DECISION of the FEI TRIBUNAL
dated 23 June 2022

CASE NUMBER: C22-0006

Mr. ROBERTO GOTTARELLI (APR)

FEI Tribunal Hearing Panel:
Armand Leone, Jr. (USA)

FEI Tribunal Reference: C22-0006

FEI Case Number: 2020/BS11

Person Responsible/ID/NF: Giuseppe DE LUCA/10047635/ITA
Additional Person Responsible: Roberto GOTTARELLI /10051043/ITA
Horse/Passport: HALO/105ZA57/ITA
Event/ID: CSI2*- Oliva (ESP), 2020_CI_1243_S_S_02
Date of Event: 29.09-04.10.2020
Prohibited Substance: Stanozolol
Bar Code No.: 5591596
I. Introduction

1. This FEI Tribunal Decision pertains to: FEI CASE 2020/BS11 HALO. On 9 March 2021, the FEI notified Mr Roberto Gottarelli of the respective charges that a violation of Article 2.1 of the Equine Anti-Doping Rules\(^1\) (the EADRs) - the Presence of a Banned Substance and/or its Metabolites or Markers in a Horse’s Sample had occurred. The FEI notified Mr Gottarelli in his capacity as the Additional Person Responsible (the APR).

Applicable Rule Provisions:

Statutes 24\(^{th}\) edition, effective 17 November 2021 (“Statutes”).

General Regulations, 24\(^{th}\) edition, 1 January 2020, updates effective 1 January 2022 (“GRs”).

Internal Regulations of the FEI Tribunal, 3\(^{rd}\) Edition, 2 March 2018 (“IRs”).

Veterinary Regulations, 14\(^{th}\) edition 2018, updates effective 1 January 2020 (“VRs”).

FEI Equine Anti-Doping and Controlled Medication Rules, 2nd Edition, effective 1 January 2020 (“EADCMRs”).

II. Factual background

2. In accordance with Article 118.3 of the FEI General Regulations, Mr Gottarelli (FEI ID 10047635) was considered the APR since he made a relevant decision about the Horse when he treated it with a Banned Substance.

3. The Fédération Equestre Internationale (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, Para-Equestrian).

4. The APR was deemed the Support Personnel for the horse HALO (FEI ID: 105ZA57) (the Horse) in the CSI2* - Oliva, in Spain, between 29 September to 4 October 2020 (the Event). The Person Responsible

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\(^1\) FEI Equine Anti-Doping and Controlled Medication Rules 2nd edition, effective 1 January 2020.
(the PR), Mr. Giuseppe DE LUCA (FEI ID: 10046681), participated in this Event.

5. The APR is a registered FEI Permitted Treating Veterinarian (PTV), and also the registered National Head Veterinarian (NHV) of San Marino.² As a PTV, a NHV and a member of Italian Equestrian Federation and San Marino Equestrian Federation (the ITA-NF and the SMR-NF) both being a member of the FEI, as such the APR was bound by the EADCMRs.

6. The Horse was selected for testing on 3 October 2020. Blood samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory (the LGC), in Fordham, Cambridgeshire, UK, for analysis.

7. The Laboratory analysed the Horse’s A Samples, and the analysis of the blood sample revealed the presence of Stanozolol. Stanozolol is an anabolic steroid used to improve performance by promoting muscular development. The substance is classified as a Banned Substances under the FEI Equine Prohibited Substances List and prohibited at all times.

8. The positive findings of Stanozolol in the Horse’s sample gave rise to an Anti-Doping Rule Violation pursuant to Article 2.1 of the FEI Equine Anti-Doping Rules (the EADRs).

9. By Notification Letter dated 9 March 2021, the FEI informed the APR, in his capacity as the Support Personnel through the ITA-NF of an Equine Banned Substance Rule Violation of Article 2.1 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse’s Sample) of the EADRs based on the Laboratory's adverse analytical finding of Stanozolol in the Horse's Sample collected at the Event. In addition, the use of Stanozolol at any time constitutes an Anti-Doping Rule Violation (ADRV) pursuant to Article 2.2 of the EADRs.

10. In accordance with Article 7.4.1 of the EADRs the APR was provisionally suspended (as of the date of the Notification Letter) as the Rule Violation involved an Adverse Analytical Finding for a Banned Substance³.

11. In accordance with Article 7.1.6 of the EADRs the PR⁴ was informed of his right to request a B Sample analysis of the positive sample. The PR did not exercise his right for a B Sample analysis, and it was therefore deemed to be waived.

III. Procedural background in front of the FEI Tribunal

² https://data.fei.org/Person/Detail.aspx?p=ED27ACC5E3DBF4E60015D62DD0C3D3C7
³ FEI EADRs Article 7.4.1 (i).
⁴ FEI Response, Exhibit 1A, Notification Letter dated 11 November 2020, FEI to PR.
12. By email dated 2 February 2022, the FEI submitted to the FEI Tribunal (the Tribunal) the FEI’s Response in this case and requested for the Tribunal to appoint a panel member to adjudicate on this case.

13. On 18 February 2022, the Parties were informed of the nominated hearing panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel by 23 February 2022.

14. On 18 and 21 February 2022, the FEI and the APR (respectively) confirmed they had no objections to the composition of the Hearing Panel.

15. On 9 March 2022, the APR requested an extension of 4 weeks (until 7 April 2022) to submit his Reply to the FEI’s Response and also requested for an oral hearing before the Tribunal.

16. On 10 March 2022, the Tribunal considered these requests and granted such an extension until 7 April 2022 and agreed to hold an oral hearing in accordance with Article 25 of the FEI Internal Regulations 2018.

