passion for the horses and understood her philosophy and how she operated her barn. He was knowledgeable about the anti-doping rules and showed great effort to make sure Salamander Farms remained in compliance with them.
- c) To start with, and contrary to the previous submissions prior to the Preliminary Decision, the PR acknowledged and accepted that Pramoxine was detected in the Horse's Sample, and that accordingly the FEI had established an EAD Rule violation. In this regard, the PR explained that when she was first notified of the positive finding, and when she had learned that the cooler seals for the sample were not intact when they arrived at the Laboratory, she had genuinely thought that this was what might have caused the positive result. However, after conducting a thorough analysis of the purchases for the barn in the past year, she had discovered Mr. Molinero's mistake.

- d) Regarding the source of the Pramoxine, the PR stated that at the Salamander Farms, like at other farms, horses occasionally sustained minor cuts and abrasions from the daily activities of turnout, training and clipping. That because at Salamander Farms there was a philosophy to always do what was best for the horse, the grooms typically rub a triple antibiotic ointment on the horses to erase any discomfort from such minor cuts as recommended by Dr. Nolan. This "Triple Antibiotic Ointment" was usually purchased at Walmart as the Walmart brand Equate produced a good ointment for less than four (4) USD. That Dr. Nolan had advised all of the grooms on multiple occasions that it was "safe" to use this ointment, on the horses (even though it was manufactured for humans) as none of its ingredients were on the FEI (or USEF) List and it helped the horses. However, he had also clearly warned all of the grooms to be careful about which triple antibiotic they buy as sometimes there were products available with corticosteroids or pain relief added and such added ingredients would likely be prohibited. All of the grooms on Salamander Farms understood which triple antibiotic they should buy and understood which triple antibiotics to avoid and they had been using the same triple antibiotic successfully for many years.
- e) In early 2017, the Horse had some minor cuts on his flanks and Mr. Molinero therefore went, on 5 January 2017, to Walmart to purchase the triple antibiotic for the Horse. He went to Walmart to the aisle where he had been accustomed over the years to finding the triple antibiotic ointment and he pulled four (4) tubes from their usual spot on the shelf. Mr. Molinero applied the ointment to the Horse's flank over the period leading up to the Event, where the Horse got tested.
- f) The PR argued that Mr. Molinero's witness statement clearly explained that the Pramoxine had entered the Horse's system via a triple antibiotic ointment with pain relief that he purchased at the Walmart store on 5 January 2017 in Florida. Mr. Molinero further confirmed that he rubbed the ointment into the Horse's flank leading up to the Event. That, as the Horse had some minor cuts on his flank, it was more likely than not that the Pramoxine entered into the Horse's system through those open cuts. That this explanation was confirmed by the 5 January 2017, itemised receipt from Walmart coupled with the fact that Pramoxine was listed as an active ingredient in the "Equate First Aid Antibiotic + pain relief" product purchased. This clearly demonstrated without any doubt how the substance entered the Horse's system.
- g) Regarding fault the PR argued that firstly she did not breach any duty or fail to show the requisite level of care, in fact, the policies and procedures at Salamander Farms demonstrated an exceptional high level of care and responsibility, as also confirmed by Dr. Nolan, and other witnesses. She was well educated about the EADCMRs and she was described by her staff as borderline obsessive about making sure that any risk of violating the rules was completely avoided. Some of the policies in place to eliminate such risks included: (1) separate stabling for retired and competition horses in most cases, so that there was no risk that a retired horse might cross-contaminate a competition horse with a Controlled

Medication; (2) all medications and treatments stored in the barn were meticulously labelled; (3) there were several dry erase white boards in the main barn where any treatments or medications being administered were noted so that all support staff were aware; (4) all competition horses had their own individually labelled feed buckets which were carefully washed each day; (5) there was an FEI water scoop to ensure competition horses were not being exposed to any contamination in water; (6) only the barn manager and the competition horse grooms were authorized to prepare the competition horse feed; (6) if any horse was receiving a topical treatment that included a Controlled Medication (retired or competition) all grooms had to use doctor grade gloves to apply it, discard the gloves (garbage area was purposely remote from horses) and then wash their hands before making contact with any other horse or person; (7) any horses receiving topical treatments were washed at the end of each day after the other horses and then the wash stall was disinfected; (8) only veterinarians were allowed to inject horses, no matter how small or minor the injection; and (9) all receipts related to anything purchased for the horses were maintained for up to one (1) year. In this regard the PR provided several photographs showing examples of the white boards, labelled feed buckets, the FEI water scoop and a container containing medicines.

