

**DECISION of the FEI TRIBUNAL**

**dated 6 October 2020**

**(FEI Case number: FEI 2019/CM13-WALFAN)**

**FEI Tribunal Hearing Panel:**

**Ms. Constance Popineau**

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**FEI Tribunal Reference:** C20-0050

**Horse/Passport:** WALFAN /104ZY27/KSA

**Person Responsible/ID/NF:** ALI ALHASHEM /10020258/KSA

**Trainer/ID/NF:** RAFEA ALAMRI /10102507/KSA

**Event/ID:** CEI1\* 110 - Al Qaseem (KSA), 2019\_CI\_0188\_E\_S\_01

**Date of Event:** 09/03/2019

**Prohibited Substances:** Oxyphenbutazone, Phenylbutazone

**Bar Code Nos.:** 5581236

## **I. Factual background**

- 1.** Mr Ali Alhashem (FEI ID 10020258), the Person Responsible (hereinafter called "**the PR**"), is a rider for Saudi Arabia.
- 2.** The Fédération Equestre Internationale (hereinafter called "**the FEI**" 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).
- 3.** The PR participated with the horse WALFAN, in the event CEI1\* 110 - Al Qaseem (KSA) on the 9 March 2019.
- 4.** Blood samples were collected from the horse on the 9 March 2019 and sent to the FEI approved Laboratory, the Hong Kong Jockey Club Racing Laboratory ("hereinafter called **the Laboratory**") in Sha Tin, Hong Kong, CHN, for analysis. The samples were divided into an A Sample and B Sample.
- 5.** The result of the analysis of the Horse's A sample reported an adverse analytical finding for Oxyphenbutazone and Phenylbutazone. Oxyphenbutazone and Phenylbutazone are anti-inflammatory drugs with analgesic effect. Oxyphenbutazone is a metabolite of Phenylbutazone. The substances are classified as Controlled Medication Substances under the FEI 2019 Equine Prohibited Substances List (hereinafter called "**the FEI List**").
- 6.** Following the positive findings of Oxyphenbutazone and Phenylbutazone (prohibited substances under the FEI list), the PR was formally notified of the positive findings and the potential Controlled Medication Rule Violation on the 2 April 2019. No provisional suspension was issued to the PR by the FEI in this instance.
- 7.** However, at the time of the notification the Horse was already serving a provisional suspension from 4 March 2019 until the 3 May 2019.
- 8.** The PR was entitled to request the B sample to be analysed but did not exercise this right nor challenge the results of the A sample.
- 9.** To date the PR has not requested a hearing or provided a reason for the findings of Oxyphenbutazone and Phenylbutazone.

## **II. Procedural background in front of the FEI Tribunal**

- 10.** By email dated 9 September 2020, the FEI submitted their response to the FEI Tribunal for the appointment of a Hearing Panel to issue a decision in respect of this case.
- 11.** On the 22 September 2020, the Parties were informed of the composition of the Hearing Panel appointed to address the present matter. Furthermore, the PR was granted with the opportunity to respond to the FEI's request. The PR was informed that, should he fail to comply with the deadline provided, the FEI Tribunal would decide the case using the file in its possession. Finally, the Parties were informed that they had the right to request for oral statements to be heard.
- 12.** On the 23 September 2020, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.
- 13.** On the 23 September 2020, the PR, via the Saudi Arabian Equestrian Federation, also confirmed to the Tribunal that they had no objections to the composition of the Hearing Panel.
- 14.** Neither Party requested for oral statements to be heard.

### **III. Considering**

#### **A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:**

Statutes 24<sup>th</sup> edition, effective 19 November 2019 ("**Statutes**"), Arts. 1.5, 38 and 39.

General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, changes effective 1 January 2020.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1 January 2020.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**B. Person Responsible:** Mr Ali Alhashem.

**C. 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 lunge shall be an additional Person Responsible."

**ECM Rules Art. 2.1.1:** "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

**ECM Rules Art. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation.

#### **IV. The Submissions- FEI Response:**

- 15.** On 9 September 2020, the FEI's submitted its response to the Tribunal which stated that:
  - a. Under Article 3.1 of the ECM Rules the FEI shall have the burden of establishing all the elements of the ECM Rule violation charged, to the comfortable satisfaction of the FEI Tribunal.