17. On 6 April 2022, the APR submitted his Reply to the Tribunal.

18. On 15 April 2022, the Tribunal wrote to all Parties and confirmed that an oral hearing would take place on 17 May 2022 at 2pm CET by videoconference (via Cisco WebEx).

IV. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

In the following, a summary of the written and oral submissions made by the Parties concerning the merits of the case is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

APR:

19. The APR submitted in the case of the PR as follows5:

“*The horse HALO (FEI Passport n. 105ZA57) displayed a fragility in the articular cartilage of the Left Tarsal Joint.*

*Classical therapies based on hyaluronic acid and PRP, together with rest, showed partial response.*

*In order to physiologically stimulate the activity of cartilage cells, I proposed to Mr. De Luca the utilisation of SUN GATE - Stanozolol by*

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5 FEI Response 2 February 2022, Exhibit 4 (statement of the APR)
means of intra-articular injection - three times a week, for a total of four injections.

In that occasion, I specified to the client that this medicine, if administered through intra-articular infiltrations, normally would not have put him at any risk profile relating to the EAD list drafted by FEI, on the basis of both the known scientific literature and my professional experience on dozens of cases, which I have personally treated in the last few years.

The efficacy of this therapeutic choice was already manifested after the second intra-articular injection.

The last injection was performed on September 21st, 2020.

Thus, the usage of Stanozolol on the horse HALO falls within a precise therapeutic plan, rationally programmed, well aware of both the nature of the molecule and its detection time concerning its intra-articular utilization, as documented in literature, where a maximum withdrawal period of few days is demonstrated.

The copy of the electronic prescription - thus unfalsifiable - drafted on June 17th 2020 and the studies regarding the use of the molecule through the intra-articular way, with the relative detection time, document the transparency of the therapeutic choice in respect of the FEI regulations.

The positivity of the test for the drug does not derive from negligence or an improper use of Stanozolol through the systemic way, which is banned, but from a therapeutic plan built to improve the wealth of the horse, which was not responding to conventional treatments at an articulation point, in compliance with the detection time known in scientific literature for this curative procedure.

I attach a copy of the electronic prescription - unfalsifiable-, which documents the purchase of the specific product, the date, the name of the patient the therapy was designed for as demanded by the Italian law, and the works concerning the utilisation of Stanozolol through the intra-articular way with the blood detection time of the drug.”

20. The APR also submitted further evidence\(^6\) in the case against him which can be summarised as follows:

- Initially, the APR considered that the Horse could not be regarded as a “competition horse”;

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\(^6\) FEI Response 2 February 2022, Exhibit 5-7 (additional exhibits APR)
He knew that the Horse had not competed for several months when he was asked by the PR to treat the Horse’s injury;

This knowledge completely influenced the choice of treatment for the Horse’s specific injury, namely he chose Sungate.

At the time of the treatment, the APR could not have expected to believe that the Horse was indeed competing or would be participating in a competition any time soon;

Therefore, the APR did not consider the Horse a “competition horse” at the moment of the treatment. The treatment with Sungate was hence not performed on a competition horse, but on a non-competition horse in his view.

21. Moreover, the APR claimed that the treatment performed on the Horse was only part of a therapeutic plan as it was the duty of a veterinarian, to improve the Horses welfare by treating an injury. The APR also submitted the following reasons for his administration of the treatment in question:

- That he was acting in the best interest of the Horse, and he had chosen the most effective treatment under these circumstances, therapeutic cycles with Sungate;

- The treatment with Sungate is authorised by the Italian Ministry of Health in Italy to be used as treatment for similar injuries;

- That as a veterinarian, he is expected to do everything in his power to ensure that the animal he is dealing with is properly treated when previous other treatments were not working. To achieve this, he believed that using Sungate, a medication that was not only approved and commonly used, but also proved to be effective, was just part of carrying out his professional duties correctly.

- The APR submitted that based on the scientific evidence, the APR stated that Sungate could successfully treat the types of injury the Horse was suffering.

- That the APR did not treat the Horse with the aim of enhancing its performance and in this regard he drew the distinction between a ADRV in the circumstances of a competition Horse versus administering a necessary treatment to an animal and such comparison must be emphasised.

- The APR also noted that Sungate injected intra-articularly had a curative effect and was utterly beneficial for a Horse. In addition, the APR confirmed did not administer Stanozolol by means of an
intramuscular injection. The latter could be deemed an ADRV but this was not the premise under which the substance was administered in this case, therefore it should not be regarded as being the same.

22. Finally, the APR also requested that in the light of the exceptional circumstances of this case that the Tribunal refrain from imposing any financial penalty/fine upon him.

FEI:

a) Violation by APR - Article 2.1 and Art 2.2 of the EAD Rules.

23. The FEI submitted that Article 3.1 of the EADRs makes it the FEI’s burden to establish all of the elements of an EADR violation charge, to the comfortable satisfaction of the FEI Tribunal.

24. The FEI noted that the elements of an Article 2.1 violation are straightforward. 'It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1'. Instead, it was a 'strict liability' offence, established simply by proof that a Banned Substance was present in the Horse's Sample.

25. As such the FEI submitted that the results of the analysis of the A Sample taken from the Horse at the Event confirming the presence of Stanozolol constituted sufficient proof of the violation of Article 2.1 of the EADRs.

26. In any event, the FEI noted that the APR did not dispute the presence of Stanozolol in the Horse’s Samples. Accordingly, the FEI submitted that it discharged its burden of establishing that the APR had violated Article 2.1 of the EADRs.

