



**Decision of the FEI TRIBUNAL
dated 11 February 2019**

Positive Anti-Doping Case No.: 2018/BS19

Horse: DOLLY PALO BLANCO

FEI Passport No: 104PR65/GUA

Person Responsible/NF/ID: Alvaro Enrique TEJADA ARRIOLA/GUA/10000668

Event/ID: C.Am+Caraib Games-S – Bogotá (COL), 2018_G-
C.Am+Caraib_0001_S_S_01

Date: 25 – 29 July 2018

Prohibited Substance(s): Diisopropylamine

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

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 hearing, as also made available by and to the PR.
- 3. Hearing:** 30 January 2019, at FEI Headquarters, Lausanne, Switzerland.

Present:

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

For the PR:

- Mr. Alvaro Enrique Tejada Arriola, PR (via video conference)
- Ms. Lisa Lazarus, Counsel

- Ms. Emma Waters, Counsel
- Mr. Peter Sibley, Paralegal
- Dr. Mariajose Camas Orantes, veterinarian (via telephone)
- Prof. Kevin Moore, expert witness (via telephone)

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel
- Prof. Stuart Paine, expert witness (via telephone)

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1068 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Alvaro Enrique Tejada Arriola, represented by Morgan Sports Law, London, United Kingdom.

3. Justification for Tribunal finding:

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 hearing(s). 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 DOLLY PALO BLANCO (the "**Horse**") participated at the Central America and Caribbean Games (also known as the CAC Games), in Bogota, from 25 to 29 July 2018 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Alvaro Enrique Tejada Arriola 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 29 July 2018.
- 1.3 Analysis of urine and blood sample no. 5572098 taken from the Horse at the Event was performed at the FEI approved laboratory, LGC, Fordham, United Kingdom (the "**Laboratory**"). The analysis revealed the presence of Diisopropylamine in the urine and blood samples.
- 1.4 The Prohibited Substance detected is Diisopropylamine. Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Diisopropylamine in the

Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

- 1.5 The Horse was further selected for sampling during the Event on 26 July 2018. The results of analysis for this sample returned negative.
- 1.6 Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Diisopropylamine in the Horse's sample gives rise to an Anti-Doping Rule violation under the EADCMRs.

2. Further proceedings

- 2.1 On 5 September 2018, the FEI Legal Department officially notified the PR, through the National Federation of Guatemala ("**GUA-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him 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 September 2018 until 4 November 2018. The Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis & further proceedings

- 3.1 Together with the Notification Letter of 5 September 2018, the PR and the Owner 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 On 12 September 2018, the PR waived his right to have the B-Sample analysed, and confirmed that he accepted – for the purpose of Article 10.6.3 (Prompt Admission) and/or Article 10.10.3 (Timely Admission) of the EAD Rules – that a violation has occurred under Article 2.1 of the EAD Rules.

- 3.3 On 14 September 2018, the PR submitted that he identified the source of the positive test, and at the same time, discovered the commission of an anti-doping rule violation by another person, *i.e.*, the FEI Official Veterinarian Dr. Mariajose Camas Orantes - an FEI Permitted Treating Veterinarian since 2012, and Veterinarian of the Stables (first in 1997, and then from 2002 onwards) and for the Horse since it was born ten (10) years ago, as well as Team Veterinarian for the National Team of Guatemala, including during the Event -, who unknowingly administered the Banned Substance to the Horse. Such information constituted Substantial Assistance pursuant to Article 10.6.1 of the EAD Rules.

4. Partial and Preliminary Decisions

- 4.1 On 30 October 2018, the FEI requested the Automatic Disqualification of the Results in accordance with Article 9.2 of the EAD Rules, and on 9 November 2018, the Tribunal issued a Partial Decision with regard to the Disqualification of Results. More specifically the Tribunal found as follows:

"10.11 The Tribunal is therefore disqualifying the Horse and the PR combination from the entire Event - minus the Competition of 26 July 2018 - and all medals, points and prize money won - other than from the Competition of 26 July 2018 - must be forfeited, in accordance with Article 9 of the EAD Rules.

10.12 In addition, the Tribunal finds that in accordance with Article 11.1.2 of the EAD Rules the disqualified results of the PR shall be subtracted from the team result, which might have consequences to the team results. The FEI is requested to re-calculate and correct the team results of the Event where necessary."

- 4.2 On 26 November 2018, the PR requested the lifting of the Provisional Suspension imposed on him. On 11 December 2018, a Preliminary Hearing was held via telephone conference call, and on 12 December 2018, the Tribunal issued a Preliminary Decision, and decided to maintain the Provisional Suspension of the PR, as the requirements of Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension have not been met.
- 4.3 On 10 January 2019, the PR submitted an application to have the case decided by a three member panel, in accordance with Article 19.1 of the IRs. On 14 January 2018, the FEI Tribunal Chair, which is also the panel in the present case, issued a Preliminary Decision not granting the PR's application; thus the one member panel previously appointed (on 1

"Vitamin B15 is known as Pangamic acid – it is not a real vitamin and there can be variations with the chemical structure.

There is a relationship between Pangamic acid and Diisopropylamine Dichloroacetate as Diisopropylamine Dichloroacetate breaks down to Diisopropylamine plus a form of Pangamic acid. We say that Diisopropylamine Dichloroacetate is a precursor of Pangamic acid but also gives Diisopropylamine as a side product (see publication).

So the company may market the product as Pangamic acid or vitamin B15 but may be using Diisopropylamine Dichloroacetate as the substance that is actually dosed and this will end up giving both Diisopropylamine plus Pangamic acid.

According to the publication enclosed this is an old trick to get Diisopropylamine in to the horse under the guise of a "vitamin".

There has been some debate with regard to the chemical structure of pangamic acid. What is clear is that diisopropylamine dichloroacetate will breakdown to a form of pangamic acid within the body via metabolism with diisopropylamine as a side product.

I think it is important to first identify the active ingredient in the actual B15 product that was used. So it is really important to determine the manufacturer's source of pangamic acid to get to the bottom of this case."