- b. The elements of an Article 2.1 violation are straightforward. 'It is not necessary that intent, fault, negligence or knowing Use be demonstrated to establish an ECM Rule violation under Article 2.1'. Instead it is a 'strict liability' offence, established simply by proof that a Banned Substance was present in the Horse's Sample.
- c. The results of the analysis of the A Sample taken from the Horse at the Event confirming the presence of Oxyphenbutazone and Phenylbutazone in the Horse's Sample constitutes sufficient proof of the violation of Article 2.1 of the ECM Rules.
- d. In any event, the PR does not dispute the presence of Oxyphenbutazone and Phenylbutazone in the Horse's Sample. Therefore, the FEI respectfully submits that it has discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.
- e. Where a Prohibited Substance is found in a horse's sample, there is a clear and unequivocal presumption of fault under the ECM Rules. Article 10.2 of the ECM Rules provides that a PR with no previous EADCMR offences who violates Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six-months, unless he/she can rebut the presumption of fault. To rebut this presumption, the rules specify that he/she must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability):
  - i. How the Prohibited Substances (in this case Oxyphenbutazone and Phenylbutazone) entered the horse's system; and
  - ii. That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had administered to the horse (or the horse's system otherwise contained) a Controlled Medication Substance (in which case, the presumptive six-month period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ECM Rules); or
  - iii. That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive six-month period of ineligibility may be reduced depending on the degree of fault, pursuant to Article 10.5 of the ECM Rules).
- f. If the PR fails to discharge this burden, the presumption of fault stands, and the six-month ban under Article 10.2 applies.

**16. The 'threshold' requirement- proving how the Oxyphenbutazone and Phenylbutazone entered the Horse's system:**

- g. The ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and the CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system.
- h. Indeed, this requirement must be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.
- i. The FEI submits in this context that the PR must provide clear and convincing evidence that proves how the Oxyphenbutazone and Phenylbutazone have entered the Horse's system.
- j. In this case, the PR has not provided any reply to the charges brought against him by the FEI. No explanation has been offered on how the Oxyphenbutazone and Phenylbutazone entered the horse's system, consequently the FEI submits that the PR has not established how the substance entered the body of the horse.

**17. Fault/Negligence for the rule violation:**

- k. To evaluate the PR's degree of Fault and Negligence, it is necessary to look at the definitions of fault and the factors to be taken into *consideration*.

*"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible 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 degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour." (Emphasis added)*

*"No fault - The Person Responsible 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."*

*"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... the Athlete must also establish how the Prohibited Substance entered the Horse's system."*

- l. In terms of the degree of Fault and Negligence by the PR for the rule violation, the starting point of any evaluation is the "personal duty" of the PR following from Article 2.1.1 of the ECM Rules, i.e. his personal duty to ensure that "no Controlled Medication Substance is present in the Horse's body".
- m. The FEI also submitted that through the FEI Clean Sport programme and the "Athlete's Guide"<sup>1</sup> has gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. The Athlete's Guide gives the following information to Athletes:
- n. **"What are my Responsibilities?"**

*As an Athlete, you have a responsibility to know, understand, and follow the EADCM regulations. But you do not have to be a legal expert to have this basic understanding. If you are the rider, driver, or vaulter of the horse, then you are the Person Responsible for the horse that will be held accountable for an EADCM regulation violation. This is true even if you are riding, driving, or vaulting a borrowed horse! Therefore, you need to be very careful about who you trust to care for your horses and even more so who you trust to treat your horses. In the case of a borrowed horse, you should make sure you are comfortable with the horse's treating history before competing with it. In the regulations, if a member of your support personnel does something that leads to an EADCM regulation violation, that person may be held accountable, but so will you. For example, if you rely on your veterinarian who tells you that a substance can be used on your horse without violating any rules, and later you find out that your horse has tested positive for a Prohibited Substance, you will be in violation of the rules even though you were relying on your veterinarian. Similarly, if a groom who is working for you mistakenly gives one of your competition horses medication intended for an ill horse and the competition horse later tests positive, you will be in violation of the regulations (and your groom may be also.)"*

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<sup>1</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

o. In this context the FEI highlighted the Glenmorgan decision<sup>2</sup> wherein CAS stated that the Athlete's Guide 'contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form' describing the Athlete's Guide as "required reading".

p. Furthermore, the Sole Arbitrator in case *Mohammed Shafi Al Rumaithi v. FEI*<sup>3</sup> endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, stating:

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

*The Sole Arbitrator respectfully agrees".*

q. In the Glenmorgan<sup>4</sup> case, the Panel confirms that the rider is 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."*

r. In light of the stated CAS jurisprudence on this point, the FEI submits that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for the horse's positive test results is a reasonable and justifiable stance.

