

**DECISION of the FEI TRIBUNAL**

**dated 15 February 2012**

**Positive Anti-Doping Case No.:** 2011/BS03

**Horse:** HELLOW

**FEI Passport No:** UAE102TD98

**Person Responsible:** Khalifa Salman Al Sabri/UAE

**Event:** CEI2\* 120km, Dubai, UAE

**Prohibited Substance:** 17 - alpha -hydroxyprogesterone hexanoate (HPC)

**1. COMPOSITION OF PANEL**

Mr. Patrick A. Boelens, Chair  
Mr. Erik Elstad, member  
Dr. Alberto Hernán Mendez Cañas, member

**2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case: By Legal Department.**

**2.2 Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

**2.3 Oral hearing:** none

**3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1<sup>st</sup> edition, effective 5 April 2010.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1<sup>st</sup> edition, effective 5 April 2010.

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5<sup>th</sup> April 2010, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

**3.2 Person Responsible:** Khalifa Salman Al Sabri

**3.3 Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

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 – 2.7 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."

**4. DECISION**

**4.1 Factual Background**

1. HELLOW (the "**Horse**"), a gelding, participated at the CEI2\* 120km in Dubai (UAE) on 18 December 2010 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Khalifa Salman Al Sabri, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 18 December 2010.
3. Analysis of the blood sample no. FEI-5501940 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Wai Him Kwok, Chemist, under the supervision of David Kwan Kon Leung, Racing Chemist. The analysis revealed the presence of 17-alpha-hydroxyprogesterone hexanoate. 17-alpha-hydroxyprogesterone hexanoate is also known as 17-alpha-hydroxyprogesterone Caproate ("HPC").
4. The Prohibited Substance detected is HPC, which is a synthetic

progesterin for the control of estrus and maintenance of pregnancy, with anabolic effects. Whilst at the time of the positive finding, HPC was not listed by name in the 2010 Equine Prohibited List (the "FEI Prohibited List"), the FEI Prohibited List specifically includes "other substances with a similar chemical structure or similar biological effect(s)"<sup>1</sup>. Therefore, following its detection by the HKJC, HPC has been classified by the FEI as a *Banned Substance* in reliance on the "catch all clause" referenced above because it has similar biological effects to several listed Banned Substances, specifically testosterone, androstenedione and deoxycorticosterone. HPC can also be metabolised into androstenedione and then to testosterone. Therefore, the finding of HPC in the Horse's sample gives rise to an *Anti-Doping Rule* violation.

#### **4.2 The Proceedings**

5. On 18 January 2011, the FEI Legal Department notified the PR, through the United Arab Equestrian Federation ("UAE-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
6. The PR did not request a Preliminary Hearing.

#### **4.3 The B-Sample Analysis**

7. Together with the Notification Letter of 18 January 2011, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the B-Sample analysis, and to request that the B-Sample be analysed in a different laboratory than the A-Sample.
8. The PR declined to have a B-Sample confirmatory analysis to be performed.

#### **4.4 The Further Proceedings**

9. In the following, the UAE-NF submitted a statement by the PR of 2 February 2011, in which the PR explained having enquired before the ride whether the Horse was free of Prohibited Substances, and that he was assured that the Horse did not have any Prohibited Substances in its system. The UAE-NF further submitted two statements by the Horse's trainer, Mr. Ali Salman Al Sabri of Emaar Stables. In his statements, Mr. Al Sabri explained that the PR had enquired with him prior to the Event whether the Horse was free of Prohibited Substances, and that he had confirmed that was the case. With regards to the positive finding, Mr. Al Sabri

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<sup>1</sup> See Equine Prohibited Substances List, page 24.

explained having used "a supplement" on the Horse as well as on other horses in his care, and that this supplement must have caused the positive test result. That, before using the supplement, he had verified that it did not contain any substances listed on the FEI Prohibited Substances List. Mr. Al Sabri further contended that insofar as HPC was not specifically listed on the FEI Prohibited List, and that he did not dispose of the necessary pharmaceutical or chemical knowledge, it would have been impossible for him to know that the substance was considered to be a Prohibited Substance. Together with his statements, Mr. Al Sabri also submitted two further statements, one by Dr. Kevin P. McManus, and one by Mr. John Ray Biffin. Mr. Al Sabri explained in this context that he had contacted the company producing the product used by him, and that the company had informed him that the product cannot be metabolised into androstenedione and testosterone, and that a gelding would not be capable of metabolizing progesterone into testosterone. That the company had performed its own research and had provided the statements by Mr. Biffin and Dr. McManus.