- 5.4 Furthermore, during the hearing both experts agreed that the most common chemical structure of Pangamic acid cannot form Diisopropylamine, whereas there was a less common structure for Pangamic acid which in principle can form Diisopropylamine. Ultimately, it will depend on which kind, *i.e.*, the "common" or "uncommon" form of Pangamic acid the manufacturer uses in a product, which information is unknown in the present case. Moreover, both experts agreed that a veterinarian when reading "Pangamic acid" on a product would not suspect that it contains Diisopropylamine.

6. Written and oral submissions by or on behalf of the PR

- 6.1 On 27 November 2018, and on 24 January 2019, the PR provided his main written explanations for the positive finding. The PR also made further submissions and provided clarifications during the Preliminary Hearing and the Final Hearing which will be outlined in the following to the extent relevant for this Decision.
- 6.2 To start with, the PR accepted an Article 2.1 Rule violation. In fact, - as

previously outlined - on 12 September 2018, the PR submitted a letter in this respect.

6.3 In essence, the PR submitted the following requests for relief:

"(a) dismiss the charge against him; or

(b) in the alternative, sanction him by way of a reprimand and no period of ineligibility; or

(c) in the further alternative:

(a) limit any period of ineligibility to be imposed on him to a maximum of 12 months (commencing from 29 July 2018); and

(b) reduce any period of ineligibility imposed on him to the maximum extent possible given the substantial assistance that he has provided."

6.4 Together with his submissions, the PR provided - among others - a statement by Dr. Camas. Dr. Camas stated that she has been working with the PR and the Horse in the lead up to the Event. Regarding the Event, she stated as follows: *"I was acting in my role as an official FEI Permitted Treating Veterinarian at the event which is the subject of these proceedings."* The "position" of Dr. Camas at the Event is disputed by the Parties, as outlined further below in their respective submissions.

6.5 Dr. Camas stated that her usual procedure around veterinary care of competition horses was that she regularly checked the FEI List to ensure that she knew what is and is not prohibited. Further, she had the FEI Prohibited Substances App on her mobile phone to enable her to carry out these checks wherever she was. She always verified that every substance she used was not prohibited by checking every listed ingredient against the Prohibited List. She was also always extremely careful in relation to withdrawal times, and if she was unsure she checked with other FEI-accredited professionals. Further, she had never in any way been involved in an anti-doping rule violation.

6.6 In addition, Dr. Camas described the policies and practices operated by the PR's stables, including among others that the PR would always consult her on medications to be given to horses, and that she would always - with the exception of emergency situations - consult the PR prior to administering any medications to horses. Further, only some emergency medicines and oral supplements were stored in a secure location in the stables, and that the main groom was in charge of the emergency medication. All other medication was with her and under her control; she would only bring the medication that she needed to the

stables when she treated horses. Moreover, she maintained a separate medication log book for each horse. Stable policy was that only veterinarians administered injections, with the exception to emergency situations.

- 6.7 Dr. Camas confirmed that the PR always wanted to know what was being used on his horses, and she confirmed what the stables of the PR were one of the most careful and well organised stables she had ever seen.
- 6.8 Regarding the treatment of the Horse at the Event, Dr. Camas stated that the intense competition at the very high altitude in Bogota resulted in most horses' levels of exhaustion increasing throughout the Event. She confirmed having administered the product, *i.e.*, Top B15+3, orally in the amount prescribed on the bottle to the Horse in between the first and second rounds of the Competition of 29 July 2018 because the Horse was tired, not being used to high altitude. She had mixed the product with a solution of Taumeel and Zeel in a fructose syrup, and recorded the administration in her medication log book. Further, she had obtained the product from Mexico. The PR had not been present during administration, and neither had she asked permission from the PR to administer the product, which was against their common practice. Prior to administering the product she had checked the FEI List, and checked all the ingredients listed on the box of the product and accompanying instructions. In addition, she consulted a FEI accredited colleague of hers, which also concluded that the product was not prohibited. She still did not understand how the product triggered the AAF, as Diisopropylamine was not a listed ingredient of the product, and since the ingredients of the product clearly had different chemical formulas to the chemical formula for Diisopropylamine. She did not know what further checks she could have performed to ensure the safety of the product; all checks she performed suggested that the product was permissible. She had never heard of Diisopropylamine at the time she used the product, and would have had no reason to do an internet search for "Top B15+3+diisopropylamine". Finally, only after notification of the positive result, and after performing internet searches, she noticed that there were suggestions online that there might be a link between the product and the substance Diisopropylamine; this is when she informed the PR of the use of the product during the Event.
- 6.9 Mr. Ricardo de Jesus Esquite Lorenzana, (the "**groom**"), stated that he was the groom of the Horse, including during the Event. The groom outlined the stable procedures, and confirmed the statement of Dr. Camas with regard to medicines, as well as explained that he was the only groom allowed to administer medicine to the horses, including the Horse, with the authorization of the PR or the veterinarian. Further, he stated that if they were unsure about a medication or supplement they

did not use it. In addition, feed and water buckets of each horse were washed daily to avoid any form of contamination.

- 6.10 With regard to the administration of the product to the Horse at the Event, the groom confirmed that he was present during the administration and had requested Dr. Camas what it was that she administered to the Horse to which question she replied that it was "just a syrup". He did not inform the PR of the administration, as he could not imagine that Dr. Camas would administer anything to the Horse which would harm either the Horse or the PR, or without first consulting the PR. Finally, to his knowledge this had been the first time the Horse was administered the product.
- 6.11 The PR argued that up until this case he had never been involved in any anti-doping procedure, and had never given, nor authorised to be given, any Banned Substances to any horse. He was committed to clean sport, and his stable procedures – among others – foresaw that he only consulted FEI veterinarians for his horses, and only them being allowed to inject his horses. Dr. Camas, in order to obtain her FEI Official Veterinarian status, was required to pass an exam which required knowledge of the EADCMRs. He trusted Dr. Camas with his horses, because she was an FEI veterinarian, and because of his longstanding relationship with her. Also, since she was the Official Team Veterinarian, he was expected to use Dr. Camas as the veterinarian for the Event.
- 6.12 In addition, the PR provided a Test Report by the Sports Medicine Research & Testing Laboratory (SMRTL), in Salt Lake City, United States, confirming that a sealed bottle of the product had been analysed for Diisopropylamine, and that Diisopropylamine at approximately 86 milligrams per millilitre had been detected. The PR also provided an email by the manufacturer of the product confirming – upon request whether the product contained any Diisopropylamine – that the product only contained vitamins. According to the PR, the manufacturer lists 47 equine veterinary products on its website, and none of those products lists Diisopropylamine as an ingredient. In this respect, the PR argued that – given the manufacturer's assertion that the product did not contain Diisopropylamine as an ingredient, the product had to be treated as having been contaminated.
- 6.13 The PR argued that he had to be re-instated with immediate effect for the following reasons:

