



DECISION of the FEI TRIBUNAL

dated 13 January 2017

Case No.: 2012/BS01 - GLENMORGAN

Horse/Passport: GLENMORGAN/UAE40813

Person Responsible: HH Sheik Hazza bin Sultan bin Zayed Al Nahyan

Support Personnel/NF/ID: Dr. Pasha Syed Kamaal/IND/10064866

Event/ID: CEI3* 160 – Abu Dhabi, Al Wathba (UAE), 2012_CI_0363_E_S_01

Date: 10 February 2012

Alleged Violation: Use or Attempted Use of a Banned Substance or a Banned Method (Article 2.2 EAD Rules)

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair
Mr. Chris Hodson QC, member
Mr. Erik Elstad, member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the Case File, as also made available by and to Dr. Kamaal.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Articles of the Statutes/Regulations:

Statutes 23rd edition, effective 15 November 2011 ("**Statutes**"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1, 161.2, 168.4 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, updates effective 1 January 2012, Art. 1013 and seq. and Annex II (the "**Equine Prohibited Substances List**").

FEI Code of Conduct for the Welfare of the Horse.

2. Support Personnel: Dr. Pasha Syed Kamaal ("**Dr. Kamaal**")

3. Justification for sanction:

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

EAD Rules Art. 2: "*Persons Responsible* and their *Support Personnel* shall be responsible for knowing what constitutes an *EAD Rule violation* and the substances and methods which have been included on the *Equine Prohibited Substances List* and identified as *Banned Substances*."

Where *Banned Substances* or *Banned Methods* are involved, the following shall constitute *EAD Rule* violations:

(...)

2.2 Use or Attempted Use of a Banned Substance or a Banned Method

2.2.1 It is each *Person Responsible's* personal duty, along with members of their *Support Personnel*, to ensure that no *Banned Substance* enters into the *Horse's* body. Accordingly, it is not necessary

that intent, fault, negligence or knowing Use on the part of the *Person Responsible*, or member of his or her *Support Personnel* (where applicable), be demonstrated in order to establish an *EAD Rule* violation for Use of a *Banned Substance* or *Banned Method*.”

Definition of Support Personnel, Appendix 1 of the EADCMRs:
“Any coach, trainer, athlete, *Horse* owner, groom, steward, chef d’équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a *Person Responsible* participating in or preparing for equine sports *Competition*. Veterinarians are included in the definition of *Support Personnel* with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an *EADCM Regulation* will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation.”

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 GLENMORGAN (the “**Horse**”) participated at the CEI3* 160 in Abu Dhabi, Al Wathba, United Arab Emirates, on 10 February 2012 (the “**Event**”), in the discipline of Endurance.
- 1.2 Urine sample taken from the Horse at the Event have been analysed and resulted in a positive finding for Propoxyphene and Norpropoxyphene (metabolite of Propoxyphene). Propoxyphene is classified as Banned Substance on the Equine Prohibited Substances List.
- 1.3 Separate proceedings had been opened against the rider of the Horse - HH Sheik Hazza bin Sultan bin Zayed Al Nahyan - as Person Responsible (the “**PR**”) in order to address the respective violation (Presence of Banned Substances, Article 2.1 EAD Rules).
- 1.4 On 7 April 2014, the FEI Tribunal rendered a final decision in the PR case. The FEI Tribunal held that an EAD Rule violation had been committed by the rider, and imposed (among other sanctions) a two (2) year period of Ineligibility on the rider. Furthermore, the FEI Tribunal suspended the PR for an additional period of three (3) months for a violation committed in 2005. As a result, the PR was ineligible through 11 June 2014.

- 1.5 The PR appealed the FEI Tribunal Decision at the Court of Arbitration for Sport ("**CAS**"). On 8 June 2015, a CAS Panel issued an Arbitral Award in the matter concerning the PR. The CAS Panel decided to partially amend the FEI Tribunal Decision, and declared the PR ineligible (retroactively) for a period of eighteen (18) months commencing as of 12 March 2012. Taking into account the period of Provisional Suspension, the period of Ineligibility of the PR ended on 12 September 2013.
- 1.6 According to the FEI Database, and until the imposition of his Provisional Suspension (as outlined further below) Dr. Kamaal was registered as 2* Official Veterinarian since 2010, and as 2* Endurance Veterinary Treatment Official since 2012. His administering National Federation is the Indian National Federation (the "**IND-NF**").
- 1.7 Furthermore, Dr. Kamaal confirmed in his statement (as outlined further below) that he was Head of the Veterinary Department at W'rsan Stables (the "**Stables**"), where the Horse was usually stabled.