27. In addition, the FEI stated that use of Stanozolol at any time constituted an ADRV under Use of a Banned Substance pursuant to Article 2.2 of the EADRs. In this regard, the FEI noted that the APR explained that he used a Stanozolol treatment on the Horse, and therefore the FEI submitted that they had discharged its burden of establishing that the APR had violated Article 2.2 of the EADRs.

b) The Presumption of Fault

28. The FEI submitted that Article 10.2 of the EADRs provided that a PR/APR with no previous doping offences who violated Article 2.1 of the EADRs was subject to a period of Ineligibility of two years, unless he was able to rebut the presumption of fault. In order to do this, the rules specify that
he must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability\(^7\)):

- How the Prohibited Substances (here, Stanozolol) entered into the horse's system; and

- That he bears 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 (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or

- That he bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules).

29. The FEI submitted that if the APR failed to discharge this burden, the presumption of fault stands, and the two-year ban under Article 10.2 of the EADRs would be applied.

c) The 'threshold' requirement: proving how the Stanozolol entered into the Horse's system

30. The FEI noted and the EADR stipulate that the jurisprudence of the FEI Tribunal and the CAS is very clear: that it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the APR proved how the substance entered into the Horse's system.

31. They furthered that this requirement must be strictly applied because without such proof it would be impossible to assess the APR’s degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.

32. The FEI submitted in this context that the APR must provide clear and convincing evidence that explained how the Stanozolol have entered the Horses’ system.

33. The FEI noted that the APR had clearly explained how he administered the Stanozolol to the Horse via the product Sungate. Consequently, the FEI submitted that it was satisfied that the APR had established how the Prohibited Substance entered the body of the Horse and accordingly the “threshold requirement” was fulfilled in this case.

\(^7\) Art 3.1 EADR
d) **Fault/Negligence for the rule violation**

34. In terms of the degree of Fault and Negligence by the APR for an ADRV, the FEI submitted that the starting point of any evaluation is the "personal duty" of the APR following from Article 2.1.1 of the EADRs, i.e., his personal duty to ensure that "no Banned Substance is present in the Horse’s body”.

35. Further, the FEI explained that it was necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCMRs:

"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.”

36. The FEI also highlighted that Banned Substances should never be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse\(^8\). In the case of Stanozolol, the FEI stated it was a well-known and historic doping substance and one of the most

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\(^{8}\) VRs Article 1055.
known abusive anabolic steroids in the equine industry, and as such the FEI operated a zero-tolerance for this substance in a competition horse.

37. The FEI described Stanozolol as an anabolic steroid which stimulated the formation of red blood cells and was used to improve performance by promoting muscular development. They further noted that it was no longer considered to have any justification in modern medicine but was still used and abused as a performance enhancing drug in both human athletes and horses. The FEI noted that Stanozolol became well known after Canadian athlete Ben Johnson tested positive for it after winning Olympic gold in Seoul 1988, thus it has been on the WADA Prohibited List for human athletes, since the very first version.

38. Consequently, the FEI submitted that Stanozolol was a Prohibited Substance under every governing and regulatory body of equestrian sport, due to its high potential for abuse, including the FEI. The FEI List Group had also strongly expressed that the “risk for abusive usage of Stanozolol to enhance performance remains very high, as seen in other sports.” In addition, its use in micro-dosages in cycles over several months and the result of enhancement of the performance in both human and horses is astonishing.

39. The FEI noted that Sungate was a product developed by an Italian company ACME, produced and licensed for equine use in Italy. They noted that even if the product was intended to assist in the treatment and management of joint disease in horses, the adverse effects and risks could not be ignored, since Sungate contains Stanozolol.

40. The FEI submitted that they were familiar with many cases involving the use of Stanozolol through products like Sungate (or Stargate) performed by veterinarians especially in Italy, who all claim it was used solely for

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9 Scientific Expert Peter Kallings has summarised the following facts on Stanozolol.
3 IFHA, International Federation of Horseracing Authorities. [INTERNATIONAL AGREEMENT ON BREEDING AND RACING AND APPENDIXES Article 6 (RACING) - PROHIBITED SUBSTANCES](http://www.ihorseracinginfed.com/default.asp?section=1ABRW&area=2#A6)
6 BHA, British Horseracing Authority, [RESULT AND REASONS OF A DISCIPLINARY PANEL HEARING (MAHMOOD AL ZAROONI)](http://www.britishhorseracing.com/press_releases/result-and-reasons-of-a-disciplinary-panel-hearing-mahmood-al-zarooni/)
7 [STATEMENT ON GERARD BUTLER DISCIPLINARY FINDINGS FROM BHA](http://www.britishhorseracing.com/press_releases/statement-on-gerard-butler-disciplinary-findings-from-bha/)
8 BHA, British Horseracing Authority [BHA STATEMENT REGARDING VETERINARY PRODUCT SUNGATE](http://www.britishhorseracing.com/press_releases/bha-statement-regarding-veterinary-product-sungate/)
11 See the cases of Lois Armstrong and the Icaros Netflix documentary.
therapeutic reasons. However, the FEI deemed that Stanozolol was a substance could never be accepted as a therapeutic treatment in a sport horse, due to its significant risk of adverse effects and abuse.

41. The FEI noted that the APR claimed that the route of administration, (i.e., intra-articular or intra-muscular) was relevant for whether it was considered an ADRV. However, according to the FEI this was irrelevant, since Stanozolol remained a Banned Substance, that was prohibited at all times under the FEI rules, and its presence was enough to constitute a violation of the EADRs.