- h) The PR further stated that she was naturally a very conscientious person, and she always looked up the ingredients of the products they used and/or confirmed with a veterinarian that they were not prohibited in FEI competitions. She did not take any risks and always made sure everything was for the welfare of the horse and compliant with the rules; she always double and triple checked. Further, she was extremely careful about cross-contamination and anything related to anti-doping. She was often told that some of the procedures she put in place were extreme or unnecessary, but she felt that one can never be too careful about anti-doping or contamination. In this respect, the PR provided an example of her being prescribed a product by her physician, where next to researching the product, she also confirmed with her National Federation that it did not contain any Prohibited Substances.
- i) Secondly, the level of experience of the member of the Support Personnel who caused the violation was high and well-established. That, in this regard, Mr. Molinero had worked for her for fifteen (15) years and had an unblemished record, which was also confirmed by the witnesses. That he was well aware of anti-doping rules and their importance, as well as of which triple antibiotic ointment he was supposed to buy. That what happened on 5 January 2017 was an anomaly, totally out of character, and a mistake that was completely unrelated to Mr. Molinero's knowledge, training, and competence as a groom.
- j) Thirdly, the level of care and investigation exercised by her in relation to what should have been the perceived level of risk was more than sufficient. That she had taken all reasonable precautions to ensure that Mr. Molinero understood and followed with care the FEI anti-doping rules. Further, that there was nothing she could have done to prevent the mistake that Mr. Molinero made on 5 January 2017. She had assured

that Mr. Molinero knew what to purchase for the horses – which he also confirmed in his statement. He had simply pulled the wrong tubes of ointment off the shelf due to similar packaging that appeared to have been new at the time. This was genuinely a freak occurrence and nothing she could have prevented. That at the time of the mistake, Mr. Molinero had been buying supplies for her horses for fifteen (15) years without a single error. It was therefore reasonable to trust him to purchase an ointment he had been using on the horses as needed over the past fifteen (15) years. She could not have predicted or foreseen that Mr. Molinero would make this mistake. Further, that she was intimately involved in the daily activities of the barn and knew that Mr. Molinero was informed about the anti-doping rules.

- k) In order to make sure that such a mistake was never repeated, they had changed the procedures at Salamander Farms, so only the stable manger and herself were now allowed to make any purchases for the barn.
- l) Fourth, the circumstances of the case at hand were unusual because Mr. Molinero made an uncharacteristic mistake that was not foreseeable or preventable. That in this respect no amount of education or training would have changed the mistake on the day in question. That for her to be held responsible for Mr. Molinero's mistake, the mistake had to have been a foreseeable risk that she could have prevented by exercising the duty of care reasonably required under the circumstances. However, that in the case at hand she could not be held responsible because there was simply nothing more she could have done.
- m) Finally, the PR referred to two (2) previous Tribunal decisions (Case 2015/BS05 BUENAVENTURA and 2016/BS06 DENDROS), and basically argued that "no fault" had to apply in the case at hand, when compared with the two aforementioned cases. In conclusion, the PR argued that Article 10.4 of the EAD Rules, *i.e.*, No Fault or Negligence, was applicable, as she could not have reasonably known or suspected that Mr. Molinero would make a mistake on this one day after fifteen (15) years of executing his responsibilities perfectly without any issues.

## **6. Written submissions by the FEI**

- 6.1 On 22 June 2017, the FEI submitted its Response to the explanations received by the PR.
- 6.2 The FEI submitted in essence that:
  - a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in

the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Pramoxine, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of the Prohibited Substance in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.

- b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless she was able to rebut the presumption of fault. And that to do this the rules specified that she must establish to the satisfaction of the Tribunal (it being her burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that she bore No Fault or Negligence for that occurrence; or in the alternative (iii) that she bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.
- c) The FEI submitted in this context that the PR had to provide clear and convincing evidence that proved how the Pramoxine had entered the Horse's system. The explanation given by the PR seemed like a plausible explanation of how the substance entered the Horse's system, and the FEI was therefore satisfied that the PR has established the source of the Prohibited Substance.
- d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PR for the rule violation was the "personal duty" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, her personal duty to ensure that "no Banned Substance is present in the Horse's body".
- e) Further, that it had been stated in several cases that the PR could not rely on any other person to perform her duty of care. In CAS jurisprudence it was clear that "the duty of caution or due-diligence was non-delegable"<sup>1</sup>.
- f) As the CAS jurisprudence confirmed, the rider was, no matter what the Person Responsible for the horse she was competing with, and could not delegate that duty to another person. The PR therefore had an obligation to ensure that no Prohibited Substance enters into the Horse's system, and had to act with utmost caution in order to fulfil this duty. Conclusions to be drawn from the case law were that the duty of care was very high and that this duty of care was non-delegable. But

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<sup>1</sup> CAS 2013/A/3318 Stroman v. FEI, para 71.

also, that Persons Responsible were responsible for their Support Personnel and any medical/veterinary treatments given to their horses by their veterinarians, groom or any other Support Personnel.