2. The Proceedings

- 2.1 The alleged violation of Use or Attempted Use of a Banned Substance (Article 2.2 EAD Rules) was officially notified to Dr. Kamaal, through the IND-NF on 16 November 2015. The Notification Letter included notice that Dr. Kamaal was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 2.2 The Notification Letter reads as follows with regard to the alleged Article 2.2 of the EAD Rule violation:

*"In the course of the Anti-Doping procedure against the Person Responsible in the above referenced anti-doping case involving the Horse GLENMORGAN ("**the Horse**"), you made various statements (oral and written) both in front of the FEI Tribunal but also in front of the Court of Arbitration for Sport ("**the CAS**"). In those statements, in a nutshell, you confirmed that you had administered to the Horse, on the night before the CEI3* 160, held in Abu Dhabi, Al Wathba on 10 February 2012, a product called Fustex, manufactured by Chinfield S.A ("Annex 1").*

Furthermore, the CAS panel accepted that the product Fustex – despite the fact that Propoxyphene is not listed as ingredient of Fustex – contained Propoxyphene ("Annex 2").

*As you know, analysis of the above-referenced urine Sample has revealed the presence of **Propoxyphene** and Norpropoxyphene. Propoxyphene is a Prohibited Substance under the FEI Equine Prohibited Substances List (the "List")."*

- 2.3 Together with the Notification Letter the FEI submitted – among others – two statements by Dr. Kamaal (which he has provided during the

proceedings regarding the PR in front of the FEI Tribunal and the CAS), as well as the Arbitral Award by the CAS Panel, dated 8 June 2015.

- 2.4 Regarding the source of the Propoxyphene the CAS Arbitral Award (CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. Fédération Equestre Internationale (FEI), para. 202) reads as follows:

"After all of the above, the Panel concluded that, on the balance of probabilities, it was the FUSTEX injection on the eve of the Event which was the source of the contamination. The vial of FUSTEX most likely contained Propoxyphene, the active ingredient of FUSTEX since its introduction into the market in 1981, the presence of which was confirmed in subsequent laboratory analyses of FUSTEX since 2013."

- 2.5 Furthermore, the CAS Arbitral Award reads as follows (para. 195):

"In making this finding, the Panel has taken the following evidence into consideration.

- *Upon inquiry of Ms. Carolin Fischer, Legal Counsel for the Respondent, with Mr. Enrique Fischer, Director of Chinfield S.A. in Argentina, the manufacturer of FUSTEX, Mr. Fischer confirmed that "from the beginning" dextropropoxyphene (Propoxyphene) had been an ingredient in the original formula of the drug FUSTEX since 1981, but "for commercial reasons", the company chose to use the term "Paradiphenbutirate". (...)"*

- 2.6 The CAS panel further found the following (paras 164 and 165):

"The FEI Tribunal held that the head veterinarian at W'rsan Stables, Dr. Pasha, acted with negligence in administering the medication FUSTEX to the Horse without inquiring about its content.

The Panel concurs with the FEI Tribunal's findings that the actions of Dr. Pasha with regard to the handling of the substance FUSTEX and his injection of the Horse must be considered significantly, if not grossly negligent."¹

- 2.7 In his statements (dated 15 May 2012 and 31 July 2013) Dr. Kamaal in essence – and relevant to the proceedings in the case at hand – stated that:

- a) He was the Head of the Veterinary Department at the Stables, and that he managed two other qualified veterinarians, and six veterinarian assistants.
- b) He oversaw the health of all of the horses (around 514 horses), including the Horse, at the Stables. Further, that he was responsible

¹ Dr. Kamaal (referred to as "Dr. Pasha" in the FEI and CAS proceedings) was only a witness and not a party to these proceedings before the FEI Tribunal and the CAS, and therefore the Tribunal is recalling these findings for the sake of completeness only.

for overseeing the administration of all medication to the horses at the Stables, and that he was responsible for ordering and controlling the use of all medicinal products at the Stables.