42. Further, the FEI noted that the route of administration did not negate the associated risks and the adverse effects of such anabolic steroid as well as the performance enhancing effects and its use and abuse in sport. The use of Stanozolol in sport horses was therefore strictly prohibited at all times, regardless of whether certain jurisdictions allowed its use in national law. In addition, contrary to what the APR stated, Stanozolol was prohibited by law in most jurisdictions in the EU. The FEI highlighted that as such they operated a zero-tolerance approach for the use of anabolic steroids such as Stanozolol, in all sports included in the Olympic movement. The FEI also noted that a horse or human can test positive for anabolic steroids several months after the use of such substance.

43. The FEI submitted that it was the APR’s personal duty to ensure that no Banned Substance was present in the Horse’s body or used in a sport horse, especially in the APR’s role as a veterinarian. The FEI furthered that for No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the APR had to establish 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. For obvious reasons, this article cannot be applied in the case at hand.

44. For No Significant Fault or Negligence to apply, pursuant to the definition of No Significant Fault or Negligence, the FEI stated that the APR must establish, that when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, that fault of the APR was not significant in relationship to the EADR violation.

45. The FEI highlighted that given the various official veterinarian roles the APR held with the FEI, that he ought to have been aware of the rules in relation to administration and use of Banned Substances. In those roles mentioned by the FEI he was tasked with advising riders, support personnel and the equestrian community about the current rules and regulations and serve as a point of contact for any veterinary questions.
46. In the totality of the circumstances, the FEI believed that APR clearly knew and suspected that he had treated the horse with a Banned Substance. In addition, the FEI submitted that Horse and PR were known to the APR as the APR was the REGULAR veterinarian of the Horse, and the PR did not work with any other veterinarians. Thus, the APR knew that the Horse was a sport horse that competed at FEI level, and he also knew it had not been competing for a few months due to injuries.

47. Moreover, the APR explained in his statement, that the last injection administered to the Horse was on 21 September 2020. The Horse competed on 29 September 2020, only a week after the last injection. The Horse was administered Sungate four times, intra-articularly, with one injection every three weeks. In order to fulfil his duty of care as a veterinarian, the FEI submitted the APR should have asked when the Horse was competing again, had it been withdrawn from FEI registration and not intended to compete again, since this treatment was strictly prohibited in sport horses.

48. The FEI stated that they were very curious why the APR chose to use Sungate. There were alternative allowed treatments to cure the condition of this Horse, which may have been equally efficient but with a bit longer rest and recovery time. As such, the FEI queries whether it was logical that there was no intent to enhance the performance by using such a treatment and they strongly disagreed due to the prospect of returning a horse to its normal condition with prohibited substances could only be deemed as trying to enhance the performance. The FEI noted that the APR even stated: “the treatment (with Sungate) turned out be utterly beneficial to the Horse in the case at hand”.

49. In reply to the APR’s arguments that the Horse was not a competition horse, the FEI explained for the avoidance of doubt that any horse registered with the FEI is considered to be a competition horse. The Horse has been registered with the FEI every year since 2018 thus, it was irrelevant whether the horse competed recently or not, it was also irrelevant as to label it a so called “treatment” as any treatment with a Banned Substance was never considered a therapeutic treatment of a sport horse, as it was prohibited at all times, in and out of competition.

50. Taking these particulars into account the FEI was of the opinion that neither can “No Significant Fault or Negligence” be applied to the circumstances of this case in question.

51. As a consequence, and as stipulated in the Article 10.2 of the EADRs the FEI submitted that the APR shall be sanctioned with two (2) years
Ineligibility period, based on the level of fault. (Please also refer to aggravating circumstances below at paragraph 52). In addition, the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs.

e) Aggravating circumstances - The role of the National Head Veterinarian and Permitted Treating Veterinarian (PTV)

52. The FEI also considered that aggravating circumstances existed in this case and in this regard referred to the role of the APR as a registered NHV and as a PTV with the FEI.

The FEI referred to the roles and responsibilities of a NHV as outlined in the VRs:

"Article 1110 - National Head Veterinarians

1. One NHV must be appointed by each NF.

2. The FEI will maintain a current list of NHVs. The list shall be revised on the receipt of names from NFs and will be published on the FEI website after approval by the FEI Veterinary Committee.

3. There must be effective communication between the FEI and the National Head Veterinarians (NHV) on veterinary-related matters within their country.

4. Within their country NHVs must:

a) be aware of equine infectious diseases within their country affecting international movement of competition Horses and provide the FEI Veterinary Department with information on equine communicable disease outbreaks of significance to competing sports Horses in their own country;

b) liaise with their national veterinary authority and its officials and be aware of regulations governing the temporary importation and re-entry of Horses; be fully aware of and distribute any special measures that may apply to the international movement of FEI registered Horses that are issued by national governments or by the OIE;

c) maintain communication with regional and international horse transporters;

d) distribute information and educational material provided by the FEI-to-FEI Veterinarians, including FEI Veterinarian Courses, FEI Updates
and any special communications received from their national governments, the OIE or other official bodies;

e) promote the improvement of veterinary-related standards at FEI Events;

f) work with the NF to ensure that the list of FEI Veterinarians is up to date and sufficient veterinarians are available to cover all FEI Events adequately;

g) provide mentors and suitable contacts to facilitate the promotion of veterinarians to FEI Veterinarians;

h) provide suggestions as required, for consultations undertaken by the FEI Veterinary Department, such as proposals for regulatory changes, prohibited substances and other veterinary matters; and

i) contribute as required, to national equine anti-doping and controlled medication control programs, including but not limited to increasing harmonisation between the FEI EADCMP and the country’s national program.”

53. The FEI also noted that the roles that a PTV may assume on are outlined in the VRs:

"Article 1101 - Permitted Treating Veterinarians

1. Permitted Treating Veterinarians may assume the following roles:

- Veterinary Control Officer;

- Treating Veterinarian (TV);

- Team Veterinarian;

- Athlete’s Private Veterinarian (APV); and

- Holding Box Veterinarian.

