

DECISION of the FEI TRIBUNAL
dated 18 August 2020

Positive Anti-Doping Case No.: 2019/BS35

Horse: CAPTAIN FUTURE 3

FEI Passport No: 104OK61/AUT

Person Responsible/NF/ID: Felix KOLLER/AUT/10067976

Event/ID: CSIO5* - NC EUD1 – St. Gallen (SUI)/2019_CI_0010_S_S_01

Date: 30 May – 2 June 2019

Prohibited Substance: Diisopropylamine

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, 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, changes effective 1 January 2019.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Felix Koller.

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

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."

EAD Rules Art. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. The Parties

- 1.1 The Person Responsible ("**PR**"), Mr. Felix Koller, is a jumping rider for Austria.
- 1.2 The Fédération Equestre Internationale (the "**FEI**" and together with the PR, the "**Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Factual Background

- 2.1 The PR competed with the horse CAPTAIN FUTURE 3 (the "**Horse**") at the CSIO5* - NC EUD1, in St. Gallen, Switzerland, from 30 May to 2 June 2019 (the "**Event**").
- 2.2 During the Event in-competition samples (urine and blood) were collected from the Horse. Subsequent analysis of the sample revealed the presence of Diisopropylamine in the urine sample.
- 2.3 On 7 August 2019, the FEI notified the PR of an adverse analytical finding and alleged a violation of Article 2.1 of the EAD Rules. Together with the Notification Letter the PR was informed that he was provisionally suspended, and provided with the opportunity to request for a Preliminary Hearing.

3. Further proceedings

- 3.1 On 16 August 2019, following a Preliminary Hearing held on the same day, the Tribunal issued a Preliminary Decision. The Tribunal decided to maintain the Provisional Suspension of the PR as the requirements of Article 7.4.4 of the EAD Rules have not been met at the time.
- 3.2 On 30 July 2020, the FEI requested the lifting of the Provisional Suspension of the PR as of 6 August 2020, in accordance with Article 7.4.4(ii) of the EAD Rules. Furthermore, the FEI informed the Tribunal that the Parties were in the process of finalising an agreement between the parties in accordance with Article 7.6.1 of the EAD Rules.
- 3.3 On 13 August 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2019/BS35 CAPTAIN FUTURE 3 and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules. Further, the Parties requested the lifting of the Provisional Suspension of the PR.
- 3.4 On 17 August 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Both Parties expressly confirmed that they accepted the constitution of the panel.

4. Agreement between Parties

- 4.1 On 12 August 2020 the Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse CAPTAIN FUTURE 3 (the "Horse") at the CSIO5*- NC EUD1 – St Gallen (SUI) from 30 May to 2 June 2019 (the "Event"), the PR, Mr. Felix Koller and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*);
- (b) The PR established on a balance of probabilities how the Diisopropylamine entered the Horse's system;
- (c) The PR bears No Significant Fault or Negligence for the Rule Violation and the otherwise applicable period of Ineligibility (i.e. two (2) years) shall be reduced to one (1) year in accordance with Art 10.5 EADR. The period of Provisional Suspension, effective from 7 August 2019 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until 6 August 2020;
- (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules;
- (e) In accordance with EAD Rules Articles 9.1 and 10.1.2 the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (f) The PR shall incur a fine of 1 500 CHF;
- (g) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (h) The PR shall bear the cost of the B sample analysis; and
- (i) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules) will apply in this case.

The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI.

The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

End Quote

- 4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

“CASE SUMMARY

Mr. Felix Koller, (FEI ID 10067976), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a jumping rider for Austria.

The Fédération Equestre Internationale (the “FEI” and together with the PR, the “Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).

The PR participated with the horse CAPTAIN FUTURE 3 (FEI ID: 104OK61) (the “Horse”) at the CSIO5*- NC EUD1 - St Gallen (SUI) from 30 May to 2 June 2019 (the “Event”). As a member of the Austrian Equestrian Federation (the “AUT NF”), the latter being a member of the FEI, the PR was bound by the EADCM Regulations¹.