10. Mr. Biffin, BVSc, Director of "Agriculture SCIENTIFIC ORGANICS", based in Australia, explained in his statement that he is an equine veterinarian and a veterinary pharmaceutical manufacturer. Mr. Biffin further explained that, in his opinion, it is fundamentally erroneous to state that HPC has similar a biological effect to testosterone, claiming that whereas the primary biological effect of testosterone was masculinising or androgenic, the primary biological effect of progesterone was feminizing. Mr. Biffin further contended that a gelding could not change progesterone to testosterone. Similarly, Dr. McManus claimed in his statement that hydroxyprogesterone hexanoate was not an androgenic anabolic steroid, and further refuted the idea that progesterone could be metabolised to testosterone.
11. By email of 16 May 2011, the UAE-NF further explained that the trainer of the Horse had administered "Hydroxy Progesterone Paste" to the Horse. That all horses in the stable had been given the paste in the belief that it was not a Prohibited Substance, and "as a feed additive to stress down mares and geldings". The UAE-NF further submitted some documentation about the paste allegedly used, showing an empty vial. On a label next to the vial is written "Hydroxy Progesterone Paste", as well as "NXGEN". The documentation does not contain any description of the product, or a list of active ingredients of the paste. Together with the email of 16 May 2011, the UAE-NF also submitted an email statement by Prof. Carlos Ponferrada from Spain, containing an electronic signature of a "Carlos". Prof. Ponferrada accepted that the product used by the trainer had anabolic and muscle building effects. However, he contested the categorization of HPC as a substance with "similar biological effect and chemical structure as other listed Banned Substances", on the grounds that the product used, unlike testosterone, did not have masculinising, but feminizing biological effect. It was further argued that the product would not be

metabolized into any anabolic androgenic derivative.

12. By letter of 8 August 2011, submitted through the UAE-NF, the PR requested the lifting of the Provisional Suspension. The PR argued that he was a responsible horse athlete, and that he regularly referred to the clean sport guidance. That he as athlete would usually take a briefing from the treating veterinarians regarding the medication administered to the horses prior to the Competition, and that he was assured by the trainer that the Horse was free of any Prohibited Substances. That he trusted the trainer and that it was due to the fact that HPC did not appear on the FEI Prohibited List that the positive finding occurred.
13. In its Response to the Request for the lifting of the Provisional Suspension of 16 August 2011, the FEI explained that this case was one of four (4) positive anti-doping cases from the 2010/2011 Endurance season in the United Arab Emirates involving the same Prohibited Substance, HPC. That further, all of the horses and riders concerned were riding for the UAE-NF, and that the horses were all under the care of trainer Mr. Al Sabri. Together with its submission, the FEI provided an expert opinion by Prof. Tom Barragry, PhD, MSc, MVB, MRCVS, Dip ECVPT, senior veterinary pharmacologist at the Veterinary School at University College Dublin. Prof. Barragry explained that HPC is used for oestrus suppression and pregnancy maintenance in mares, and is also indicated for progesterone deficiency in mares and associated behavioural problems. That HPC has been used in geldings for the prevention of weight loss. According to Prof. Barragry, HPC is a precursor compound in the synthesis of a number of endogenous produced steroids and is – by means of endogenous testosterone biosynthesis – metabolised into a number of possible substances including androstenedione and testosterone. Prof. Barragry further explained that all progesterone, including synthetic progestogens, have anabolic effects, also when used in horses, those anabolic effects being more noticeable in geldings. Prof. Barragry also reported HPC to have behaviour modifying effects. With regards to the general biological effects, Prof. Barragry pointed out that in particular in male animals, the effects of HPC are biologically similar quantitatively to other Banned Substances on the FEI Prohibited List, such as androstenedione and testosterone. Lastly, Prof. Barragry underlined that in the absence of any justified therapeutic indication for its administration, HPC would not normally be found in the system of geldings. Prof. Barragry concluded that the finding of HPC in the body fluids of a gelding would allow the conclusion that the substance had been administered for a potentially spurious reason, such as inducing weight gain and anabolic effect. Based on the statement by Prof. Barragry, the FEI maintained its contention that HPC has a similar biological effect to other substances included on the FEI Prohibited List, and that therefore, HPC itself is classified as a Prohibited Substance, specifically as a Banned Substance. The FEI further took the position that the information provided by the PR about