"(a) First, the FEI must be estopped from enforcing the EADR against, or otherwise seeking to sanction, Mr Tejada Arriola given that the violation was caused by the actions of a FEI Official Veterinarian;

(b) Second, and alternatively, further to Article 10.4 of the EADR, Mr Tejada Arriola must be held to have acted with no fault or negligence, such that no period of Ineligibility can be imposed on him;

(c) Third, in the further alternative, and further to Article 10.5.1.2 (Contaminated Products) of the EADR, Mr Tejada Arriola must be held to bear no significant fault or negligence, such that no period of Ineligibility should be imposed on him;

(d) Fourth, in the further alternative, if the Tribunal does not agree with Mr Tejada Arriola that Article 10.5.1.2 (Contaminated Products) of the EADR applies, he must be held to bear no significant fault or negligence further to Article 10.5.2, such that any period of Ineligibility imposed on him be limited to a maximum of twelve months;

(e) Fifth, in the further alternative, Mr Tejada Arriola must be held to have promptly admitted the violation further Article 10.6.3 (Prompt Admission), such that any period of Ineligibility imposed on him be limited to a maximum of twelve months; and

(f) Sixth, in any event, Mr Tejada Arriola must be held to have provided Substantial Assistance within the meaning of Article 10.6.1, such that any period of ineligibility imposed on him must be suspended to the maximum extent possible.”

6.14 Further, the resolution of this case was urgent, as, *inter alia*, there were several events due to take place within the next few weeks in which he had to participate in order to have a chance to qualify for the 2019 Pan American Games (and neither might his team be able to field a show jumping team), which themselves provided an opportunity to qualify for the 2020 Olympic Games. In addition, his Provisional Suspension was causing his stables very significant damage and financial losses. If he was not permitted to return to competition very soon, the business may have to be shuttered, which would result in job losses (his stables provided employment to 35 people directly or indirectly). He had already suffered serious harm as a result of the Provisional Suspension; it has affected his career prospects, ability to attend important competitions, financial position and hard-earned reputation.

6.15 More specifically, the PR submitted that next to the EAD Rules, the Tribunal was entitled to apply certain principles of law which have become part of the so-called *lex sportiva*, namely (a) the principle of legal certainty, (b) the *contra proferentem* principle, (c) Estoppel and legitimate expectation; and (d) Proportionality. As examples, the PR

provided various extracts of CAS cases, as well as some articles in this regard. In the case at hand, the violation was brought about by a FEI veterinarian appointed by the National Federation to act as the Official Team Veterinarian at the Competition. This unique aspect of the case constituted an exceptional circumstance, and like in the case *Bohdan Ulirach v ATP*, it would be unconscionable and unfair to allow the FEI to sanction the PR in such circumstances. The FEI had to be estopped from sanctioning him or otherwise enforcing the EAD Rules against him and that, accordingly, the charges against him must be dismissed.

- 6.16 In the alternative, the PR submitted that he acted without fault or negligence and that any period of Ineligibility imposed on him should be eliminated. He did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that Dr. Camas – an FEI veterinarian – would, without permission, breach their long-established protocol and administer the product. Additionally, the PR did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that the product used by Dr. Camas would contain Diisopropylamine as an unlisted, and undeclared, ingredient. Even if he or Dr. Camas had called the manufacturer of the product, the manufacturer would have confirmed that the product did not contain any Prohibited Substances. He had done everything that was expected of him from an anti-doping perspective. His violation of Article 2.1 was entirely unknowing and inadvertent.
- 6.17 Further, the PR submitted that the Article 10.4 (b) exclusion could not possibly be deemed to apply in the present case, as (i) Article 10.4 (b) relates only to Administration, and Administration only relates to Use or Attempted Use (as per Definition), which was an offence of Article 2.2 of the EAD Rules; the PR has however been charged under Article 2.1 of the EAD Rules; (ii) since Dr. Camas was attending the Competition in her capacity as FEI Official Veterinarian not as the PR’s veterinary personnel, and Article 10.4 (b) only relates to “the Person Responsible’s veterinary personnel”; and (iii) since it was clear from the language and construction of Article 10.4 (b) exclusion that there must have been a knowing administration of a Prohibited Substance. Further, the PR submitted that the *Oliviera analysis* (the Oliviera interpretation of Article 10.4 of the 2009 WADA Code, which meant that an absence of intent would be established if athletes could prove that they did not know they had used a Banned Substance in question) on purposive construction of the rules should be applied in this case, and that to the extent that there was any uncertainty or lack of clarity arising from the construction of the rules, this should, in accordance with the *contra proferentem principle* be constructed in the PR’s favour.
- 6.18 That following the *Glenmorgan case*, there had to be some fault or

negligence on the part of the Person Responsible in “oversight of the physician, trainer or advisor”. Therefore, the PR cannot possibly be faulted in circumstances in which an experienced FEI veterinarian (i) administered what she believed to be an innocuous product that was safe to use; and (ii) did so without first consulting or forewarning him, in circumstances in which he had – for several years – required that no treatment should be administered to his horses without first consulting him and seeking his express approval. Article 10.4 (b) cannot and should not apply in the present case, as the violation was caused by an FEI Official Veterinarian, and in the PR’s view the FEI ought therefore to be estopped from enforcing Article 10.4 (b).