- g) In light of the CAS jurisprudence (outlined further below), the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to her ability to prove she bears No (Significant) Fault or Negligence for its doped condition, was a reasonable and justifiable stance.
- h) In this respect, CAS in the Royal des Fontaines case<sup>2</sup> had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- i) In the Glenmorgan case<sup>3</sup> the Panel confirmed that the rider was best fit to control the Horse before a competition. The Panel further stated as follows (in para 203):

*"The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant's sanction is not that of the Dr. It is the Appellant's own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-equine Athlete, is placed at the exercise of "utmost caution". It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body."*

- j) In the Glenmorgan case the positive finding had also been caused by the action of an individual other than the PR, but not disclosed to him. In fact, *"the particular PR had, with his father, implemented a system involving pre-race testing, (and) had employed experienced staff to look after his horses who were properly instructed to carry out their obligations"*. (para 239) Nonetheless, the Panel in the Glenmorgan case imposed an 18-months suspension on the PR; even though it was

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<sup>2</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, para 57.

<sup>3</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI, paras 203 and 239.

clear that the veterinarian had administered the substance to the horse and failed in his normal duty of care, the PR was still responsible for his conduct.

- k) Further, that it was necessary to look at the definitions of fault, as defined in Appendix 1 of the EAD Rules, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence.
- l) In this respect the FEI highlighted that, in accordance with Article 1055 of the VRs, Banned Substances are never to be found in a competition horse, they were substances with no legitimate use and had a high potential for abuse. The FEI argued that in cases where the PR or their Support Personnel have administered or treated a horse with a medication that contained a Banned Substance which was disclosed on the label, No Fault and Negligence cannot be applied.
- m) The FEI pointed out that the case at hand could not be compared with the two cases referred to by the PR, *i.e.*, DENDROS and BUENAVENTURA, since the cases concerned inadvertent doping due to an unknown contamination risk, which was not the case in the case at hand. On the contrary, in the present case, the product used on the Horse clearly stated Pramoxine and pain-relief on the package and the PR and the groom had been warned by Dr. Nolan not to use such creams. Pramoxine could further easily have been checked on the FEI List to confirm its status as Banned Substance. Also, when using human medicine on horses, there was always a risk taken since these medications very often did not have any research or studies done on equines and were not meant to be used on horses in the first place. Furthermore, in this respect, the FEI was generally questioning the practice of treating small cuts with triple antibiotic ointment. It was a well-known fact that treating horses often with antibiotic creams, when not really necessary, contributed to the multi-resistance to antibiotics.
- n) Further, that both the PR and the groom were aware of the fact that there were two different but very similar products, one containing a Banned Substance. Dr. Nolan had informed them very carefully about the difference. The FEI argued that by knowing this fact, the PR had taken a risk in using such a product anyhow as it could not be excluded that the "wrong" product, *i.e.*, the one containing Pramoxine, was used instead. Further, the PR did not do anything to prevent the use of such cream by the groom, while on the other hand – as one of the grooms stated – she did not let managers and grooms inject the horses with permitted medications.
- o) The FEI was of the opinion that since the PR did take the risk to let the groom buy and apply the cream, use a human medication on the Horse, and was aware of the two different creams where one contained a Banned Substance, she did not act with utmost caution. By buying and applying the cream to the Horse herself she could have noticed that the cream contained Pramoxine and avoided the whole situation. Moreover, since the positive finding the PR had actually changed and improved the procedures at Salamander Farms, which meant that she did not do

the utmost to avoid a positive test previously.