- c) That before considering whether to buy a new product, he always requested to see a complete breakdown of its ingredients, and where appropriate, required a certificate confirming that they are "race allowed", *i.e.*, that they are not prohibited by the rules of the FEI and other racing regulation bodies.
- d) Regarding the positive finding Dr. Kamaal explained that on 10 February 2012 – after the Horse had completed its pre-race training - he has administered 1 cc of the product FUSTEX – a muscle stimulant by Chinfield SA of Argentina – to the Horse as a "pick me up", in order to "simply to help to relax him after the hard training". Further that he believed that the pre-race injection of FUSTEX was the cause of the positive finding of the Prohibited Substance Propoxyphene, and that he was extremely disappointed having caused the positive finding, as he only gave FUSTEX as he genuinely believed it to be a safe pre-race muscle stimulant, free from Prohibited Substances.
- e) Dr. Kamaal further explained that he had heard about FUSTEX for two or three years prior to him using it. That everyone had been talking about it, and that it was freely marketed by Gulf Center in Bhuraimi, Oman, owned by Dr. T Ganesh. That the general feeling had been that FUSTEX was a good and effective muscle stimulant, which has a good effect on horses, and that it was not thought to contain any Prohibited Substances. That a few weeks prior to the Event he requested Federico, a veterinarian from the Al Ain Endurance stables, for a vial of FUSTEX. The vial was in its branded box, which contained the bottle itself (sealed) and the manufacture's insert. He had put the vial in his emergency medicine kit, which he kept with him during events. Thereafter, he further satisfied himself that the seal on the vial was intact. He further studied the ingredients listed in the manufacture's literature in detail to satisfy himself that it contained no prohibited ingredients, and he double-checked the ingredients to satisfy his own high standards. The listed ingredients were paradifenbutriate and formulation agents q.s. He was duly satisfied that FUSTEX was suitable for use at the Stables. Finally, as he received the vial of FUSTEX from Federico, he had not recorded it in his log purchase book.

3. Further proceedings

- 3.1 On 25 August 2016, the FEI Tribunal Chair – since no panel has been established at the time – granted Dr. Kamaal with a final deadline to provide his explanations regarding the alleged rule violation in writing. Furthermore, Dr. Kamaal was informed that – unless he requested a hearing within a specific deadline – he shall be deemed to have waived

a hearing. Dr. Kamaal did not provide any explanations, nor request for a hearing to be held within the deadline granted.

- 3.2 Moreover, on 5 October 2016, in accordance with Article 19.10 of the IRs, the Tribunal decided to fix a schedule of dates for further submissions by the Parties. Until issuing of the present decision, Dr. Kamaal did not provide any further explanations.

4. FEI Submission

- 4.1 On 2 November 2016, the FEI provided its submission. Together with its submission, the FEI provided – among others – a document with questions and answers by Dr. Kamal during the CAS proceedings. Among other things he explained that he looked through the list of Banned Substances on the FEI website and could not find the product on the Equine Prohibited Substances list. Furthermore Dr. Kamaal was asked the following and answered as below:

"- A vet in his position, when seeing the term "Paradifenbutirate", written on Fustex, ought to have realized that there was no such substance? - No I don't think so.

When he received Fustex from Federico in Jan 2012, did he know of any positive doping tests? – No, not at the time.

The stables have very detailed procedures with regards to handling of medications and supplements? – Yes

Why are there those procedures? – We have a lot of animals, clean, sport, if we compete we compete fairly, if we win we win.

Are you familiar with the EADCMRs? – Yes

Are you familiar with utmost caution for the PR? – Yes"

- 4.2 In essence the FEI submitted that:

a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.2 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.2"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's Sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Propoxyphene and Norpropoxyphene and together constituted "sufficient proof" of the violation of Article 2.2 of the EAD Rules.

b) The veterinarian of a horse counted as a Support Personnel in accordance with the definition outlined in the EADCMRs since he has been *"assisting in any fashion a Person Responsible participating in*

or preparing for equine sports” and could therefore be considered as an additional Person Responsible for the Horse. According to Article 2.2.1 of the EAD Rules “It is each Person Responsible’s personal duty, along with members of their Support Personnel, to ensure that no Banned Substance entered into the Horse’s body and that no Banned Method is Used”.