¹ The FEI Equine Anti-Doping and Controlled Medication Regulation, 2nd edition, changes effective 1 January 2019.

The Horse was selected for testing on 2 June 2019. Blood and urine samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.

Analysis of the urine sample revealed the presence of Diisopropylamine, a vasodilator used in the treatment of peripheral and cerebral vascular disorders in humans. Diisopropylamine is classified as a Banned Substance under the 2019 FEI Equine Prohibited Substances List.

The estimated concentration of Diisopropylamine in the Sample was in the range of 45-70ug/ml (microgram/microliter), which is considered a very high concentration, indicating that the substance was administered to the Horse i.e. through intravenous or intramuscular administration. Such high concentration is highly unlikely to be a result of contaminated feed/supplements.

By notification letter dated 7 August 2019, the FEI informed the PR, in his capacity as the Person Responsible, and the AUT NF of a violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Anti-Doping Rules (the "EADRs") based on the Laboratory's adverse analytical finding of Diisopropylamine in the Horse's sample collected at the Event. The PR was provisionally suspended, as of this notification letter in accordance with Art 7.4.1. EADR. (Exhibit 1)

On the same day, a Provisional Suspension of two months, namely until 6 October 2019, was imposed on the Horse.

In the notification letter of 7 August 2019, the PR was informed of his right to request the Horse's B sample to be analysed. The PR requested for the B sample analysis to be performed and such analysis confirmed the results of the A sample, namely the presence of Diisopropylamine. (Exhibit 3)

The PR asked for a preliminary hearing, which was held on 16 August 2019. The Tribunal maintained the provisional suspension of both the PR and the Horse. (Exhibit 4)

THE FULL REASONING OF THE CASE

2A. Science of 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.

It is acknowledged² that both DIPA (Diisopropylamine) and DADA (Diisopropylamine Dichloroacetate) are used and abused in equestrian sport i.e. horse racing and endurance, due to its alleged effects to increase the oxygen utilization and the cortical glucose uptake.³

The science of Diisopropylamine is somewhat unclear, but there are two commonly used compounds that are connected, namely Diisopropylamine and Pangamic Acid,⁴ also known as B15.

The FEI has consulted its scientific expert (Exhibit 18-19) on the connection between Diisopropylamine and Pangamic Acid/B15 who concludes:

"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."

² By the approved FEI laboratories, other equestrian governing bodies and national regulators.

³ <https://www.sciencedirect.com/science/article/abs/pii/S0306362388901292>

⁴ Another name for Pangamic Acid is B15.

The DIPA itself (in the salt form as DIPA Dichloroacetate or DADA) claims to be a separate ingredient from B15 (Pangamic Acid). But, there is a relationship between Pangamic Acid and Diisopropylamine Dichloroacetate as Diisopropylamine Dichloroacetate breaks down to Diisopropylamine plus a form of Pangamic Acid. Diisopropylamine Dichloroacetate is a precursor of Pangamic Acid, but also gives Diisopropylamine as a side product (See publication Exhibit 18).

Pangamic Acid has hence no confirmed chemical structure and the scientists cannot agree on its actual chemical structure. One of those structures can lead to the finding of Diisopropylamine, whereas the other cannot. The key is to identify the active ingredient of the source of Pangamic Acid on a case by case basis, to be able to conclude on the potential link between Pangamic Acid and Diisopropylamine.

Despite the name, B15 is not a true vitamin⁵ and there have been controversies over claims of its uses and benefits, leading some authorities⁶ to order that substances containing Pangamic Acid/B15 to be seized at import in order to prevent it from being distributed on the grounds of safety and lack of information on nutritional use.⁷

The FEI has also consulted the FEI approved LGC Laboratory for their experience with Diisopropylamine. The LGC confirmed that they are aware of a range of potential sources of Diisopropylamine in various products, and some of these products allege to contain either vitamin B15 or Pangamic Acid. LGC confirms that all of their other governing bodies (regulators) consider Diisopropylamine (DIPA) a positive substance and a number of labs worldwide have reported positives for this compound. This includes LGC and they have reported several positives in the last year for a range of equine and canine customers.