- p) As confirmed in the case law, it was clear that the PR was responsible for any act of her Support Personnel, as such also the mistake by Mr. Molinero, and the PR could not be freed from fault when her Support Personnel was grossly negligent.
- q) Further, in another CAS case<sup>4</sup> the panel associated itself with the approach of the CAS panel in CAS 2011/A/2336, para 97 ("*sporting background, age, sporting behaviour, anxiety in proving their innocence, clean anti-doping record ... are utterly irrelevant under the applicable anti-doping rules and do not justify any reduction of sanction where the requirements of article 10.5 are not satisfied*").
- r) With this background, the FEI was of the opinion that No Fault or Negligence could not be applied in the case at hand. The FEI was however satisfied that the PR had fulfilled No Significant Fault and Negligence for the rule violation considering the facts of the case. That in this respect the FEI has taken note that the PR as a person was a very conscientious person who had developed a number of policies and systems at the Salamander Farms to try to ensure that they did not take risks with anti-doping rules. Regarding the PR's explanation that, going forward, only herself and her barn manager have the authorization to purchase any supplies for the barn, the FEI was of the opinion that, to eliminate any risk of wrongdoing this step should have been taken at an earlier stage.
- s) As a result, the FEI respectfully submitted that the period of Ineligibility imposed on the PR should be at least one (1) year in accordance with Article 10.5.2 of the EAD Rules.
- t) Pursuant to Article 9 of the EAD Rules, the result of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. This rule applied even if the period of Ineligibility was reduced or eliminated under Article 10 of the EAD Rules, *e.g.*, on the basis of No (or No Significant) Fault or Negligence. Furthermore, since this was a case with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible's individual results obtained in that Event, with any and all Horses with which the Persons Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules.
- u) As fairness did not dictate that no fine be levied in the cases at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined the PR

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<sup>4</sup> CAS 2013/A/3124 Rashid Mohad Ali Alabbar v. Fédération Equestre Internationale (FEI)



in the amount of 3 000 CHF, and ordered the PR to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings.

## **7. Final Hearing**

- 7.1 In accordance with Article 19.34 of the IRs, each person heard by the Tribunal was asked to tell the truth. Witnesses were examined and cross-examined by the Parties, if they wished to do so, as well as being questioned by the Tribunal.
- 7.2 The Parties had full opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' final submissions, the Tribunal closed the hearing and reserved its final decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 7.3 At the end of the hearing, upon being questioned by the Tribunal, the Parties acknowledged that they have had the opportunity to be heard and to present their case.
- 7.4 During the Final Hearing Mr. Molinero further confirmed that they (at Salamander Farms) had been using triple antibiotic ointments for many years, and that he had purchased that product for the first time many years ago. That in the instant case he had bought it in Walmart, and that by accident he took the wrong product, the one including pain relief. In this respect, he explained that all products had been shelved next to each other, looking very similar, and that he did not read what was on the product box, prior to buying the product. He had in total bought four (4) boxes, of which he had kept one (1) in his grooming box, had given one (1) box to each of the other two (2) grooms (the other two grooms did not use the product) and had stored the remaining one (1) in the storage shelf. Furthermore, that he had used only one (1) tube/box of the product over a period of two (2) weeks, and that he had applied the product twice daily. That he had not discussed the usage of the product with the PR on this occasion, and that he had never read the label, as he assumed that it had been the product normally used, *i.e.*, the one without pain relief, and therefore without any Pramoxine in it. Finally, that once – in May - they had found out that the product bought by him in January was the "wrong" one, the product boxes had been collected and disposed of (the other three (3) boxes were still unopened at the time).
- 7.5 Mr. Drummer stated that he was groom for the PR from March to August 2016, when he was in between jobs, and while the PR was recruiting a stable manager. That during his twelve (12) years as a groom he had never worked in a place where the anti-doping rules were followed as strictly as at the Salamander Farms. During his time at Salamander Farms Mr. Molinero, with whom he could communicate perfectly even though neither of them was English mother tongue, told him how to do things, and Mr. Molinero was always careful with the horses. He further confirmed

that Dr. Nolan had informed him about the different triple antibiotic ointments, and that Dr. Nolan was available to answer questions and discuss with the grooms the medications of horses where needed.