- c) That Dr. Kamaal admitted that he has administered FUSTEX to the Horse on 10 February 2012, the day before the competition, wherefore Article 2.2 of the EAD Rules, *i.e.*, Administration, should be applied. That in any event, Dr. Kamaal did not dispute the presence of Propoxyphene and Norpropoxyphene in the Horse’s Sample and has admitted that he injected the Horse with FUSTEX. Accordingly, the FEI respectfully submitted that it had discharged its burden of establishing that Dr. Kamaal has violated Article 2.2 of the EAD Rules.
- d) Where a Banned Substance was found in a horse’s sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Support Personnel with no previous doping offence who violated Article 2.2 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse’s system; and (ii) that he bears No Fault or Negligence for that occurrence; or (iii) that he bears No Significant Fault or Negligence for that occurrence. If Dr. Kamaal as additional Person Responsible failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.
- e) The EAD Rules stipulated, and the jurisprudence of the Tribunal and CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/and or his Support Personnel proved how the substance entered into the Horse’s system. The FEI submitted in this context that Dr. Kamaal as additional Person Responsible must provide clear and convincing evidence that proved how the Propoxyphene and Norpropoxyphene have entered the Horse’s system. The FEI was of the opinion that Dr. Kamaal has given a convincing explanation of how the Propoxyphene and Norpropoxyphene have entered the Horse’s system by administering the product to the Horse and injecting FUSTEX on the day before the competition, on 10 February 2012. The FEI was therefore satisfied that Dr. Kamaal has established how the Banned Substance entered into the Horse’s system.
- f) In terms of the degree of Fault and Negligence for the rule violation, the FEI argued that, the starting point of any evaluation was the “personal duty” of the Support Personnel following from Article

2.2.1 of the EAD Rules, *i.e.*, his personal duty to ensure that “no Banned Substance enters into the Horse’s body”.

- g) That in the FEI Tribunal Decision GLENMORGAN, dated 7 April 2014, the FEI argued the following:

“7.8b) With respect to the question of Fault or Negligence for the rule violation, Dr. Pasha acted highly negligently and with the intention of enhancing the Horse’s performance. Firstly, that Dr. Pasha, who had used a product unknown to him at the time, had acted clearly negligently and with fault, as the only checks, prior to using the product, had been the consultation of the product’s leaflet and the oral feedback by a fellow veterinarian. That this was however insufficient in case of the use of an unknown product, and even more in light of the fact that the substance listed as FUSTEX’ main ingredient, Paradiphenbutirate, was an unknown, fictitious term. That further research should have been performed on the product – as also confirmed by Dr. Schumacher – such as an online search, contacting the manufacturer, searching for scientific literature etc., in order to find more scientifically based information. That – and as confirmed by Dr. Paine, Dr. Wan, and Mr. Maynard in their statements – Dr. Pasha, as a qualified veterinarian, having determined “Paradiphenbutirate” as main ingredient of FUSTEX, should have been puzzled about this term, and that the term should have triggered him to do further research, in order to be duly satisfied that FUSTEX was suitable for use at W’rsan Stables.

*7.8.c) Secondly, that Dr. Pasha had also intentionally used the product in order to enhance the Horse’s performance, as at the time when he was using the product, he had thought using a muscle stimulant. That it was questionable why Dr. Pasha would use a muscle stimulant for a competition horse, as it was obvious that a “muscle stimulant” – even though as such not a scientific term – would stimulate muscles in a positive/negative way, *i.e.* gain advantage or be a disadvantage, and would therefore be banned under any sporting rules. Furthermore, that it was notable that Dr. Pasha – as admitted by him – had not recorded the administration of the product FUSTEX anywhere.”*

- h) Further, that the Tribunal came to the following conclusion regarding fault:

“11.6 With regards to the question of Fault or Negligence for the rule violation the Tribunal acknowledges that the PR claims having put in place “stringent procedures” with the aim to prevent any contamination or positive testing. However, the Tribunal finds at the same time that based on the evidence

submitted in the present case, these procedures had not been followed in the case at hand, neither with respect to the acquisition or the storage of the product FUSTEX. In addition, a diligent check was not conducted regarding the suitability of the product "paradiphenbutirate", as Dr. Pasha had only performed a minimum check, limited to the consultation of the product's leaflet and the oral feedback by a fellow veterinarian. The Tribunal therefore finds that Dr. Pasha had been clearly negligent when using a product unknown to him. The Tribunal further holds that it would expect a veterinarian to conduct further research on a product used by him for the first time, and substances contained in it, including contacting the manufacturer of the product. In addition, the Tribunal would have expected for Dr. Pasha to undertake a profound search in scientific literature, as the substance listed as the main ingredient of the product, the compound Paradiphenbutirate, appeared to be an unknown chemical term.