2. PTVs must have adequate professional indemnity insurance.

3. PTVs that are not appointed by the OC must register with the OC as veterinarians.”

54. Considering the onus, the VRs place on the PTV’s, the APR in this case should have been aware of the rules in relation to administration of Banned Substances. The FEI explained how the NHV/PTV registration required that a veterinarian passed an exam in order to become registered for these positions and that he must be approved by his/her respective
National Federation. The FEI furthered that a NHV’s role was also to act as liaison veterinarian of his country and the FEI on all veterinary matters. In addition, the PTV’s role was to act as the adviser for riders and teams in relation to the medical treatments for the horse’s prior and during the events.

55. The FEI submitted that a violation of the EADCMRs by a NHV and PTV is a very serious matter. From an FEI perspective it was completely unacceptable for the NHV/PTV to administer Stanozolol to FEI registered horses and the FEI operates a zero tolerance to such behaviour.

56. In conclusion, the FEI considered it was extremely important that above all officials, the role of an official such as the NHV would ensure that he was aware of and up to date with all anti-doping rules and regulations. In the FEI’s opinion, for someone in this position to ignore those rules should be considered an aggravating circumstance for this case, which justifies the imposition of a higher sanction, in accordance with Article 10.7 of the EADR s. The FEI however submitted that it will be at the discretion of the Tribunal to decide whether it will impose a higher sanction than the standard two (2) years period on the APR.

VII. Summary of the Hearing 17 May 2022– Position of the Parties

APR- Submissions:

57. At the Hearing dated 9 June 2022, the APR opened the proceedings and highlighted the importance of a veterinarian’s role in the equine industry. The APR also referred to various accolades in his long career to date, the impeccable reputation he retains in the equine industry and in particular, the commitment to horse welfare he has shown in his work to date.

58. The APR confirmed that as part of his work, he was asked by the PR to treat the Horse who was displaying a fragility in the articular cartilage of the Left Tarsal Joint. The APR stated that classical therapies based on Hyaluronic Acid and PRP, in combination with rest, showed partial response. Furthermore, that as part of that treatment, the APR administered the Horse with Sungate by means of intra-articular injection in order to stimulate the activity of cartilage cells. The medication Sungate contained the substance Stanozolol which according to the APR’s medical assessment was necessary to cure the Horse despite the fact it is a Banned Substance under the EADRs.

59. The APR also submitted that the accusations of the FEI and the subsequent suspension must be set aside due to multiple reasons which can be summarised as follows:
Violation of his right to a “Fair Trial” under Article 6 of the European Convention of Human Rights (the ECHR) (and such violation occurred when the PR requested the APR to provide a statement and testify on behalf of the PR in order to prove that the PR had no fault for the presence of Stanozolol in the Horse. Thus, as requested the APR subsequently issued a statement with the best of intentions, unaware that the PR was intending to shift the blame to the APR thereby causing the APR to move from a position of a helpful witness to an accused party.

The APR also stated that the PR did not warn the APR about the possible consequences of self-incrimination and the legal implications of his witness statement, and the role the APR’s witness statement would play in the Settlement Agreement of the FEI with the PR. On the contrary, the APR confirmed that the client relationship arose when the PR engaged the APR’s services by presenting a Horse that required treatment for its welfare as opposed to a situation that required treating a Horse to enable it to compete. The APR further submitted that he only treated the horse under the impression that he was hired to cure the Horse’s injury to improve its welfare, not for the purposes of treating the Horse to ensure it could participate in a competition. Moreover, the APR also assumed – as already stated – that he was dealing with a horse that was out of competition for almost a year.

The APR also submitted that he applied Sungate intraarticularly and not by means of an intramuscular injection (which could be deemed as an ADRV) and asserted that it was undisputed that Sungate had no performance enhancing effect if it is administered in a joint. He furthered that he administered Sungate to the Horse as it was widely accepted as a curative treatment when injected intraarticularly and utterly beneficial to the Horse in question given its fragility and the injuries presented.

The APR also submitted that he was never informed of his right to request the analysis of the Horse’s B sample. In that regard, the APR referred to the Notification Letter dated 9 March 2021 which contained no details about the possibility of testing the B Sample. The APR noted that this option was only given to PR, as the Notification Letter to the APR was sent months after the PR’s Notification Letter and thus his right to test the B Sample had already been waived by the PR. Thus, the APR had no chance to use the B Sample testing as a remedy in this case. Consequently, the APR considered that he was hindered from using this remedy for his advantage. Effectively, the APR submitted that it must be assumed that – without any fault on his behalf – he was prevented from obtaining a negative test of the B Sample as the B
Sample was no longer available for testing by the time the APR was notified of these proceedings.

- The APR also highlighted the issue regarding the classification of the Horse as a competition horse by the FEI. In this regard the APR submitted that on several occasions the FEI also referred to the term “sport horse” which created confusion and made the FEI Rules and Regulations unclear and difficult to understand. Furthermore, the APR noted that neither “competition horse” nor “sport horse” has been defined under the FEI Rules and Regulations despite the fact that the FEI considered that all FEI registered horses are competition horses.

Therefore, then APR claimed that the FEI was trying to fix loopholes in its own Rules and Regulations by maintaining (without any plausible explanation) that any horse registered with the FEI is considered to be a competition horse and that in the light of the registration of the Horse with the FEI since 2018, meant that it was irrelevant whether the Horse competed recently or not, in order for it to be considered a competition horse. The APR was never informed by the PR that the Horse was due to compete and given its condition he was not of the view this was even a possibility in the near future and as such he treated the Horse with the best therapy possible from a welfare perspective rather than with a “sport horse” approach.