- 6.19 In the alternative, the PR submitted that the product administered to the Horse was a Contaminated Product for the purposes of Article 10.5.1.2 of the EAD Rules. He could not have detected the presence of the substance from the product label, nor discovered its presence by searching the internet. In this respect the PR emphasised that internet search engines yield different results based on (i) user location; and (ii) user search history. Dr. Camas conducted her searches from the Competition in Bogotá, having never searched for “Diisopropylamine”. Further, searching in incognito browser mode prevented the search engine from accessing the user’s search history. The results of an incognito search for “Sodium Pangamate” does not clearly alert the searcher to any direct link between Sodium Pangamate and Diisopropylamine. Dr. Camas reasonably searched for the ingredients listed on the product, *i.e.*, Sodium Pangamate (but not Vitamin 12), which raised no flags. The PR submitted that it would be unreasonable to expect athletes to search for every possible pseudonym and every listed ingredient. Moreover, the chemical formula for Pangamic Acid and the chemical formula for Diisopropylamine were different, there was no scientific link between the two. Even if Dr. Camas had reviewed the Pangamic Acid as part of her investigation, she would not have identified information that would have discouraged her administration of Top B15+3. Thus, not at fault, and no period of Ineligibility should be imposed on him further to the application of Article 10.5.2 of the EAD Rules.
- 6.20 In the further alternative, the PR submitted that he bore No Significant Fault or Negligence further to Article 10.5.2 of the EAD Rules, and that any period of Ineligibility imposed on him should be limited to a maximum of twelve (12) months.
- 6.21 If the Tribunal were to conclude that the PR did act with significant fault or negligence, Article 10.6.3 of the EAD Rules (Prompt Admission) applied, and the period of Ineligibility should nevertheless be limited to a maximum of twelve (12) months. He promptly admitted the violation by letter dated 12 September 2018, and the violation was not serious, as it

occurred in circumstances in which he did everything that was required of him and was ultimately caused by a FEI Official Veterinarian.

- 6.22 In addition to the application of Articles 10.5.1.2, 10.5.2 or 10.6.3 he was also entitled to the application of Article 10.6.1 (Substantial Assistance) of the EAD Rules. In this regard, on 14 September 2018, the PR sent a letter to the FEI explaining that he had identified the source of the substance and, at the same time, had discovered the commission of an anti-doping rule violation by another person. That person was Dr. Camas, an FEI Official Veterinarian, who, by administering a Prohibited Substance to the Horse committed (albeit inadvertently and unknowingly) an EAD Rule violation. He had provided the FEI with information which resulted in the discovery of an EAD Rule violation by another person, and the FEI, based on his information provided, wrote to Dr. Camas on 8 November 2018 requesting a response to the alleged Article 2.2 violation.
- 6.23 Finally, the PR submitted that - unless the Tribunal has previously reduced the otherwise applicable period of Ineligibility in accordance with Article 10.6.3 of the EAD Rules (Prompt Admission) - any period of Ineligibility imposed on him should be backdated to the date of Sample collection, as he made a Timely Admission of the violation by letter dated 12 September 2018, in accordance with Article 10.10.3 of the EAD Rules. Further, the PR was entitled to credit for the period of Provisional Suspension further to Article 10.10.4 of the EAD Rules.

7. Written submission by the FEI

- 7.1 On 24 January 2019, the FEI provided its Answer to the submissions received by the PR until that day.
- 7.2 To start with, the FEI highlighted that both Pangamate Sodium and B15 were listed on the product. In addition, on the label it was clearly stated that the product was an injectable solution with the administration route being intra-muscular injection. Dr. Camas however recorded having given the product orally to the Horse. The FEI, having consulted several veterinarians, considered this to be highly unlikely, and/or great lack of knowledge.
- 7.3 The product which was administered to the Horse in this case was licensed as a Nutraceutical, which meant a supplement, and the FEI therefore considered it as such. In relation to the use of B15, the FEI argued that all people with medical and/or biological knowledge knew that B15 did not exist and that the last type of vitamin B is vitamin B12. In this respect the FEI submitted that *"With a simple google search on vitamin B15 the first hit that comes up is: "PANGAMIC ACID*

OTHER NAME(S): Acide Pangamique, Ácido Pangámico, Calcium Pangamate, Calgam, Di-isopropylamine Dichloroacetate, Vitamin B15, Vitamine B15." Further, a Wikipedia search on Vitamin B provided the following information: "*Vitamin B15: pangamic acid, also known as pangamate. Promoted in various forms as a dietary supplement and drug; considered unsafe and subject to seizure by i.e. the US Food and Drug Administration.*" And a simple search on Sodium Pangamate provided the information - among others - that "*there is no standard chemical identity for pangamic acid*".

7.4 The PR has not provided what kind of Pangamic Acid/Sodium and the chemical structure for that version which was present in the product given to the Horse, only that Diisopropylamine was present in the Top B15+3 that was tested. Without this causal link no further evaluation could be made.

7.5 In essence the FEI submitted 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 Controlled Medication 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 Diisopropylamine, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR did not dispute the presence of the Diisopropylamine in the Horse's sample. Accordingly, the FEI discharged its burden of establishing that the PR had 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 offence, but who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. To do this, the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substances entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or

suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Banned Substance; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.

- c) The EAD Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Diisopropylamine entered the Horse's system. In the case at hand, the PR has provided plausible information on how the veterinarian used the product on the Horse just prior the competition, and has also tested the product which tested positive for Diisopropylamine. The FEI therefore concluded that the explanation provided by the PR was likely to have caused the positive finding. The threshold requirement of proving how the substance entered the Horse's system, had therefore been fulfilled.
- d) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, his personal duty to ensure that "*no Banned Substance is present in the Horse's body*". It has been stated in several cases that the PR cannot rely on any other person to perform his duty of care. In CAS jurisprudence it was clear that "*the duty of caution or due-diligence is non-delegable*"¹. It was therefore not possible for a PR to rely on or blame any other person for the positive case.
- e) Furthermore, the Sole Arbitrator in the *Royal des Fontaines case*² had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows:

"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

¹ CAS 2013/A/3318 Stroman v. FEI (para 71)

² CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI (para 57)

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 apprised 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."