- 7.6 Mr. Drummer further stated that he worked in Florida for six (6) years prior to working for the PR, and confirmed that horses had often skin problems in Florida. That previously, other veterinarians had also advised him to use the triple antibiotic ointment, and that he might have bought the product himself previously also, although not while working for the PR. Regarding how the product was stored in the PR's stables, he explained that every groom had one cream in his grooming box, and that the rest of them were stored in the feeding room, which contained of a cabinet were creams (all of them not containing any Prohibited Substances) were stored; there was no need to lock this product up, since it did not contain any Prohibited Substances.
- 7.7 To start with Dr. Nolan confirmed that Pramoxine was a Prohibited Substance also under the rules of the USA-NF. He further stated that he never prescribed any Pramoxine to the Horse. Neither did he use any antibiotics with pain relief on the horses, including the retired horses. He did however have products containing Pramoxine, such as a shampoo and an ointment, labelled for use on dogs, cats and horses for skin irritation.
- 7.8 Regarding why he used or suggested to use the triple antibiotic ointment for superficial cuts on horses, he explained that it was a permissible substance and one of the more common ointments for wounds of horses. Further, that it was accessible and affordable, and that since it was much easier to find it over the counter for the human label market, *e.g.*, in Walmart, he allowed that one for use on horses. Furthermore, that the regulations in US veterinary medicine allowed products that were appropriate, even though not labelled for animals, to be freely used for humans or animals. Further, that the soil organism in South Florida was different, and that horses sustained skin infections much easier there. That, since he was concerned about antibiotic resistance, he tried to prevent injections, *i.e.*, to administer larger doses (1:10 ratio between topical and oral route or via injection). That therefore, and with the aim to prevent systemic infections, he agreed to treat horses with a topical mild ointment, *i.e.*, the triple antibiotic ointment.
- 7.9 That depending on the nature of the wound he was generally called to examine that horse. However, in the instant case he was not called, and he – being located in Virginia – only goes to Florida periodically. He had learned that the wound of the Horse concerned a spur rub, and that when he examined the Horse in January after the Event it had healed. Dr. Nolan further stated that he was confident that Mr. Molinero knew what to buy with regard to the triple antibiotic ointment, and that he had clearly understood his instructions concerning the ingredients that are permissible. He would have expected Mr. Molinero to be very thoughtful when he made the purchase, and that Mr. Molinero was one of the most professional grooms he had worked with in his career, and very careful. Moreover, he stated that while there existed differences in product packaging for human and animal products, also considering the existence

of multiple generics, the active ingredients were always listed on the labels. Finally, that when he used Controlled Medication substances on horses he recorded them – as was the case with the veterinary history of the Horse – and he shared his records with the PR.

- 7.10 The PR clarified that there existed two facilities at Salamander Farms, one in Virginia and one in Florida, and that the facility in Virginia consisted of two barns, one for retired horses; although some of them were staying with the competition horses, as the other barn was full. Further, that she herself was in charge of feed, medications and veterinary, and that she was very cautious. For example, that products containing Prohibited Substances went through the veterinarians only. She had therefore not kept a FEI Medication Log Book, in accordance with Article 1066 of the VRs, as no products containing Prohibited Substances were administered without a veterinarian, who kept records. That if something was fed or administered to a horse that was not common in her usual program she was “extra” involved. Furthermore, that prior to the incident in the case at hand she had never heard of Pramoxine, nor researched that ingredient, as it was never prescribed.
- 7.11 She and her grooms had all been aware that different creams existed, and that some contained Prohibited Substances. The triple antibiotic ointment had been discussed with the veterinarian and her entire team, as was done on all occasions with anything they used. She had never seen any “wrong” tube in the room where the supply was stored, to which all staff had access. Only when she had gone through the receipts after the positive finding was notified, she found out that the wrong product had been bought (“EQ TRIP PLUS” instead of “EQ TRIP ANTI”). Further, that she trusted Mr. Molinero implicitly, and that there had never been any problems beforehand. That generally, she only employed people whom she trusted, that they had to earn her trust, and that they were given responsibilities only when they had earned it. That she had not known that Mr. Molinero had to go and buy the cream on this occasion, and that she had no reason to think that Mr. Molinero would make a mistake this time. That they had used the triple antibiotic ointment for the past fifteen (15) years and that there had been no reason for her to check the grooming box of Mr. Molinero and the general storage shelf. That she had discussed the application of the triple antibiotic ointment with Mr. Molinero, as the Horse had a spur rub, which was quite common for the Horse, as it had sensitive skin. She did not call the veterinarian on this occasion as she knew the Horse very well, and as they had used the triple antibiotic ointment in the past to treat the same issue.
- 7.12 The PR accepted to be the Person Responsible in the case at hand, as well as being responsible for the actions of her groom. Furthermore, the PR also accepted that Pramoxine was listed as a Banned Substance on the FEI List. However, she argued that the substance did not meet the definition that “it should never be used on a horse”, as it was a substance contained in many products on the US market and commonly prescribed in the US. It should therefore be listed as Controlled Medication Substance. Moreover, that it was legally allowed in the US – as also confirmed by Dr. Nolan – to use human ointments on horses.