What can be concluded on the science of Diisopropylamine is that: Diisopropylamine is a precursor of Pangamic Acid; the chemical structure of Pangamic Acid varies; B15 is Pangamic Acid, but it is not a true vitamin and has no confirmed chemical structure; Pangamic Acid/B15 is an old school trick to get Diisopropylamine in to the horse under the name of a vitamin.

⁵ The last number of B vitamin is B-12.

⁶ Including the US FDA and its Canadian equivalent.

⁷ Wikipedia search on vitamin B it is clearly stated that the last type of vitamin B is B12. Further on "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." https://en.wikipedia.org/wiki/B_vitamins

The FEI has had several previous equine Anti-Doping Rule Violations involving the substance Diisopropylamine.⁸ In those cases it was established that Diisopropylamine was often found in products which were marketed to contain either B12/B15 vitamin or Pangamic Acid.

Moreover, in the aforementioned cases, it became apparent that Diisopropylamine products are used in particular in the Arabic region. The products are usually sold online and are being manufactured either in the Arabic region or the USA.

Some examples of products that have been confirmed to have contained Diisopropylamine are Tridenosen (50mg/ml), Top B15 +3, NV DADA 250 injection (250mg/ml), Heptenel injection (20mg/ml).

In order to warn the equestrian community of the associated risks with Diisopropylamine, several trade names have been added to the Prohibited List, (both online and in the FEI clean sport app, under the Prohibited Substance "Diisopropylamine").⁹

2B. How the substance entered the body of the Horse

The PR provided the details of the feeding regime of the Horse including feed and supplements (Exhibit 5):

Feed:

- Hay provided by the stable 3 times a day.
- Oats - 2 litres 3 times a day.
- Mash – 2 litres every second day.

Supplements:

- Global Medics: Top Competition
- Global Medics: Lacta Fort
- Global Medics: P-Block
- Nutrilabs: Equimotion

The Horse is fed hay, oats and mash on a daily basis. The supplements are not given on a daily basis but rather occasionally during the event periods.

⁸ Cases: 2018/BS09 TINA LA BOHEME; 2018/BS19 DOLLY PALO BLANCO, (showing products confirmed to contain Diisopropylamine) 2018/BS14 AL BAAS; 2018/BS07 H V CHAIRU (showing region of use).

⁹ Such as B-15, Cubisol, Dedyll, Diedi, Kalodil, Neovascoril, Nutricor, Oxy pangam, Vasculene, Pangamic Acid, Top B15+3, DADA 250, Tridenosen, Heptenel.

In fact the PR's Horse is following the same feed and supplement regime as the other horses in the stable. The above supplements are used by the stable on most of the horses, including horses of several top riders. Moreover, the horses in the stable have been tested on many occasions over the past years at high level international events and no other horse has tested positive.

The stable confirmed in a statement that they use the above mentioned supplements regularly on their horses, and also added that the manufacturer tests the products on a regular basis to assure that all their products do not contain prohibited substances. Considering this background, the stable is confident that such supplements are safe to use, and also purchased from a reputable source. (Exhibit 6)

The supplements *Top Competition* and *Lacta Fort* are vitamin products administered to the Horse to recover during an event, and not given on a daily basis. Before the Event in question, the Horse received these two supplements every evening the entire week before the Event, since the Horse had to compete in the Nations Cup on the Sunday 2 June 2019, which is considered as one of the more demanding and important competitions in show jumping.