- f) In the *Glenmorgan case*³ the Panel confirmed that the rider was best fit to control the Horse before a competition. *"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*

"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."

- g) In light of the stated CAS jurisprudence on this point, the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the Horse's positive test results was a reasonable and justifiable stance. Furthermore, as the CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he competed with, and could not delegate this duty to another person. The PR, therefore, has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with the utmost caution to fulfil this duty.
- h) 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. Despite the fact that the PR and his father had anti-doping systems in place and had staff they trusted who were well informed,

³ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI (para 209 & 203)

the Panel in the *Glenmorgan* case imposed an 18 months of suspension on the PR. Even though it was clear that the veterinarian had administered the substance to the horse and failed in his normal duty of care, the PR was still the responsible for this conduct. This case demonstrated that the duty of care on the PR was very high, and the PRs were the responsible for any treatment given to their horses by their Support Personnel.

- i) The FEI was of the opinion that any veterinarian using a substance being a supplement without exactly knowing what it is, imported from Mexico, for the first time on the day of competition, during an important event, was highly at fault. The PR was responsible for choosing his veterinarian and no fault cannot apply only because another person administered the Banned Substance to the Horse.
- j) The FEI submitted that since the product was a supplement that was used by the PR's Support Personnel, the FEI was of the opinion that No Fault and Negligence was not applicable, as Article 10.4 of the EAD Rules did not apply in those cases. In this regard, the product was licensed as a Nutraceutical, which meant a supplement. Further, it was also a supplement since it was not the main feed of the Horse, but only an additional product for extra beneficial effects. By using a supplement the PR took a risk, and the FEI had warned extensively about the risk of use of supplements on several occasions.
- k) Persons Responsible had a responsibility and had to always ensure that they exercise extreme caution and judgement in the products that they use and only use products from reputable sources. Especially, in relation to supplements. The product label in this case did provide information that should lead to extra caution by any user, and the use of such supplement on a competition horse during an event was highly negligent. This was not a case of contamination, but a clear case of the use of a supplement. Diisopropylamine was a precursor of Pangamic acid and therefore the explanation of so called contamination had to be excluded in the case at hand.
- l) The FEI was curious as to the intent of using such supplement. It was given immediately before competition since the Horse was suffering the effects of high altitude. Generally such treatments were given for performance enhancing purposes.
- m) The FEI agreed that the PR in the case at hand had shown that he was not at significant fault and therefore No Significant Fault for the rule violation should apply in accordance with Article 10.5.2 of the

EAD Rules. The FEI believed that the sanction had to be in the higher range of the span, and requested the Tribunal to impose a period of Ineligibility of eighteen (18) months.

- n) With regard to the PR's claim for Prompt and Timely Admission, the FEI argued that Prompt and Timely Admission could not apply when the admittance of the violation was in relation to acts by another person. Further, Article 10.6.3 of the EAD Rules required a consideration of the two key factors of the "seriousness of the violation", *i.e.*, a Banned Substances being the most serious substances on the FEI List, and the PR's "degree of fault". Given the FEI's position on the seriousness of the offence and the level of fault of the PR, the FEI was of the opinion that Prompt Admission could not be applied in this case.
- o) With regard to Substantial Assistance, the FEI argued – among others - that the information provided by the PR in the present case did not in the FEI's view amount to Substantial Assistance. While the PR in this case might have offered as much assistance as he reasonably could have under the circumstances, this assistance did not lead to the discovery or establishing of any new anti-doping rule violation, since the wrongdoing by the veterinarian related to the very same positive finding and was necessary in order to explain the positive finding of the PR's Horse.
- p) Finally, the FEI clarified that Permitted Treating Veterinarians, such as Dr. Camas in the case at hand, are not official FEI veterinarians and did not count as Officials, according to Annex II of the VRs. Dr. Camas had no official function at the Event, but being a Treating Veterinarian for the PR. This was clear from the VRs and also from the approved Schedule of the Event.
- q) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fined the PR in the amount of 3,000 CHF, and ordered the PR to pay the legal costs of 2,000 CHF.

8. Hearing

- 8.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the

hearing and reserved its 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.

- 8.2 At the end of the hearing, the Parties acknowledged that the Tribunal has respected their right to be heard and their procedural rights.
- 8.3 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.
- 8.4 During the hearing Dr. Camas confirmed that she had been appointed as Team veterinarian by the GUA-NF for the Event, and that she has been responsible for the horses of all disciplines, including the Horse. Further, a Team Veterinarian was required to be an FEI Permitted Treating Veterinarian (PTV).
- 8.5 Regarding the product, she confirmed that she did not include it in the plan of medicines discussed with the PR prior to the Event, and did not inform the PR of the administration, as she thought it did not contain any Prohibited Substances. Even though the route of administration required was via injection, she administered the product orally, as the rules did not allow for any injections prior to a competition; in her view most injectable products, though not all of them, could be given orally, and she had done so many times before.
- 8.6 In addition, she confirmed that she had used the product before, and she would always buy it through a veterinarian friend. She did not check whether the product was registered in Mexico, and she would in general order many products from either Mexico or the US, as there was limited availability of such products in Guatemala. Her view had been that the product was a vitamin, and she had always used it as Pangamic Acid, mainly for helping horses with fatigue. Now after doing a lot of research she understood that there were some different chemical formulas, and some of them might contain Diisopropylamine. She had checked the ingredients of the product in the FEI Database, which did not alert her that it was prohibited. In addition, also her veterinarian colleague confirmed that Vitamin B15 was Pangamic Acid, which was not prohibited. She always checked ingredients of products prior to taking them to events. She had used the product on many horses before, and one additional horse during the Event, which was however eliminated and not tested.
- 8.7 Finally, she would normally agree with the PR beforehand on which vitamins were to be given to horses, and she would not use vitamins

routinely which have not been included in the treatment plan. However, what was needed for horses during events was depended on climate, altitude and similar, and one could not do an (exact) plan beforehand. When comparing the plan and the medication log book of Dr. Camas for the Horse for 29 July 2018, the plan does not foresee any medication to be given to the Horse, and the medication log book lists eight (8) different substances. In this respect, Dr. Camas confirmed that the PR saw the medication log book only after he received the Notification Letter.