- 7.13 The present case was a case of No Fault or Negligence. In this regard one had to look at what fault meant according to the EADCMRs, namely any breach of duty or any lack of care appropriate to a particular situation. Factors such as how long the PR had been operating a procedure, the degree of risk that should have been perceived by the PR, and the level of care taken by the PR had to be taken into account.
- 7.14 That in the case at hand the PR had taken the utmost care, and that, according to CAS case law (Kendrick case)<sup>5</sup>, this meant that she had to make "*every conceivable effort to avoid taking a prohibited substance*". Furthermore, as confirmed by the FEI Tribunal in the CSJ GAI FOREST case<sup>6</sup>, following the CAS Advisor Opinion of 2006 issued by CAS upon request of FIFA and WADA, the prerequisite of "No negligence or fault" had to be achievable and that a "*reasonableness test*" had therefore to be applied. The questions to be asked were as follows: (1) Did she exercise the appropriate duty of care? and (2) Was it reasonable?
- 7.15 With regard to question (1) the PR argued that what she did went far and above and met the duty of care standard, and she was a model rider with regard to anti-doping. She exercised the utmost duty of care by (i) putting a training process in place, and by having the veterinarian discuss the triple antibiotic ointment many times with the grooms and herself; (ii) having been recommended the triple antibiotic ointment by the veterinarian, and having used it for many years without any issues; and (iii) having been careful when hiring employees. That doing anything more from her side would not have been reasonable, for example such as limiting Mr. Molinero's access to buy medication after fifteen (15) years, or checking his grooming box. Further, that with seventeen (17) horses she had to a certain degree rely on her Support Personnel, and that Mr. Molinero had deserved that trust. Finally, that foreseeability was important in the case at hand, and that there was nothing more she could have done to prevent the incident.
- 7.16 Finally, the PR accepted the disqualification of the results of the Event, and further argued that being suspended for over two and a half months until the date of the Final Hearing meant suffering for her as she did herself pride being an advocate and spokesperson.
- 7.17 During the Final Hearing the FEI mainly maintained its submissions in writing. Furthermore, the FEI argued that Pramoxine was a Banned Substance under FEI rules, as well as under the rules of the USA-NF. It was irrelevant whether the substance was common or easily accessible in the US. Neither was it a substance that had been discussed or considered by the FEI List Group as a Controlled Medication Substance.
- 7.18 In the case at hand, the PR and the groom had been both aware that two different types of creams existed, *i.e.*, one containing Prohibited Substances, and that by knowing this fact, the PR had nonetheless taken a risk, as it could not have been excluded that the wrong type of cream

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<sup>5</sup> CAS 2011/A/2518 Robert Kendrick v. ITF, para 10.15

<sup>6</sup> Case 2009/25 CJS GAI FOREST, Final FEI Tribunal Decision dated 14 September 2010, para 33.

was bought and applied. She should not have taken the risk to let the groom apply the cream, especially in the case where the groom was not fully able to read English. The FEI further argued, that the PR could have avoided and eliminated the risk and incident in the case at hand by putting certain procedures in place, such as restricting who was allowed to buy the cream, and by controlling the cream. The PR has actually changed the procedures since the positive finding, which meant that she had not done the utmost previously. The FEI was of the view that since they were both (PR and groom) aware of the risk, they had to be extra careful. Furthermore, since the "wrong" cream was applied twice daily for two weeks someone should have noted that. Furthermore, that the PR, who was usually "hands-on", was not in this case. She knew that the Horse was injured, and that the cream was applied; therefore she also knew that there could be a risk.

- 7.19 Finally, the FEI argued that the duty of care for the PR was very high, and the duty of care was non-delegable. That while the FEI believed that the PR was a good person and took care of her horses, this was irrelevant with regard to the application of Article 10.5 of the EAD Rules. It was a fact that Mr. Molinero made a mistake, and that he had been grossly negligent by doing so. The PR could not be freed from fault where her Support Personnel was grossly negligent.

## **8. Jurisdiction**

The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

## **9. The Person Responsible**

In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as she has competed with the Horse at the Event. The PR also accepted to be the Person Responsible in the case at hand.

## **10. The Decision**

- 10.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Pramoxine in the urine and blood sample taken from the Horse at the Event. While the PR did initially contest, she in fact later on accepted, the accuracy of the test results or the positive finding. Pramoxine is a Banned Substance under the FEI Equine Prohibited

Substances List and the presence of the substance in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.