Because of the complex scientific background of Diisopropylamine, the FEI contacted the manufacturer¹⁰ of the supplements used by the stable. and asked if they use Pangamic Acid/B15 in any of their products. They confirmed that they do not and did not (at any time) use Pangamic Acid or B15 in any of their products. Instead they use Betaine Anhydrous.¹¹ The also manufacturer further confirmed that samples of their supplements are sent for testing for prohibited substances to the LCH laboratory on a regular basis. Moreover, they explained that many top riders use their products without any doping problems. (Exhibit 7)

In addition, after the notification of the positive finding in this case, one of the stable veterinarians took urine samples from several horses being on this supplements regime, and analysed such samples at the Cologne anti-doping laboratory. None of the samples returned positive. (Exhibit 8)

¹⁰ *Global Medics*.

¹¹ Feed additive 3a920, belonging to the category of vitamins and pro-vitamins, admitted for all animal species without maximum dosage levels.

The stable management carefully choose and designated two experienced veterinarians (the "Stable Veterinarians") who are also FEI Official Veterinarians. One of them is in addition, the official veterinarian for the Italian National Team. (Exhibit 9)

The Stable Veterinarian confirmed in his statement that the high concentration found in the sample is very unlikely to be a result of contamination caused by supplements, but rather a result of intravenous or intramuscular administration. (Exhibit 9):

"Putting evidence based medicine, the manufacture's written statement that these products are negative at medication control/ drug screening and the lab results together, to me it is very unlikely that the positive result at the competition is caused by these oral supplements. Most likely the results can be caused by intravenous or intramuscular administration."

The FEI has further verified this presumption with the Veterinary Department, who confirms that it is a high concentration, which indicates that it has been injected intravenously. In addition, the FEI expert explains, that it is unlikely that the supplements is the source of the positive finding given that no other of the top horses from the stable on this supplement regime tested positive, despite being tested often at international events.

With this background, the FEI concludes that it is highly unlikely that the supplements are the source of the positive finding of Diisopropylamine in the Horse.

The PR is very careful about any treatments of his horses and he has strict procedures in place as enforced by the stables, such as no treatments of his horses is allowed without his permission, (as explained further under 2C below).

In addition, the PR keeps veterinary records of his horses, and in particular the Horse since it is his best horse, and such records confirm that the Horse has never been treated with Diisopropylamine. The only treatment of the Horse in the past year was an injection of the hock coffin joint with Betamethasone. (Exhibit 9)

Any need for treatment during events is performed by the designated treating veterinarian for the event. The PR is present for any treatment of his horses even during an event. In this case, the team veterinarian (the "Team Veterinarian"), was the designated veterinarian for the Event, in his role as the Austrian team veterinarian.

At the Event in question, the Team Veterinarian administered to the Horse several products as per his invoice, without the PRs knowledge, especially on the Sunday. The PR only learned about those administrations when he received the invoice which stated: (Exhibit 10)

"30.05.2019:

- 1 Dose PK 1000 4S
- 1 Dose AMP Paste

31.05.2019:

- 3 Pepticur

01.08.2019:

- 2 Injektion Intravenös
- 1 Injektion Hyaluronasäure 50mg Intravenös
- 1 x 3 Aufbauinjektionen Intravenös Inkl. Medikament

02.08.2019, **Spezielle Injektionen**

- 1 Injektion Hyaluronsäure 60mg Intravenös
- 1 x 2 **Aufbauinjektionen Intravenös, Inkl. Medikament**
- 1 Injektor Free to Fly
- 1 Injektor Amino Speed Injektor"

From the invoice it can be concluded that the Horse was treated every day during the Event and that some of the treatments were given intravenously and by injection.¹²

The invoice did however not provide any information as to the specification of the products or substances administered to the Horse. The FEI therefore contacted the Team Veterinarian for clarifications of the exact substances and products that were administered to the Horse during the Event and requested him to provide the medical record attesting such administration.