- The APR further submitted that as the FEI have failed to define the term “competition horse” and in their Statutes, it must be considered a bridge too far to accept the FEI’s current explanation in this case which boiled down to the statement that every horse registered with the FEI was ipso jure a competition horse. The APR noted that the FEI database does not make any distinction whether a FEI registered horse is retired, competing or dead. For instance, the APR referred the late legendary dressage stallion Totilas and stated that it was still active in the FEI database despite the fact that the horse deceased in December 2020. Accordingly, the APR argued that a sole registration with the FEI without considering all relevant circumstances, cannot be an argument for confirming that such registration was sufficient to assume that a horse was a competition horse.

60. APR-Mitigating Circumstances:

- The APR also submitted that no aggravating circumstances existed in the case at hand. In his view one cannot be accused of committing an ADRV in circumstances where the APR was not aware that the horse in question was a competition horse, and the Horse was being treated as a competition horse by the PR.
In addition, the APR noted that he was treating the Horse as an Italian veterinarian with an approved and prescribed medication of a very low dosage applying intra joint treatment (the allowed method for treatment Sungate). All these circumstances demonstrate that he was not aware this treatment could conflict with his role a veterinarian associated with the FEI.

The APR also explained that when he was asked for a statement by the lawyer of PR in relation to the PR’s proceedings, he was asked to sign the statement in English – even though – the APR’s command of the English language was not proficient. Such a request caused the APR to overlook all legal implications of submitting such a statement. In addition, the APR referred to his right to test the B Sample of the Horse again and how this was overlooked.

All things considered; the APR submitted that the latter circumstances should be counted as mitigating circumstances rather than aggravating ones when considering this case. In particular the APR highlighted the following: the manner in which the APR was requested to issue a witness statement for the PR, the fact that the PR waived the right to test the B Sample without consulting the APR, that neither the PR or his lawyer informed the APR that any statement given by the APR could be used against him, and as such these mitigating circumstances should determine the dismissal of the pending charges and the agreement of the Tribunal to lift the provisional suspension imposed on the APR with an immediate effect. The APR also requested that due to the exceptional circumstances of this case the FEI Tribunal refrain from imposing any financial penalty/fine upon him.

**FEI- Submissions:**

**61.** The FEI submitted that the reason for the FEI Rule and Regulations in respect of an anti-doping regime was to ensure the level playing field of equestrian sport is protected in addition to ensuring that the welfare of the horse remains paramount. Thus, this case demonstrated that irrespective of the veterinary reasons that the Horse was treated, the level playing field was not protected as the Horse was administered a Banned Substance a week before it was due to participate in a competition. This treatment enabled the Horse to recover much quicker which enhanced the Horse’s performance as the Horse was able to compete sooner than would be expected given its fragile condition.

**62.** The FEI also highlighted that one of the main arguments raised by the was that he should not be considered the APR in these proceedings however the FEI do not agree and emphasised that the APR in this case was not just a normal veterinarian working in Italy, but he was also the PTV, and
NHV of San Marino. Furthermore, the FEI referred to the responsibilities of a NHV as outlined in Article 1110 of the VRs\textsuperscript{13}, and notably amongst other responsibilities, one of the obligations of NHV “was contribute as required, to national equine anti-doping and controlled medication control programs, including but not limited to increasing harmonisation between the FEI EADCMP and the country’s national program”\textsuperscript{14}. The FEI also noted that the NHV acts as the liaison between the FEI and the national veterinary authority and the NF regarding various veterinary-related matters, thus, the FEI considered that the PTV and NHV has more obligations and awareness than a regular veterinarian.

63. In respect of the argument raised by the APR regarding the classification of the Horse as a competition horse, the FEI submitted that the horse was registered with the FEI, as such this was classified as an active registration and falls under the jurisdiction of the FEI. The FEI furthered that for such Horses the use of Banned substances is prohibited at all times. As the NHV it would have been very easy to access this information via the FEI Database and the FEI Clean Sport App, especially regarding a Banned Substance such as Stanozolol, which the FEI deemed as one of the most well-known abusive anabolic steroids. Consequently, the FEI had a zero-tolerance policy for the use of such substance in a competition horse.

64. The FEI also highlighted the definition of the APR in the GRs, and noted that in accordance with Article 118.3 that “veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse”, thus the APR in these proceedings falls twice under the jurisdiction of the FEI as an APR.

65. The FEI also referred to the issue of the charge and the criticism the APR made in respect of Fair Trial issues and stated that as they charged the APR with an Article 2.2 violation of the EADRs “Use or Attempted Use of a Banned Substance or a Banned Method” no right existed for a B Sample analysis, thus that point is mute for the FEI in this case. The FEI also explained that when they notified the APR about this charge, it was 2020 and the rules changed in 2021 when the WADA system of an Acceptance of Consequences process was brought in where the APR can avail of an automatic 6-month reduction. Moreover, the FEI stated that despite the fact that this was a 2021 case, the APR was offered the latter option for an automatic reduction (by applying the principle of lex mitior) for his benefit however the APR did not choose this option and requested a hearing instead. Therefore, the FEI did not agree that the current case showed any violation of a Fair Trial procedure.