the alleged use of "Hydroxy Progesterone Paste" was very vague, and that the documentation submitted in this context was hardly readable. That no information was provided about the actual substances contained in the allegedly used product, and no concrete details about the product used, the manufacturer, the reason for its use and the expected effects of the administration, the time and route and details of its administration. The FEI therefore concluded that it may not be determined whether the allegedly used product had lead to the positive test result, and that the PR therefore had not established how the Banned Substance had entered the Horse's system. With regard to the question of fault or negligence for the rule violation, the FEI argued that it was not sufficient for the PR to simply inquire with the Horse's trainer whether the Horse carried any Prohibited Substances. That the PR should not have simply relied on the trainer, even less so as the trainer – as he had admitted himself – did not have the necessary veterinary or pharmaceutical knowledge in order to determine whether products used by him would contain Prohibited Substances. And even less so since the trainer did not seem to have any written confirmation that the product used by him on the Horse did not contain any Prohibited Substances. The FEI underlined that any treatment with any substances should always be made under supervision and with the approval of qualified veterinary or pharmaceutical personnel. That therefore it was negligent by the PR to rely on the trainer exclusively, and that conclusively, he had not established, as required under EAD Rules Article 10.5, that he bears "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. The FEI contended that no elimination or reduction of the otherwise applicable period of Ineligibility should be granted, and that conclusively, the Provisional Suspension should be maintained.

14. On 3 October 2011, Dr. Elke Peperkorn, veterinarian with the UAE-NF, further argued for the lifting of the Provisional Suspension on behalf of the PR on the grounds that at the time of the Competition, HPC was not listed by name on the FEI Prohibited List, and that no information could be found on the FEI Clean Sport website about the substance. That according to the statement of the manufacturer of the products used, there was a difference between the possible laboratory conversion of HPC to Testosterone versus HPC's actual metabolism in a living horse. This was supported by the fact that according to the manufacturer research submitted, after 25 weeks of injections no increase in cortisol or androstenidone had been observed. That HPC indeed had the effect of causing retention of fluids and electrolytes, leading to weight gain, but that there was no scientific proof of an anabolic effect of HPC. Dr. Peperkorn contended, therefore, that the PR had complied with the research recommended by the FEI Competitor's Guide.

15. Further, on 5 October 2011, the UAE-NF submitted an expert

statement by Dr. McManus, in response to the statement of Prof. Barragry. Dr. McManus explained that he was a retired Veterinary Scientist still working in Veterinary pharmacology and that the banning of HPC would necessarily require the banning of other anabolic metabolites and the ban of metabolite steroids, and should therefore be immediately revisited.

16. By Preliminary Decision of 27 October 2011, the Tribunal lifted the Provisional Suspension as of 28 October 2011, stating that a hearing in the case would be appropriate and suggesting 19 January 2012 as the date.
17. By email to the UAE-NF of 9 January 2012, the FEI informed the PR that the Tribunal, after having reviewed the Case File including the statements by Mr. Biffin, Dr. McManus, Prof. Ponferrada and Prof. Barragry, had requested that a third independent expert reviews the above statements, and provides the Tribunal with an impartial and additional opinion on the questions in dispute between the parties. That the Tribunal had selected Dr. Stuart Paine, BHA Associate Professor of Veterinary Pharmacology at the University of Nottingham for this third expert opinion. Once Dr. Paine's statement was submitted, it was provided to the PR, along with his curriculum vitae, and the PR was invited to comment thereon before 30 January 2012. The FEI further explained that the Tribunal had agreed to postpone the hearing, pending consideration of the report by Dr. Paine. In his report, Dr. Paine, in contradiction to Mr. Biffin, Dr. McManus and Prof. Ponferrada, stated that 17 $\alpha$ -hydroxyprogesterone is naturally converted to androstenedione, specifically via a single metabolic step, by the naturally occurring enzyme CYP17. Further, that 17 $\alpha$ -hydroxyprogesterone is used to increase weight in steers and, as it is directly converted to androstenedione, must result in an anabolic effect. Dr. Paine concluded that 17 $\alpha$ -hydroxyprogesterone as well as esters of 17 $\alpha$ -hydroxyprogesterone should be considered Banned Substances.
18. The PR did not provide any response to Dr. Paine's report nor did he respond to the Tribunal's invitation for a hearing. In the following, the Tribunal requested further background information regarding the PR, and in particular his relationship to the other riders concerned by the cases involving HPC. Despite several emails to the UAE-NF transmitting the Tribunal's request, the UAE-NF only repeated that the four horses concerned have the same trainer, and have been given the same feed additive, delivered by the Australian Company. That the four riders are employed by the trainer or the stable and that they follow the order from the trainer to ride a horse selected by him for the different rides taking place in endurance competitions during the UAE season. That riders in the UAE are very similar to jockeys in flat racing, earning their living by riding horses, and that riding is their job, not their hobby.