¹² The FEI would like to highlight in this context that it is not in accordance with FEI rules to perform injections (unless in the event of an emergency with a valid veterinary form) on the same day of competition, as stated in Art 1056 of the VRs.

"Article 1056 Same-Day Treatment

1. Horses must not be treated by injection with any substance not listed on the EPSL prior to the Competition on the day in which they compete. An exception is granted for classes starting at 18.00hrs or later where Horses may be treated by injection until 10.00hrs on the day of competition.

2. In the event of an emergency or on-going treatment, Horses may be treated with injectable Controlled Medication Substances or antibiotics on the day in which they compete. Prior authorisation must be obtained from the VD and GJ as described in Articles 1061 and 1062.

3. Same-day medication is subject to routine checks by the VC/VD, Stewards and other FEI Officials.

4. Disciplinary actions will be taken against PTVs who administer unauthorised same-day medication. Sanctions will be issued according to Annex VI and/or issued in accordance with the EADCMRs."

The Team Veterinarian explained that there were no veterinary record, (which is required for any treatment) but only the invoice, and also submitted some additional information as per below. (Exhibit 10-12)

"30 May 2019:

- 1 Box of PK 1000 4S for oral application (given by the groom)
- 1 Box of AMP Paste for oral application (given by the groom)

31 May 2019:

- 3 injectors of Pepticur for oral application (given by the groom)

01 June 2019:

- 2 injections i.v. = 500ml Duphalyte (2 injections because of the huge volume, were injected by a small catheter)
- 1 injection hyaluronic acid i.v. = 10ml Gel-50
- **3 Aufbau" injections i.v. = 20ml Biodil, 20ml Hemo 15, 20ml Vitamin C**

02 June 2019:

- 1 injection hyaluronic acid i.v. = 10ml Gel-50
- **2 Aufbau" injections i.v. = 20ml Biodil, 20ml Vitamin C**
- 1 injector of Free to fly for oral application
- 1 injector of Amino Speed for oral application"

The following products were submitted by the Team Veterinarian to have been administered to the Horse:

- PK 1000 4S - Equi 4S
- AMP Paste - Equiprovet BV
- Pepticur - Bayer Vital
- Duphalyte - Grovet
- Gel -50 - Equimed USA
- Biodil - Equimed USA
- Hemo 15 - Grovet (or Equimed)
- Vitamin C - Grovet
- Free to fly - Cento Fiori srl
- Amino Speed - Tecnozoo (Equiplanet)

The Team Veterinarian also explained that "The original Biodyl was not available for a long time. That is why we obtained the Biodil from Equimed USA. As declaration of the producer its a compounded product with the same ingredients as Biodyl." (Exhibit 12)

This statement is false since the two products have different components and ingredients. Biodyl (Exhibit 14) is a commonly used equine supplement produced in Europe and widely used at FEI events. However, Biodil, is a supplement with a similar name, but a different composition and produced by Equimed in the USA for export only. (Exhibit 13c)

The FEI has carefully looked into the details on each and every product that was submitted as administered to the Horse during the Event by the Team Veterinarian. (Exhibit 13a-13j)

The FEI found that there are several discrepancies in the annexed products (Exhibits 13a-j) compared to the above list of products, as submitted by the Team Veterinarian.

As examples:

- *AMP Paste - Equiprovect BV¹³* - annexed as a product from the brand *CEVA* (Exhibit 13b)
- *Duphalyte - Grovet*, annexed as a product from the brand *Zoetis* (Exhibit 13d)
- *Free to fly - Cento Fiori srl*, annexed as a product from the brand *Unica* (Exhibit 13e)
- *Hemo-15 - Grovet or Equimed*, annexed as a product from the brand *Equality* (Exhibit 13g)
- *Vitamin C - Grovet*, annexed as a product from the brand *Vetoquirol* (Exhibit 13j)