- 8.8 During the hearing, the PR stated that he was a person who took full responsibility for his actions and mistakes, but in the case at hand he was wrongfully punished for something another person did, and that he could not have prevented. He had been the only Guatemalan rider with a treatment plan ahead of the Event, which he also shared with his Chef d'Equipe. At home he would always record everything given to his horses by the veterinarian, and instructions for the groom were written on a white board. It was very disappointing that Dr. Camas used a medication that he did not authorize, and that she had not mentioned anything to him.
- 8.9 The PR further argued that he disagreed with the FEI that the product concerned a "supplement". The EADCMRs did not include any definition of supplement, and according to the dictionary a supplement was dietary in nature. If there was any ambiguity with the definition, it had to go against the FEI, who made the rules. This was not the case for the product. The product was registered in Mexico in group 1 as a "Pharmaceutical Product", and was destined for veterinary use only. Referring to other FEI cases, the PR argued that in the present case the product was not a supplement, and because it was registered there was less risk and more security that it should not contain any Prohibited Substances.
- 8.10 In the PR's view the FEI did not make any difference between liability and fault. He admitted the violation and also did not challenge the Disqualification of the Results. However, the facts and the evidence in the case were compelling for No Fault. No Fault had to be achievable, and there was nothing more/different he could have done to avoid the Banned Substance from entering the Horse's system. Following the *Glenmorgan case* one had to look at the actual rider's fault not the fault of the veterinarian.
- 8.11 The PR agreed that the duty of care of a Person Responsible was not delegable. However, argued that his delegation to Dr. Camas was reasonable. He had agreed a treatment plan with the veterinarian prior

to the Event, which did not foresee any medications to be given to the Horse on the day of Competition on the 29 July 2018. However, for seasons completely incomprehensible to him, Dr. Camas administered eight (8) substances to the Horse, among others the product, a product which had never been given to the Horse before. This could actually be seen as some form of sabotage. Comparing with the *Glenmorgan case*, the rider in the case at hand gave clear instructions and had a clear agreement with the veterinarian, which was not the case in the *Glenmorgan case*. However, the veterinarian acted outside the scope of their agreement.

- 8.12 The PR in the present case did not know or suspect, or could not have reasonably known or suspected that the veterinarian administered a product which contains a Banned Substance. The only reason the PR now knows that the Banned Substance in question was in the product was because he tested the product; even the manufacturer disputed that the Banned Substance was in the product. It was therefore a contaminated product, and the PR did not have to prove how the contamination happened, just that the product was contaminated. Neither could Dr. Camas have reasonably known that the product was containing a Prohibited Substance. Diisopropylamine is not listed as an ingredient on the product, and neither could she have found it with a reasonable internet search. She had never heard of Diisopropylamine and searched for the ingredients on the product label, where she could find not association between Diisopropylamine and Sodium Pangamate. Ultimately, both experts agreed that no medical professional could have assumed that Diisopropylamine was in the product. In addition, the PR run some internet searches for Sodium Pangamate in front of the panel which – on a reliable scientific source - did not result in a Diisopropylamine finding.
- 8.13 The FEI further highlighted that the case at hand concerned a Banned Substance case, and Banned Substances are prohibited at all times, and should never be found in a competition horse.
- 8.14 The FEI agreed with the PR that the EADCMRs did not contain any definition of supplements. However, if one googled “supplement” a long list of products appeared. For the FEI supplements were everything else than the normal feed fed to a horse, *i.e.*, hay, oats and pellets. The route of administration was irrelevant, a supplement could be anything from vitamins, minerals, amino acids etc. Furthermore, supplements were mostly not subject to approval. The product in the case at hand had to be considered as a supplement, firstly as the veterinarian believed that it was a vitamin, and secondly since the manufacturer lists it as “Restorative Nutraceuticals” on its website. The

FEI had warned riders about possibilities of supplement contamination, wrong ingredients being listed, including containing Banned Substances. According to the FEI, riders should never use any supplements unless they had been tested beforehand.

- 8.15 Furthermore, the FEI was of the view that, if contamination indeed happened, the PR had still not established which kind of Pangamate was contained in the product. Therefore the science remained uncertain. Whether the product in question was also a "contaminated product" or not was not relevant, since the product was also a "supplement", which use came with risks. The degree of fault of the PR had to be seen with regard to the risk in using products. Therefore, where hay from a feed producer was contaminated, the PR's fault could be lower than where oats and pellets (which some might classify as supplements) were contaminated, to ultimately contaminated supplements, where the Persons Responsible had to be suspended for twelve (12) months. In the case at hand, the product was not part of the Horse's daily feed, and used with the intention to enhance the performance of the Horse. The case was different from previous cases where pellets – which had been tested many times – were given on a daily basis as part of those horses' feed, and where one of the listed ingredients was ultimately contaminated. In addition, those Persons Responsible were able to prove the entire chain of custody.
- 8.16 The FEI saw a lot of similarities between the case at hand and the *Glenmorgan case*, among others that (i) the veterinarians in both cases checked the list of ingredients, and it did not contain any Banned Substances in either case; (ii) both veterinarians were recommended products by other veterinarians; (iii) the intention of the use of the products were clearly performance enhancing in both cases, *i.e.*, to cope with high altitude and fatigue in the case at hand; and (iv) both products were used on the horses for the first time either right before or during the competition. It was common sense not to administer to any horse anything new either right before or during an event, which in the case at hand was a very important competition, leading to qualification to the Olympic Games.
- 8.17 The duty of care of a rider was not delegable, and a rider could not use a potential violation of a third person to get away of his or her own violation. Persons Responsible were still responsible for the acts of their veterinarians. The PR himself was also at fault in the case at hand. He should never have let anyone treat his horses without his presence, and not allow any treatments at events, in particular in between rounds. No treatments of horses with injections twelve (12) hours prior to competitions were allowed, and the nature of the

product was that it had to be administered via intra-muscular injection. In the case at hand it was still not clear to the FEI why Dr. Camas administered the product orally and not via intra-muscular route as required; different detection times, effects etc. had to be expected as a result thereof. Furthermore, the PR could have established all the vitamins he uses, and tested them prior to use. The FEI had still not seen the PR's personal record of the Horse, which was recommended for all riders to have. Ultimately, the FEI accepted that the PR's fault was not significant, and that No Significant Fault or Negligence applied in the case at hand.