- 10.2 As a result, 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 EAD Rules.
- 10.3 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, the EADCMRs may still allow the PR to avoid being sanctioned with a period of Ineligibility by showing that she bore "No Fault or Negligence" for the presence of the substance in the Horse's system, or alternatively, the period of Ineligibility might be reduced, where the PR establishes that she bore "No Significant Fault or Negligence".
- 10.4 In an EAD Rule violation the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system in order to claim "No Fault or Negligence" or "No Significant Fault or Negligence".
- 10.5 To start with, the Tribunal takes note of the PR's explanation on how the Pramoxine entered the Horse's system, namely by Mr. Molinero applying on the Horse the product "Equate First Aid Antibiotic + pain relief" containing Pramoxine, starting from 5 January 2017 for a period of two weeks, twice daily. The product was thought to be a triple antibiotic ointment without pain relief, *i.e.*, not containing any Prohibited Substances, and was wrongly bought by Mr. Molinero at Walmart in Florida on 5 January 2017. In this respect the Tribunal also takes into consideration the invoice dated 5 January 2017 presented to it, as well as the samples of the two different types of products illustrated to it during the Final Hearing. In addition, the Tribunal takes note of the FEI's position concerning the source of the Prohibited Substance, namely finding the PR's explanation plausible. The Tribunal finds that the PR has established - on a balance of probability, as required under Article 3.1 of the EAD Rules - how the Prohibited Substance has entered the Horse's system.
- 10.6 In a second step, the Tribunal needs to examine the degree of fault of the PR for the rule violation. To start with, in accordance with Article 2.1.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any time. Furthermore, following CAS case law, as outlined by the FEI, the Tribunal also holds that the duty of care of the PR was non-delegable. The FEI argued, which was also accepted by the PR, that she is responsible for her Support Personnel, and thus anything given/applied to the Horse by her groom, *i.e.*, Mr. Molinero in the case at hand. The Tribunal agrees with the FEI's suggestion that Mr. Molinero has been grossly negligent in buying the "wrong" cream, and applying it to the Horse for a period of two weeks, twice daily. In the view of the Tribunal, Mr. Molinero was even more negligent by not having read the product label which clearly stated that the product contained Pramoxine, especially after he was trained and told many times to be cautious to not buy/apply the "wrong" product. Furthermore, the Tribunal finds that, since Mr. Molinero distributed two

(2) of the boxes of the product to the other grooms and stored one (1) box in the storage place, the other grooms – who had like the PR and Mr. Molinero been trained with regard to the triple antibiotic ointment – were also negligent in failing to see that the “wrong” product was used.

- 10.7 The Tribunal however finds that it needs to first and foremost examine whether the PR herself bore any fault for the rule violation in the case at hand. To start with the Tribunal looks at the Definition of “Fault” as set out in the EADCMRs, which reads as follows:

*“Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. (...)”*

- 10.8 In the case at hand, and looking at the factors to be taken into consideration, the Tribunal finds that the PR’s, as well as also the groom’s experience, have been considerable. Therefore, inexperience, or other special considerations cannot be taken into account. The question therefore is, was there a breach of duty or any lack of care appropriate to the particular situation in the case at hand, or put differently and in the words of the PR, has she taken the utmost care, which according to CAS case law meant “every conceivable effort to avoid taking a prohibited substance”. In a further step, the Tribunal will conduct the so-called “reasonableness test”, as put forward by the PR following CAS jurisprudence.

- 10.9 To start with, the Tribunal finds that the PR did not take every conceivable effort to avoid that no Banned Substance entered the Horse’s system. While the Tribunal finds that the PR has, in general, put good procedures in place to avoid that Prohibited Substances entered the systems of her horses, the Tribunal is also of the view that with respect to the triple antibiotic ointment the PR has not met the duty of care expected from her as a rider, and neither did the duty of care taken by her meet her (other) own standards. The Tribunal comes to this conclusion as follows. While the triple antibiotic ointment – the “right” product - as such does not contain any Prohibited Substances, and it might not be necessary to for example to establish a log book for its purchases or applications, the situation is different in the case at hand. The PR and her grooms have been warned several times not to buy any

triple antibiotic ointments which contain "pain relief", *i.e.*, the "wrong" product, as was the case in the case at hand, as these contain Prohibited Substances. These explanations/warnings by the veterinarian should have alerted the PR, who seems to otherwise always double and triple check to put some procedures in place in order to avoid exactly the incident of the case at hand. The Tribunal notes that the PR stated that she never checked the content in the storage shelf.

10.10 In this respect, the Tribunal finds that a Person Responsible is always expected to check the label of a product, and in those cases where she delegates that responsibility to her Support Personnel, then the Support Personnel is expected to do so. In the view of the Tribunal this is the case no matter whether the person buys a product for the first time or for fifteen (15) years, as it was the case in the case at hand. While the required research might be less after fifteen (15) years, *i.e.*, no more double or triple check needed, and when buying the product in the same place, or store – as it was the case in the case at hand –, a Person Responsible, or if delegated a Support Personnel cannot rely solely on past experiences. A certain degree of caution is requested at all times. The Tribunal comes to this conclusion also, since it is generally known that the same product (with the same name) might not contain the same substances in different countries for example, as well as product packaging might change, the list of ingredients or the amount of substances for the same product, *i.e.*, product composition, might also change over time.

10.11 Thus, in the case at hand, both the PR and her Support Personnel, *i.e.*, Mr. Molinero, departed from the expected duty of care from riders and their grooms.