In addition, the PR explained¹⁴ in this context that: *"I want to say once again that the Team Vet treated the horse on Sunday (day of the Nations Cup) without my permission and without my knowledge. We still don't know what he administered. My groom was present during the treatment and had already made a statement. In addition, the treatment was not in a treating box."* In a mobile phone call, *"where he told me that he had given vitamin B (would fit Diisopropylamine) but then had to make some improvements and thought that he had given vitamin C (vitamin C is used for regeneration after the competition and not before the competition). Where I asked him about Sunday, he said in this call I shouldn't tell anyone, because it is not allowed to treat the horse on the same day."* The call was on the *"6th of September 2019. The fact that he treats a horse as a Team Vet without my knowledge and without permission, on the same day as*

¹³ <https://equiprovect.com/en/products/Registered-Drugs> Equiprovect, has several products containing Banned Substances.

¹⁴ In phone calls with the FEI and in person meeting in Geneva in December 2019.

the national price and without a treating box is a rule violation. He also sent you (FEI) a fake treatment bill that deviates from the real one."

In the information provided to the PR after the positive finding, the Team Veterinarian explained that he had only given some vitamins and amino acids i.e. *Free to fly* and *Amino Speed*. The however PR requested further information after receiving the invoice since it did not provide any details about the administration/use. The Team Veterinarian explained then in a phone call with the PR that he had also used some injected *Biodil*, *Hemo 15* and Vitamin B/C.

The Team Veterinarian also admitted in the call with the PR that he is well aware of that injections cannot be performed during competition, and especially that injections are not allowed on the same day as the horse is competing. In addition, the Horse was not treated in a treatment box and no veterinary forms were submitted for those treatments of the Horse at the Event.

Moreover the PR's groom submitted a statement where she confirms that she saw the Team Veterinarian injecting the Horse on the day of Sample Collection with 2-3 injections. (Exhibit 16)

"On Sunday about 1.5 hours before the beginning of the Nations Cup I saw that Dr. x (the Team Veterinarian) gave Captain Future 2-3 injections."

According to the veterinary experts, both the FEI veterinary department and the PR's veterinarians at the stable, the high concentration of Diisopropylamine found in the Horse's sample is highly likely caused by intravenous or intramuscular administration through injection, and contamination orally through feed or supplement is very unlikely.

The FEI concludes that the high concentration of Diisopropylamine in the Horse's sample, is highly likely to be a result of the injection of such substance. The FEI therefore also finds it very plausible that the positive finding of Diisopropylamine have been caused by one of the numerous injections performed by the Team Veterinarian during the Event.

There are two products that in particular raised concerns, namely *Biodil* and *Hemo-15*, manufactured by Equimed USA. It is the FEI's experience from previous doping cases, that Equimed USA products

have contained prohibited substances. In fact the brand openly sells products containing anabolic steroids, and other banned substances. (Exhibit 15)

Despite the fact that it has not been confirmed, exactly which products and the ingredients of such products, that the Treating Veterinarian injected the Horse with, the FEI concludes that it is both plausible and probable that the multiple injections of such products lead to the positive finding of Diisopropylamine in the Horse for the following reasons:

Firstly, the PR has excluded by provided evidence, all other ways of contamination/administration through his anti-doping procedures (as explained below under 2C), as practised at the stable also by other top-riders. Among other things by choosing feed and supplements from reputable sources for horses, using supplements that are routinely checked for prohibited substances by the producer, checking any administration of medication before use on the i.e. FEI clean sport app, and only allowing treatments to his horses to be performed by the veterinarians at the stable and the team veterinarian at the events, with his permission and in his presence.

Secondly, the FEI finds that there is enough evidence showing that the Team Veterinarian injected multiple injections on the same day as the competition, outside the treating box, without any treatment record or veterinary forms, in breach of the FEI Veterinary Regulations, and most importantly, without the knowledge of the PR.