9. Jurisdiction

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

10. The Person Responsible

- 10.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event. In this respect, the Tribunal wishes to clarify that Support Personnel might be held additionally responsible where evidence so warrants; the rider however remains the main Person Responsible. The decision in the present case only deals with the rule violation by the rider.

11. The Decision

- 11.1 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. 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 Diisopropylamine in the urine and blood sample taken from the Horse at the Event. The PR accepts the accuracy of the test results and the positive finding. Diisopropylamine is a Prohibited Substance on the FEI List and the presence of the Diisopropylamine in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.

- 11.2 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.
- 11.3 To start with the Tribunal wishes to clarify the status of Dr. Camas. The Tribunal has taken note that Dr. Camas was not listed as an FEI Official at the Event, but was sent by the GUA-NF as team veterinarian and responsible as such for all disciplines at the Event. Contrary to the PR's submission, the Tribunal finds that Dr. Camas as an FEI Permitted Treating Veterinarian (PTV) had merely received a qualification expected by the FEI in order to act as team veterinarian at events such as the Event. While such qualification includes expected knowledge of the EADCMRs, a PTV cannot be considered as an FEI Official, unless – in addition – registered as such for an event, which was not the case in the case at hand. In addition, Dr. Camas was also the veterinarian of the PR's stables, as well as of the Horse since it was born. Hence, the Tribunal finds that Dr. Camas was the veterinary personnel of the team as well as of the PR. The PR's argument that he had no other choice, as Dr. Camas had been imposed on him by the team is baseless; he in fact chose the very same veterinarian for his own purposes also. As a result, the PR's argument that the FEI had to be estopped from applying the EADCMRs on the PR, since Dr. Camas was an FEI Official responsible for the rule violation, has to be rejected.
- 11.4 In addition, the Tribunal finds that the EADCMRs, and more specifically Article 2.1 of the EAD Rules, are clear in respect that a rider will be held responsible for a positive finding of the horse he rode at an event, no matter whether he had an intent, was at fault or negligent, or knew about the use of a Banned Substance. The Tribunal therefore finds that both the principle of legal certainty, and legitimate expectation – invoked by the PR – have been fulfilled in the case at hand, and more generally in Article 2.1 EAD Rules violation cases.
- 11.5 As a result, pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 11.6 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, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.

- 11.7 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 11.8 To start with, the Tribunal has taken note of the PR's explanations as to the source of the Diisopropylamine, namely that Dr. Camas had administered the product to the Horse in between rounds on the day of Competition in order to help it with the high altitude. Further, the PR provided analysis results of the product showing that it contained Diisopropylamine, even though the manufacturer denies such substance in the product. In addition, the Tribunal takes note that the FEI accepts the PR's explanations, and the product being the source of the Banned Substance found in the Horse's system. The Tribunal therefore finds that the PR has shown – on a balance of probability, as required – how the Diisopropylamine entered the Horse's system.
- 11.9 In a second step, the Tribunal has to decide on the PR's degree of fault and whether any of the Articles 10.4, 10.5 and/or 10.6 of the EAD Rules, which allow for a reduction of suspension of the two (2) year period of Ineligibility, are applicable.
- 11.10 Firstly, the Tribunal agrees with the PR that the delegation to Dr. Camas was reasonable, as she was – among others – also his personal veterinarian for a long time. In this respect, the Tribunal also takes note of the procedures established by the PR concerning medications in his stables. With regard to the Event the Tribunal takes note of the treatment plan established by the PR and Dr. Camas. In this regard, the Tribunal notes that the treatment plan includes many products to be administered via injections, as well as some products to be administered to the Horse if so required, which in the Tribunal's view did from the outset fail to provide the PR with a certainty what, when, and in which form they will be administered to the Horse.
- 11.11 The PR however failed to supervise and control the actions of Dr. Camas. The absence of checks whether Dr. Camas was acting properly and as agreed represent fault by the PR.⁴ While the PR would have been able to show during the hearing (since recorded on his phone) any substances administered by Dr. Camas in his stables, the PR apparently did not at any time seek to see Dr. Camas' medication log book of the substances administered to the Horse during the Event, neither during or after the Event; the PR only requested such information from Dr. Camas once he had been notified of the positive finding. The conclusion to be drawn is,

⁴ The Tribunal notes that the CAS panels in the CAS 2016/A/4643 Maria Sharapova v. International Tennis Federation (in para 90), and the panel in the *Glenmorgan* case (para 235) came to a similar conclusion.

that the PR's anti-doping measures were not as effective as intended, or they were after all not clearly communicated to the Support Personnel.

11.12 As a result, the Tribunal finds that there was some fault on the PR's side, and No Fault or Negligence cannot apply in the case at hand. While the Tribunal finds that it does not have to establish the fault of Dr. Camas for the rule violation for the present decision, the Tribunal would come to the conclusion that Dr. Camas was significantly at fault when administering a product in between rounds for the first time to the Horse in an important competition, such as the Event, with the clear intention to improve the Horse's performance.