\textsuperscript{13} FEI Veterinary Regulations 2020 - Clean Version.pdf, Article 1110 (1-4)
\textsuperscript{14} FEI Veterinary Regulations 2020 - Clean Version.pdf, Article 1110 4 (i)
Response of the APR from in respect of the FEI’s submissions at hearing:

66. The APR reiterated that Sungate was recognised for therapeutic use in Italy and the EU. In particular, he stated that the dosage administered was low and had a curative effect to the Horse. The APR was not aware of the intention of the PR regarding competing with the Horse and therefore he stated that he should not have to stand in for the negligence of the PR. He submitted that he was not doing anything illegal by applying a recognised treatment to help the Horse under the premise the Horse was not competing. The APR thanked everyone for their time and concluded that all he did was cure a horse with a substance that had no performance enhancing effect that had been was ill for several months.

FEI Reply to the Response of the APR:

The FEI commented that performance enhancing from the FEI’s perspective also includes the scenario when a Horse is administered a therapeutic treatment to recover faster.

Summary of Closing Statements from Hearing dated 17 May 2022:

67. APR- Closing Submissions:

The APR acknowledged that this was not a straightforward case as it was a case about conflicting arguments between the principle of a level playing field versus welfare of the Horse. The APR confirmed that he would always consider the welfare of the Horse as paramount to the level playing argument the FEI had highlighted and moreover he did not even though the Horse was due to compete. He emphasised that a distinction has to be made between the APR versus the PR relationship with the Horse, specifically that the APR was merely treating a sick horse and what the PR’s intentions were after such treatment was none of the APR’s responsibility. He furthered that it was not his goal to enhance the Horse’s performance in the competition but rather to do everything necessary for the Horse’s welfare, insofar as taking care of an animal that was suffering. He concluded that as an Italian veterinarian that sometimes works under the auspices of the FEI, did not mean however that the FEI had the power to limit the APR in providing approved and legitimate curative treatments in Italy to a horse when it was required.

68. FEI- Closing Submissions:

The FEI submitted that a veterinarian with such qualifications and official equine positions was expected to recognise certain things and to check certain things, as this was a veterinarian that played a role at official FEI
events. The FEI noted that if he was to and treat a horse with a Banned substance, the FEI would expect this veterinarian to flag this to the PR and also to check whether the Horse was going to compete in order to educate the PR on the relevant detection times.

VIII. Legal Analysis

69. Jurisdiction

The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMR, the EADCMRs, as well as Article 18 of the IRs. The APR is a member of the ITA-NF, which is a member of the FEI, as such the APR is bound by the EADRs. The jurisdiction of the Tribunal is undisputed.

70. Burden of Proof

The Tribunal is satisfied that the laboratory reports relating to the Horse’s A sample reflect that the analytical tests were performed in an acceptable manner and the findings of the laboratory is accurate. The Tribunal is further satisfied that the test results evidenced the presence of Banned Substances in the Horse’s A sample taken from the Horse at the Event and such results constitutes sufficient proof of the violation of Article 2.1 of the EADRs by the APR. The Tribunal notes that the APR did not challenge the accuracy of the test results or the positive findings. As a result, the Tribunal accepts that FEI has also established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3.1 of the EADRs.

In addition, the Tribunal also notes that the use of Stanozolol at any time constitutes an ADRV Violation under Use in Article 2.2 of the EADRs. The APR confirmed he used a Stanozolol treatment on the Horse, therefore the Tribunal confirms that the FEI has discharged its burden of establishing that the APR violated Article 2.2 of the EADRs.

The presumption of Fault

71. The Tribunal also notes that Article 10.2 of the EADRs provides that a PR/APR with no previous doping offences who violates Article 2.1 of the EADRs is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault and in order to rebut such presumption the rules specify that the APR must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability15):

15 Art 3.1 EADR
i. How the Prohibited Substances (here, Stanozolol) entered into the horse's system; and

ii. That he bears 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 (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or

iii. That he bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules).

The Tribunal notes that if the APR fails to discharge this burden, the presumption of fault stands, and therefore the two-year ban under Article 10.2 of the EADRs applies.

The 'threshold' requirement: proving how the Stanozolol entered into the Horse's system

72. The Tribunal recognises that the EADRs stipulate, and the jurisprudence of the FEI Tribunal and the CAS are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the APR proves how the substance entered into the Horse's system.

Indeed, this requirement must be strictly applied because without such proof it would be impossible to assess the APR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.

As confirmed by various CAS panels as well as FEI Tribunal cases, the APR must present facts substantiated with concrete evidence to establish how the prohibited substance entered the Horse’s system. Speculation or theoretical possibilities are not sufficient. In these proceedings, the Tribunal considers that the APR provided clear and convincing evidence to explain how the Stanozolol entered the system of the Horse. Furthermore, the Tribunal notes that due to the Horse's fragility in the articular cartilage of the Left Tarsal Joint, the APR proposed a treatment plan to the PR to physiologically stimulate the activity of cartilage cells, via the utilisation of the product Sungate– (which consists of the anabolic steroid Stanozolol) by means of intra-articular injection - three times a week, amounting to a total of four injections.
The Tribunal accepts that the APR corroborated this treatment plan and exhibited a copy of the electronic prescription\textsuperscript{16} which documented the purchase of the specific product, the date, the name of the patient the therapy was designed for as demanded by the Italian law, and the utilisation of Stanozolol through the intra-articular method with the blood detection time of the drug. The prescription also shows the medication Sungate (5mg/ml) in the dosage of four syringes containing 1 ml of Sungate each - one syringe contains the low dosage of 5 mg of Stanozolol. The APR confirmed that the last injection was administered on 21 September 2020. Consequently, the Tribunal confirms it is satisfied that the APR has established on a balance of probability – how the Banned Substance entered the Horse’s system i.e., via intra-articular administration of the product Sungate and the Tribunal is satisfied that the “threshold requirement” has been fulfilled in this case.