#### **4.5 Jurisdiction**

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

#### **4.6 The Person Responsible**

20. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he was the rider of the Horse at the Event.

#### **4.7 The Decision**

21. The Tribunal understands that the case at hand is one out of four (4) positive anti-doping cases of the 2010/2011 Endurance season in the United Arab Emirates involving the same Prohibited Substance, 17- alpha – Hydroxyprogesterone Hexanoate, HPC. The Tribunal is further aware that all of the horses and riders concerned are from the UAE-NF, and that the horses were all under the care of trainer Mr. Al Sabri of Emaar Stables, who is also being charged with a violation under the EAD Rules as Support Personnel.

22. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of HPC in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. However, the PR contested the classification of HPC as a Banned Substance under the FEI Prohibited List. The Tribunal therefore needs to determine whether the FEI has correctly classified HPC as a Banned Substance, i.e. whether the FEI has established an Adverse Analytical Finding and has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3.

23. As an initial matter, the Tribunal holds that HPC, which is a product used for the control of oestrus and maintenance of pregnancy, has no justified therapeutic use in male horses. Therefore, it would not normally be found, nor should it be found, in a gelding's system. Furthermore, the Tribunal, having reviewed all of the expert statements, is convinced by the third neutral report provided by Dr. Stuart Paine. Dr. Paine clearly and unequivocally explains why HPC has a similar biological effect to anabolic steroids and the simple natural conversion of 17 $\alpha$ -hydroxyprogesterone to androstenedione, specifically via a single metabolic step, by the naturally occurring enzyme CYP17. Dr. Paine's statement, taken together with Dr. Barragry's expert report, both of whom are clearly experts in the field, have convinced this Tribunal that HPC should be considered to have the same biological effect as anabolic steroids and should therefore be considered already included on the FEI Prohibited List, by means of the catch-all clause, at the time it was detected in the Horse's Sample.



24. In cases under the EADCMRs, a strict liability principle applies as described in EAD Rules Article 2.1.1. Once a positive case has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2.
25. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. With regard to the standard of proof to be met by the PR, EAD Rules Article 3.1, second sentence, stipulates that the PR has to establish "specified facts or circumstances" "by a balance of probability".
26. The Tribunal holds that the PR has established by a "balance of probability" how the Prohibited Substance entered the Horse's system as he has acknowledged that a supplement containing HPC was administered to the Horse.
27. Accordingly, the Tribunal must address the question of whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2 should be applied.
28. The Tribunal finds that while it considers HPC to be a Banned Substance given its same biological effect as anabolic steroids, it also finds that the PR bears No Significant Fault here since HPC was not clearly named on the FEI Prohibited List at the time it was administered to the Horse. As the PR is not a pharmacologist the Tribunal finds that he does not bear Significant Fault for this clear error of allowing administration of HPC to the Horse as it is difficult to determine without some pharmacological knowledge what does or does not have the same biological effect or chemical structure as a Prohibited Substance. But when using a new and unknown substance or supplement on the Horse, the PR has an obligation to get all the necessary information about the product in order to ensure that no anti-doping offence occurs. This is especially important when giving the Horse a supplement that the PR does not know without more diligent investigation.
29. According to EAD Rules Article 9, a violation of the EAD Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.
30. According to GRs Article 168.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

31. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won at the Event must be forfeited, in accordance with EAD Rules Article 9.

#### **4.9 Sanctions**

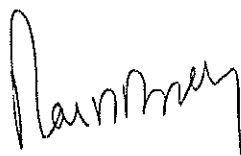
32. Under the EAD Rules applicable at the Event, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period for first time offenders. Based on the arguments above, the FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10.2 of the EAD Rules:

- 1) The PR shall be suspended for a period of **one (1) year** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 18 January 2011 to 27 October 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the Period of Ineligibility expires on 4 May 2012, midnight, which means that the PR is again eligible to participate in FEI activities as of 5 May 2012.
- 2) The PR is fined **CHF 1,000.-**.

#### **5. DECISION TO BE FORWARDED TO:**

- 5.1 The person sanctioned: Yes**
- 5.2 The President of the NF of the person sanctioned: Yes**
- 5.3 The President of the Organising Committee of the Event through his NF: Yes**
- 5.4 Any other: No**

**FOR THE PANEL**



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**THE CHAIRMAN, Patrick A. Boelens**