11.13 While no finding by the Tribunal with regard to Article 10.4 (a) and (b), would be necessary given the foregoing, the Tribunal nonetheless wishes to address those provisions. Regarding Article 10.4 (b) the Tribunal finds that, since Dr. Camas was the PR's veterinary personnel, as previously established, this provision would apply in the present case, and No Fault and Negligence would not apply therefore. In the case at hand Dr. Camas has administered a Banned Substance without disclosure to the PR. The Tribunal has to reject the PR's argument that the analysis conducted by several CAS panels when reviewing the application of Article 10.4 of the 2009 version of the WADA Code had to be taken into account in the present case. In the Tribunal's view this would mean comparing apples with oranges. It has to be noted that Article 10.4 of the 2009 version of the WADA Code applied for Specified Substances⁵ and under Specific Circumstances only. The case at hand however concerns a Banned Substance, which in the Tribunal's view could arguably not even be comparable with Non-Specified Substances on the WADA List. Banned Substances are never to be found in a competition horse, and to the Tribunal's knowledge no Equine TUE's would be issued for such substances, which to the contrary is the case for Non-Specified Substances for Athletes where medically justified. Article 10.4 of the 2009 WADA Code also required as a condition no intent to enhance the Athlete's performance, whereas Dr. Camas in the case at hand had a clear intent to enhance the Horse's performance, as previously established by the Tribunal.

11.14 Regarding whether the product could be considered as a supplement, the Tribunal finds the answer to be in the affirmative for reasons as follows. The product is not part of the Horse's normal feed. On the contrary, as has been explained by Dr. Camas, she applied the product on the Horse for the first time in between rounds at the Competition. Furthermore, the product is listed as a "Restorative Nutraceutical" rather than in the

⁵ See Comment to Article 10.4 of the 2009 WADA Code: " (...) Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation. (...)"

category of "Diseases" on the manufacturer's website; it can therefore not be understood as a medication. The Tribunal has taken note that the product has been registered in Mexico as a "Pharmaceutical Product" and its use is via intra-muscular injection. The Tribunal believes that whether the product has to be considered as a supplement or as a medication might ultimately depend on the circumstances of the case, as well as the intention of use of the product, including the way it was administered. According to Dr. Camas, her intention was to use the product as a "vitamin", which would in the Tribunal's view lead to the conclusion that it should be considered as a supplement. However, the Tribunal has also taken note that the EADCMRs do not include a definition of "supplements". Therefore, where the rules are not clear, and where no definition exists, as is the case for "supplements", and in accordance with the *contra proferentem* principle, the Tribunal would have the tendency to apply the provision of Article 10.4 (a) in the PR's favour, if it had decided that the PR was at no fault, which is not the case in the case at hand.

11.15 Furthermore, the Tribunal will decide whether the product could (also) be considered as a "Contaminated Product" as defined in the EADCMRs. While the Tribunal in its Preliminary Decision found that it was not convinced that the product concerned a "Contaminated Product", the Tribunal now – having been provided with further facts, science and arguments – concludes that the product could be considered as a "Contaminated Product". In this respect the Tribunal notes that the experts could not give a definite answer as to whether the finding of the substance Diisopropylamine should be regarded as an intended, unlabelled ingredient, or as a result of an unexplained contamination. The experts however also concluded that a veterinarian could not have known that based on the information available on the product, the product contained Diisopropylamine. The Tribunal also notes that the manufacturer denies that the product contains any Diisopropylamine, whereas it has tested positive for it according to the laboratory report provided by the PR. Given the specific circumstances of this case, the Tribunal accepts that the product can somewhat be considered as a "Contaminated Product" and that Article 10.5.1.2 of the EAD Rules applies in the case at hand. The Tribunal however also finds that even though it concludes that the product can be considered as a "Contaminated Product", the product is still a product one should not use prior to having properly investigated it, and the wording on the product leaflet should alert any veterinarian and rider to even more conduct such proper investigation.

11.16 Pursuant to Article 10.5.1.2 of the EAD Rules, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at

a maximum, two years Ineligibility, depending on the PR's degree of fault.

- 11.17 In taking into account all specific circumstances in the case at hand, and the PR's degree of fault, the Tribunal finds a period of Ineligibility of twelve (12) months as proportionate. In this respect, the Tribunal cannot discount the level and importance of the event, and the responsibilities the PR had not only towards himself, but also towards his team.
- 11.18 Finally, the Tribunal has to decide whether "Prompt Admission" or "Timely Admission" apply in the case at hand. The Tribunal has taken note that on 12 September 2018, *i.e.*, seven (7) days after having been notified of the positive finding by the FEI, the PR accepted that a violation of Article 2.1 of the EAD Rules had occurred. While the Prompt Admission provision cannot apply in the case at hand, since it requires approval by the FEI, and is at the discretion of the FEI, the Tribunal accepts Timely Admission by the PR and decides that the period of Ineligibility shall start as early as the date of Sample collection. While the Tribunal agrees with the FEI that no suspension of the period of Ineligibility for Substantial Assistance can apply in a case, such as the case at hand, where a PR puts merely information forward that concerns the same rule violation as his, and thus the same information is required for him to establish the source of the Banned Substance, the Tribunal finds that the PR with his letter of 12 September 2018 did admit his rule violation, *i.e.*, an Article 2.1 EAD rule violation, as notified to the PR on 5 September 2018.

12. Disqualification

- 12.1 The Tribunal has already previously decided with regard to Disqualification of Results, and issued a Partial Decision in this respect.
- 12.2 In addition, since the period of Ineligibility starts from the date of sample collection, all results of the PR, with any and all horses, which might have been recorded between the date of sample collection and Provisional Suspension of the PR, *i.e.*, between 29 July 2018 and 5 September 2018, shall also be disqualified.

13. Sanctions

- 13.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be twelve (12) months.

- 13.2 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 **twelve (12) months** from the date of sample collection, *i.e.*, 29 July 2018, the period of Provisional Suspension, effective from 5 September 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 28 July 2019**.
 - 2) The PR is fined **three thousand Swiss Francs** (CHF 3000,-).
 - 3) The PR shall contribute **two thousand Swiss Francs** (CHF 2000,-) for the cost in these proceedings.
- 13.3 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).
- 13.4 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).
- 13.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 13.6 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 'Henrik Arle', is written over a light blue rectangular background.

Mr. Henrik Arle, one member panel