(...)

11.8 The Tribunal also takes note of Dr. Pasha's statement that he had administered 1cc of FUSTEX as a "pick me up" to the Horse after it had completed his pre-race training on the day prior to the Event, intending to help the Horse relax after a hard pre-race training. In this respect the Tribunal understands that Dr. Pasha had not recorded the administration of the product FUSTEX anywhere, including the Pre-Ride Medication list, nor did he mention the product in his initial Statement of Truth, dated 15 May 2012. The Tribunal finds that the evidence shows that Dr. Pasha intentionally used the product FUSTEX, in order to enhance the Horse's performance. Whereas in the case at hand, the charges are only against the PR, the Tribunal comes to the conclusion that the actions by Dr. Pasha could potentially qualify as a violation by Dr. Pasha himself of the EAD Rules."

- i) The FEI further argued that Dr. Kamaal has given a thorough and detailed explanation of how he works as a Head Veterinarian with the 514 horses at the W'rsan stables. That he did however not follow his normal chain of precaution before considering a new product. He did not check the drug or manufacturer properly, neither did he require a certificate of "race allowed" containing no prohibited substance as he usually did, nor did he ask for a complete breakdown of the ingredients. Instead he put the FUSTEX vial in his emergency kit, without following the normal procedure. Once he decided to use the FUSTEX, he did not make a record of the administration of it or note anything in the log book on the occasion when he used it on the Horse. Further, Dr. Kamaal could not claim 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 a Banned Substance to the Horse. Especially

since he had actually given a product that he had never used before on the day before the competition, without following his normal high standards and procedures of checking a drug. He has even explained that *"The day before the competition he gave the Horse 1 cc of Fustex as a "pick me up" through injection, simply to help the Horse relax after the hard pre-race training. He remembers discussing with his college and told him (the college) that he was going to give the Horse Fustex although they had not used it before. The college (sic) trusted Dr. Kamaal's judgement and only asked if it contained any prohibited substances, which he confirmed it did not"*.

- j) The FEI was therefore of the opinion that Dr. Kamaal was at fault and has been negligent, since he did not act with utmost caution in order to avoid a positive finding. On the contrary, and according to both the FEI Tribunal Decision (in the PR case) and the CAS Award, the conclusion was that Dr. Kamaal was significantly negligent, if not grossly negligent. Based on these decisions, the FEI was of the opinion that Dr. Kamaal has been significantly negligent and no reduction of the presumptive two-year ban under Article 10.2 EAD Rules could be applied. Dr. Kamaal should therefore be suspended for a period of two (2) years.
- k) With regard to fines and costs, the FEI requested that the Tribunal fined Dr. Kamaal in the amount of 3'500 CHF, and ordered Dr. Kamaal to pay 1'500 CHF legal costs that the FEI has incurred in these proceedings.

5. Jurisdiction

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

6. The Support Personnel

- 6.1 The institution of Support Personnel is defined in Appendix 1 of the EADCMRs as:

"Any coach, trainer, athlete, Horse owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports Competition. Veterinarians are included in the definition of Support Personnel with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an EADCM Regulation will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."
- 6.2 The Tribunal takes note that Dr. Kamaal has been the Head of the Veterinary Department at the Stables where the Horse was stabled,

and as such the veterinarian for the Horse prior to and during the Event. Furthermore, the Tribunal takes note that Dr. Kamaal has been registered as 2* Official Veterinarian and as 2* Endurance Veterinary Treatment Official at the time of the Event. Dr. Kamaal therefore qualifies as a member of the Support Personnel in accordance with the EADCMRs. Finally, the Tribunal also takes note that Dr. Kamaal has not disputed his status as Support Personnel in the matter at hand.