Thirdly, the FEI is aware of that the Team Veterinarian injected several different products, whereas some of these products are labelled with the brand that has previously lead to positive findings of prohibited substances, and openly sells products containing banned substances such as anabolic steroids.¹⁵

With this background, the FEI is satisfied that the PR has established, on a balance of probabilities, that the Team Veterinarian, administered the prohibited substance through injection to the Horse during the Event, and therefore also established on a balance of probabilities how the Diisopropylamine entered the Horse's system.

¹⁵ With this background the FEI cannot exclude that one of the Equimed products contained the Banned Substance, Diisopropylamine, i.e. through Pangamic Acid/B15 or Diisopropylamine itself.

2C. Fault and Negligence for the Rule Violation

The rules are clear, Art. 10.4 EADR states that no fault and negligence for the rule violation does not apply in cases where: *"the Administration of a Banned Substance by the Person Responsible's veterinary personnel or member of the Support Personnel without disclosure to the Person Responsible. Persons Responsible are responsible for their choice of veterinary personnel and Support Personnel and for advising veterinary personnel and Support Personnel that Horses cannot be given any Banned Substance at any time."*

The FEI has carefully considered the circumstances of the case, and agrees to that that the PR has established that he bore no significant fault and negligence for the rule violation in accordance with Art. 10.5.2 EADR, based on his explanations below.

The PR is a young talent and a member of "A Young Riders Academy" 2019¹⁶, a talent program¹⁷ which consist of a one year program with both riding and education, including education about horse welfare, rules and regulations and anti-doping. The PR is therefore well acquainted with both human and equestrian anti-doping rules, and has also participated in an education day at the FEI HQs.

The PR is employed as a rider at the Schockemöhle stable. This is a very well known, professionally managed sales and competition stable with experienced professionals with a great knowledge of horse welfare, veterinary care, feed and anti-doping. Due to this fact, the PR also relies on the knowledge and experience of the management of the stable and has learned a great deal on how to handle horses on a daily basis.

The PR has gained the experience at the stable that, keeping it simple with good quality feed and some extra vitamins is enough also for high performing horses, and he never gave any additional treatments during the events except from the supplements as explained above for recovery during the competitions.

The Event in question, was one of the first events where the PR was included as a member of the Austrian national team. It was a great honour to be on the team and the PR had no reason to suspect that the Team Veterinarian would do something to his Horse. Being young and new on the team he did not suspect the Team Veterinarian to perform any treatments without his knowledge and presence.

¹⁶ <https://www.ridersacademy.eu/riders.aspx?anno=2019>

¹⁷ <https://www.ridersacademy.eu/>

In fact, the PR had been at previous events with this Team Veterinarian, where all treatments were performed with his knowledge and in his presence. The PR was very surprised to learn that the Team Veterinarian had treated the Horse on the Sunday, without his knowledge, with several injections and especially that he was willing to do so during the Event. The PR was therefore unaware of some of the treatments given to the Horse and only realised once he received the invoice from the Team Veterinarian.

The PR did however notice that on the Sunday 2 June 2019, his Horse did not behave like normal, on the contrary, it felt weak and tired, despite the different treatments given by the Team Veterinarian.

The PR explained his daily procedures, at home and at events as follows:

- Firstly, he highlights that he has learned throughout his experience at the Schockemöhle stable that horses should be feed as normal and natural as possible, only hay, oats and some mash, except from a few additional well-checked supplements after or during competition periods for recovery.
- He has also learned from the stable management to only work with veterinarians who are familiar with the rules (i.e. FEI Veterinarians)
- If products are approved by the professional stable management of the Schockemöhle stable which is very thorough, he relies on this confirmation, especially given their attitude to doping. In addition, he also checks the products himself and with his veterinarian to assure the safe use.
- The PR, always asks his veterinarians and searches the internet and the FEI clean sport app before the use of any products given to his horses.
- Further, confirms that such use is in accordance with the rules, usually with one of the stable veterinarians, and at competition with the team veterinarian.
- Also checks with other horse professionals and fellow riders, for advice on any feed/product, used on his horses.
- In his control of a product before use, he reads the labels and searches the products on the internet, in order to try to

find out the ingredients and check them for prohibited substances on the FEI clean sport app.