10.12 In a further step, the Tribunal has to decide whether it was reasonable for the PR to put these further measures in place. Also here the Tribunal decides in the affirmative. The Tribunal finds that one can reasonably expect from riders to put some measures in place to assure that not the "wrong" products, containing Prohibited Substances, are used. Here the Tribunal finds that simply informing/educating her staff, even though it was refreshed many times, is not enough. Furthermore, such measures, for example restricting who is allowed to buy the triple antibiotic ointment, have been put in place by the PR following the positive finding. Hence, it is reasonable to expect that the PR put measures in place to reduce the risk of Prohibited Substances entered her horse's systems, and such measures need to include all medications/substances used as well as potential risks. In the case at hand, whereas the PR has strict measures in place for other medications/substances, and risks such as cross-contamination, this was not the case for the triple antibiotic ointment and the risk of the "wrong" product containing Prohibited Substances being applied.

10.13 Furthermore, in order for No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence (Appendix 1 of the EADCMRs), the PR has to establish that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost



caution, that she had administered to the Horse, or the Horse's system otherwise contained, a Banned Substance.

- 10.14 In the case at hand, the Tribunal finds that since the PR, as well as her Support Personnel, was well aware that there existed two different types of triple antibiotic ointments, one containing Prohibited Substances, she could at least have reasonably suspected that the wrong product could be bought or applied to the Horse at some point in time. While the Tribunal agrees that the perceived risk of the PR after fifteen (15) years of buying and applying the "right" triple antibiotic ointment was certainly much less, the perceived risk when starting to use the product was however very high. Furthermore, the Tribunal also finds that the PR, as well as her Support Personnel, were reminded of that risk every time the veterinarian re-called them the importance to buy and apply the "right" triple antibiotic ointment. The Tribunal finds, that the PR, by using a triple antibiotic ointment of which a very similar "wrong" product existed, containing Prohibited Substances, accepted the risk that the "wrong" product might be bought or applied to one of her horses sooner or later.
- 10.15 From the foregoing, the Tribunal finds that No Fault or Negligence cannot apply in the case at hand. Article 10.4 of the EAD Rules, and more specifically Article 10.4 (b), is only applicable in exceptional circumstances. In a further step the Tribunal examines whether No Significant Fault or Negligence applies in the case at hand.
- 10.16 No Significant Fault or Negligence applies where the PR establishes that her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EAD Rule violation.
- 10.17 The Tribunal finds that, while the PR has been negligent in not putting the necessary procedures in place with regard to the triple antibiotic ointment, and thus risking for the "wrong" product to be bought and applied on the Horse, at the same time her fault for the rule violation has not been significant. The Tribunal has taken note that the PR seems to generally take good care for the welfare of her horses, and generally has good anti-doping procedures in place, aiming to avoid that Prohibited Substances to enter her horses' systems, including cross-contamination etc.
- 10.18 Therefore, when considering all circumstances of this specific case, the PR's fault was not significant in relationship to the EAD Rule violation in the case at hand, and the Tribunal finds that Article 10.5.2 of the EAD Rules is applicable in the case at hand. Following Article 10.5.2 of the EAD Rules, the otherwise applicable period of Ineligibility may be reduced based on the PR's degree of fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable, *i.e.*, one (1) year.
- 10.19 As a result, the Tribunal finds the period of Ineligibility of the PR for the present rule violation shall be one (1) year. In this regard the Tribunal

takes note that the PR has been provisionally suspended since 5 April 2017, *i.e.*, for over three (3) months, which shall be taken into account.

### **11. Disqualification**

Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, even though the PR bore no significant fault for the rule violation, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

### **12. Sanctions**

- 12.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be one (1) year.
- 12.2 The Tribunal takes note that the PR has been provisionally suspended since 5 April 2017, *i.e.*, for over three (3) months. The Tribunal finds, that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed.
- 12.3 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
  - 1) The PR shall be suspended for a period of **one (1) year**. The period of Provisional Suspension, effective from 5 April 2017 shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 4 April 2018**.
  - 2) The PR is fined **two thousand Swiss Francs (CHF 2'000,-)**.
  - 3) The PR shall contribute **three thousand Swiss Francs (CHF 3'000,-)** towards the costs of the judicial procedure.
- 12.4 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 12.5 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall

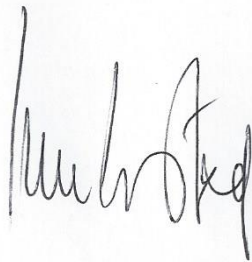
be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

- 12.6 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.7 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read 'Erik Elstad', is centered on the page. The signature is written in a cursive style.

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**THE CHAIR, Mr. Erik Elstad**