**Fault/Negligence for the rule violation**

The Tribunal must also assess the degree of Fault and Negligence by the APR for the rule violation, the starting point of any evaluation is the “personal duty” of the APR 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”. Furthermore, the Tribunal takes into account the definitions of Fault, as defined in Appendix 1 of the EADCMRs\textsuperscript{17} and concludes the following;

- For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the APR has to establish 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,

\textsuperscript{16} FEI Response 2 February 2022: Exhibit 4 Vet statement and electronic prescription

\textsuperscript{17} "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.”
or the Horse’s system otherwise contained, a Banned Substance. For obvious reasons, this article cannot be applied in the case at hand;

- For No Significant Fault or Negligence to apply, pursuant to the Definition of No Significant Fault or Negligence, the APR must establish, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, that his fault was not significant in relationship to the EADR violation.

75. However, the Tribunal noted that the APR in both his written submissions and testimony confirmed he treated the Horse with a Banned Substance. The APR also demonstrated that he took no affirmative action or admonishment to alert the PR as to the risks associated with competing with the Horse until further notice despite being the regular veterinarian of the Horse. Hence, the Tribunal believes that the APR knew that the Horse was a sport horse that competed at FEI level and would have known if it had not been competing for a few months due to injuries. As such, it was the APR’s personal duty to ensure that no Banned Substance is present in the Horse’s body or is used in a sport horse, especially given his profession as a veterinarian and his official roles as a NHV and PTV and the responsibilities such roles entail: i.e., providing advice to riders, support personnel and the equestrian community about the current rules and regulations and acting as the contact point for any veterinary questions/issues. Failing to affirmatively advise the PR that the Horse would be ineligible for competition based on the treatment provided fell below the expected standard of care for a veterinarian experienced in treating FEI registered horses.

76. Nonetheless, the Tribunal accepts that Horse was administered a Banned Substance by the APR for the purposes of treating an injury in the joint and for the horse’s welfare. Even though the medication is allowed for veterinarian use in Italy, it is prohibited under FEI rules of competition. In the totality of the circumstances the Tribunal believes that the administration of the Sungate to the horse was a valid exercise of the Respondent’s professional judgment that was intended for the welfare of the Horse.

However, the Tribunal recognises that the APR is both a NHV and PTV and, as such, is charged with knowing which substances are Prohibited Substances under the FEI rules. As an FEI veterinarian official, he would understand the risks of using prohibited substance medications in horses and the importance of a level field of play. The Tribunal considers that the APR has a duty to ensure both the welfare of the horse and a level field of play. These responsibilities required him to take explicit affirmative action to caution the PR not to compete with this Horse until further notice. The APR did not do so, thereby causing a negligent violation of the EADCMRs.
which allowed a horse to compete in an FEI competition with a Banned Substance.

77. In the totality of the circumstances, the Tribunal confirms that the APR clearly knew that he treated a horse with a Banned Substance. In addition, the Horse and PR were no strangers to the APR. The APR was the normal veterinarian of the Horse, since the PR did not work with any other veterinarians. The APR hence knew that the Horse was a sport horse that had competed at the FEI level, knew it had not been competing for a few months due to injuries, and knew that a Banned Substance had been used for treatment. The APR should have reasonably expected that, in the absence of a specific admonition to the PR not to compete until further notice, the PR would not know that entering the horse into an FEI competition would be in violation of the EADCMRs.

78. Moreover, the Tribunal notes that the APR explained in his statement, that the last injection of the Horse was on 21 September 2020. The Horse competed on 29 September 2020, only a week after the last injection. The Horse was administered Sungate four times intra-articularly, with one injection every three weeks. In order to fulfil his duty of care as a veterinarian, the Tribunal submits that he should have made sure that the PR was aware that the horse was ineligible to compete in FEI competition until further notice or confirmed that it had been withdrawn from FEI registration, since this treatment is strictly prohibited in sport horses.

79. With this background the Tribunal confirms that No Fault or Negligence and No Significant Fault or Negligence reductions cannot be applied in this case. As a consequence, and as stipulated in the Article 10.2 of the EAD Rules shall and the APR shall be sanctioned with two (2) years Ineligibility period, based on the level of fault. The Tribunal also notes that the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs.

80. The Tribunal further agrees with the FEI’s recommendation for costs but confirms a reduction in the fine recommended to **five thousand Swiss Francs (5,000 CHF)**.

**Disqualification of Results**

81. The Tribunal acknowledges that the FEI did not submit any request for the disqualification of results obtained by the PRs and Horses combination at the Event as this has been requested in the procedure against the PR.

**IX. Terms of the Decision**

1) The Tribunal rules that the FEI has established an ADRV to the comfortable
satisfaction of the Tribunal and notes that the results of the A Sample taken from the Horse at the Event confirming the presence of Stanozolol constitutes sufficient proof of the violation of Article 2.1 of the EADRs. Accordingly, the Tribunal upholds the charge that the Athlete violated Article 2.1 of the EADRs.

2) The APR shall incur:

   a) a period of Ineligibility of two (2) years on the APR. The period of the Ineligibility will be effective from 23 June 2022 (The Tribunal also notes that the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs);

   b) a fine in the amount of five thousand Swiss Francs (5,000 CHF); and

   c) contribute two thousand Swiss Francs (2,000 CHF) for costs that the FEI has incurred in these proceedings.

3) This Decision is subject to appeal in accordance with Article 13.2 of the EADRs. 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.

4) This Decision shall be published in accordance with Article 14.3 of the EADRs.

DECISION TO BE FORWARDED TO:

a. The Parties: Yes
b. The Secretary General of the NF of the person sanctioned: Yes
c. Any other: No

FOR THE FEI TRIBUNAL

Dr Armand Leone (USA), One-Member Panel