- He further, instructs his veterinarian about the competition schedule to ensure that no medication (if used) is used, which is not allowed in competition, i.e. withdrawal times.
- The PR also, carefully instructs his groom and the stable personnel about the risk of prohibited substances, and make sure they are aware that the horses should only get in contact with the products that have been approved for use by him as PR. His groom and the personal at the stable are instructed to not use any product, feed, ointment etc. on his horses without the PR's approval.

The FEI has carefully considered the circumstances of the case, and agrees that that the PR has established that he bore no significant fault and negligence for the rule violation, in accordance with Art. 10.5.2 EADR. According to this rule, the sanction may not be less than one-half of the period of Ineligibility otherwise applicable (here 2 years for Banned Substance case), namely the minimum for such violation is 1 year.

The FEI has looked at similar case law and finds the facts of this case, very similar to the case of 2018/BS19 DOLLY PALO BLANCO.¹⁸ In that case, the team veterinarian had administered the Prohibited Substance without the knowledge of the PR on the last day of competition, despite the instructions not to administer anything to the horse without the PRs knowledge and presence, and the PR was suspended for 1 year.

In the case at hand, the PR has strict procedures in place as described above and is well acquainted with the anti-doping rules. Despite this the Team Veterinarian administered his horse with several injections without his knowledge on the last day of the Event. The PR could not reasonably have known or suspected that the Team Veterinarian would do so without his knowledge, especially given that he had been present all other times the Horse was treated by this veterinarian. He therefore trusted this procedure would be followed for all treatments of his Horse during the Event. Considering those circumstances, the FEI finds that the PR has showed that he bore no significant fault and negligence for the rule violation and in the lower range. The proportionate sanction for the EADR violation in the present case shall therefore be one (1) year ineligibility period.

¹⁸ <https://inside.fei.org/system/files/2018-BS19%20-%20DOLLY%20PALO%20BLANCO%20-%20Final%20Tribunal%20Decision%20-%2011%20February%202019.pdf>

The AUT NF has removed the Team Veterinarian as a team veterinarian after the incident and the FEI is investigating to open separate disciplinary proceedings against him in his capacity of Support Personnel. (Exhibit 17)

2D. Conclusions of the Parties

Based on the evidence and documentation supplied by the PR and the scientific conclusions, the parties conclude that it is highly likely that the presence of Diisopropylamine is a result of the numerous intravenous and/or injection administered by the Team Veterinarian during the Event.

The parties concludes that the criteria for the application of Article 10.5.2 of the EAD Rules has been met and that the PR has established:

- (a) on a balance of probabilities, established how the Diisopropylamine entered the Horse's system;
- (b) that he did not know or suspect, and could not reasonably have known or suspected that the Team Veterinarian would administer a Banned Substance to his Horse during competition;
- (c) in consequence the FEI is satisfied that the PR established that he bore No Significant Fault or Negligence for the Rule Violation.

Article 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval."

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, Article 8.1 of the EADCMRs, as well as Article 18 of the IRs.
- 5.2 As a member of the Austrian National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts – on a balance of probability - that the PR has established the source of the Prohibited Substance, namely that the Team Veterinarian administered the Prohibited Substance through injection to the Horse during the Event.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Significant Fault or Negligence for the rule violation.
- 6.3 Following from Article 10.5.2 of the EAD Rules, where a PR establishes that he bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) may be reduced up to one-half.
- 6.4 The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof with regard to the source of the Prohibited Substance, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not take into account previous case law.
- 6.5 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS35 CAPTAIN FUTURE 3.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Felix Koller, concerning the case 2019/BS35 CAPTAIN FUTURE 3 is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL



Mr. José A. Rodríguez Álvarez, one member panel