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<sup>2</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

<sup>3</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI (para 57)

<sup>4</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI (para 203 & 209)



- s. Further, as the CAS jurisprudence confirms, the rider is, no matter what, the Person Responsible for the horse he is competing with and cannot delegate that duty to another person. He therefore has an obligation to ensure that no Prohibited Substance enters the horse's system and must act with utmost caution to fulfil this duty.
- t. In the case at hand, the FEI confirm that the PR has not provided any reply to their Notification Letter of 2 April 2019, despite several reminders. The PR has therefore not discharged his burden of proving how Oxyphenbutazone and Phenylbutazone entered the Horse's system. Furthermore, the FEI do not possess any conclusive evidence or information regarding how the Prohibited Substance entered Horse's body from other sources.
- u. Due to the PR's inactiveness in providing any explanation of the circumstances that led to this Equine Controlled Medication Rule Violation the FEI cannot assess the level of the PR's Fault or Negligence and consequently no elimination or reduction of the period of Ineligibility in this case is possible under Article 10.4 and Art. 10.5 of the ECM Rules.
- v. The FEI therefore respectfully submits that the applicable period of Ineligibility imposed on the PR in the present case shall be six (6) months in accordance with Article 10.2 of the ECM Rules.

**18. For the reasons set out above, the FEI respectfully requests that the FEI Tribunal issue a decision:**

- i. upholding the charge that the PR has violated Article 2.1 of the ECM Rules;
- ii. imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the final decision;
- iii. fining the PR in the amount of three thousand five hundred (3'500) CHF; and
- iv. ordering the PR to pay the legal costs of one thousand five hundred (1'500) CHF that the FEI has incurred in these proceedings.

**V. Jurisdiction**

- 19.** The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs. The PR is a member of the Saudi Arabian Equestrian Federation, and as such is subject to the FEI Equine Controlled Medication Rules.

## **VI. The Decision**

- 20.** Pursuant to Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A sample. The Tribunal is satisfied that the laboratory tests and reports are accurate for the adverse analytical finding of Oxyphenbutazone and Phenylbutazone. The Tribunal takes note that the PR did not challenge the accuracy of the test results and the substance therein. Oxyphenbutazone and Phenylbutazone are anti-inflammatory drugs with analgesic effect. Oxyphenbutazone is a metabolite of Phenylbutazone. The substances are classified as Controlled Medication Substances under the FEI List.
- 21.** Accordingly, the FEI has established a breach of an ECM rule violation in line with the burdens and standards of proof under Article 3 of the ECM Rules.
- 22.** Pursuant to Article 10.2.1 of the ECM Rules the period of Ineligibility for an Article 2.1 violation, i.e. the Presence of a Controlled Medication Substance in a Horse's sample (as in this case), shall be six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the ECM Rules.
- 23.** However, the Tribunal takes note that PR made no attempt to provide any explanation for the adverse analytical finding of Oxyphenbutazone and Phenylbutazone. Thus, the Tribunal finds that none of the criteria have been met to establish on the balance of probability how the Prohibited Substances entered the Horse's system.
- 24.** In the absence of establishing on the balance of probability how Oxyphenbutazone and Phenylbutazone entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the Rule Violation.
- 25.** In line with previous FEI decisions and CAS case law, the Tribunal finds that the PR is responsible for the Horse's status when riding at an Event and this includes all aspects of preparation both mentally and physically for the Horse.
- 26.** Consequently, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, i.e., six (6) months pursuant to Article 10.2 of the ECM Rules is possible.

- 27.** The Tribunal takes note that the horse WALFAN was already serving a provisional suspension from 4 March 2019 until 3 May 2019 – which prevented the horse from participating in the Event on the 9 March 2019.
- 28.** The Tribunal also noticed that the Trainer, RAFEA ALAMRI, was the same Trainer when the horse WALFAN, previously tested positive at an Event on the 2 February 2019 for banned substances and controlled medication substances.

## **VII. Disqualification**

- 29.** Pursuant to Articles 9 and 10.1.2 of the ECM Rules, the combination of the PR and the Horse were prevented from participating at the Event due to the Provisional Suspension the Horse was already serving. Consequently, no disqualification of results is necessary in the present matter.

## **VIII. Sanctions**

- 30.** The Tribunal imposes a six (6) month period of Ineligibility on the PR for the said rule violation, pursuant to Article 10.2 of the ECM Rules;
- 31.** In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
  - a. upholds the charge that the PR has violated Article 2.1 of the ECM Rules;
  - b. imposes a period of Ineligibility of six (6) months on the PR, the period of the Provisional Suspension, effective from 6 October 2020 until the 5 April 2021;
  - c. the PR is fined in the amount of three thousand five hundred (3500) CHF; and
  - d. the PR is ordered to pay the legal costs of one thousand five hundred (1,500) CHF that the FEI has incurred in these proceedings.
- 32.** No PR 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 authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
- 33.** Where a PR 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 10.11.13 of the ECM Rules).

- 34.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the parties concerned.
- 35.** In accordance with Article 12 of the ECM 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.

**FOR THE FEI TRIBUNAL**



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**Ms. Constance Popineau, One-Member Panel**