7. The Decision

- 7.1 As a preliminary comment, the Tribunal takes note that in the FEI Tribunal and CAS proceedings with regard to the case of the PR, Dr. Kamaal was a witness and not a party. Therefore, when deciding the case at hand, the Tribunal will not rely on these decisions and their findings with respect to Dr. Kamaal, including with regard to his degree of fault or negligence. Instead, the Tribunal will assess and evaluate the evidence submitted to it independently of the previous decisions, and will decide the present case, and the alleged rule violation by Dr. Kamaal, based on its own assessment and evaluation of the evidence on the record of this case.
- 7.2 Given that Dr. Kamaal has not provided any submission/explanation in the present case with regard to his alleged rule violation notwithstanding the many opportunities afforded to him, the Tribunal will take into consideration the explanations he provided in the previous proceedings of the PR, *i.e.*, his witness statements dated 15 May 2012 and 31 July 2013.
- 7.3 Regarding the alleged rule violation of Dr. Kamaal, the Tribunal holds that the FEI has discharged its burden of establishing that Dr. Kamaal had violated Article 2.2 of the EAD Rules. The Tribunal finds that the statements by Dr. Kamaal himself regarding his administration to the Horse after pre-race training of 1 cc FUSTEX – a product containing Propoxyphene, as also accepted by Dr. Kamaal - evidences a violation by Dr. Kamaal of Article 2.2 of the EAD Rules. The Tribunal further takes note that Dr. Kamaal did not contest the Rule violation alleged by the FEI.
- 7.4 In cases brought under Article 2.2 of the EADCMRs for Use of a Banned Substance, the so-called strict liability principle, as described in Article 2.2.1 of the EAD Rules, applies. This means that once the use of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI, and it is not necessary that intent, fault, negligence or knowing Use on the part of the PR or member of the Support Personnel be demonstrated in order to establish an EAD Rules violation. Rather, the PR or the member of Support Personnel has the burden of proving that he bears “No Fault or Negligence” for the positive finding as set forth in Article 10.5.1 of the EAD Rules, or “No Significant Fault or Negligence,” as set forth in Article 10.5.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Articles 10.5.1 or 10.5.2 of the EAD Rules,

the person alleged to have committed the Article 2.2 EAD Rule violation, must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.5 of the EAD Rules. The standard of proof is that Dr. Kamaal must establish "specific facts or circumstances" "by a balance of probability".

- 7.5 The Tribunal takes note of Dr. Kamaal's explanation of how the Propoxyphene and Norpropoxyphene have entered the Horse's system, namely by injecting the Horse with the product FUSTEX – containing Propoxyphene - on the day prior to the competition, on 10 February 2012. The Tribunal further also takes note that the FEI is satisfied that Dr. Kamaal has established how the Banned Substance entered into the Horse's system. As a result, the Tribunal finds that Dr. Kamaal has established on a balance of probability – as required in accordance with Articles 3.1 of the EAD Rules – how the Prohibited Substances entered the Horse's system.
- 7.6 In a second step the Tribunal needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. In this respect the Tribunal holds that – in accordance with Article 2.2 of the EAD Rules - it is each Person Responsible's personal duty, along with members of their Support Personnel, - such as Dr. Kamaal in the case at hand - to ensure that no Banned Substance is present in the Horse's system at any stage.
- 7.7 The Tribunal finds that the duty of care expected from a veterinarian, such as Dr. Kamaal in the case at hand, exceeds a simple check, or even double-check of the ingredients listed on a product prior to using it for the first time. Neither can a veterinarian, who is responsible for the health of over 500 horses simply rely on the advice of one of his colleagues –as was the case in the instant case - without thoroughly and independently investigating the ingredients and the effects of a product such as FUSTEX. The Tribunal finds that, as confirmed by Dr. Kamaal himself, Dr. Kamaal did not even follow his own standards of care and procedures usually applied. As a result the Tribunal finds that Dr. Kamaal did not meet the standard of care expected neither from a veterinarian generally, nor from him in the specific circumstance of the case at hand.
- 7.8 The Tribunal therefore comes to the conclusion that Dr. Kamaal was significantly at fault and negligent, as a result of which the Tribunal concludes that no reduction or elimination of the otherwise applicable period of Ineligibility under Article 10.5 of the EAD Rules is warranted.

8. Sanctions

- 8.1 Article 10.2 of the EAD Rules foresees a sanction of two (2) years period of Ineligibility for an Article 2.2 EAD Rule violation.

- 8.2 Furthermore, the Tribunal takes note that the FEI is requesting it to fine Dr. Kamaal in the amount of 3'500 CHF, and to order him to pay 1'500 CHF legal costs that the FEI has incurred in these proceedings. In assessing the appropriate amount of the fine to be imposed on Dr. Kamaal and the FEI claim for repayment of its legal costs, the Tribunal is taking into account the long time that has passed between the rule violation and the charges brought against Dr. Kamaal.
- 8.3 The Tribunal therefore imposes the following sanctions on Dr. Kamaal as member of the Support Personnel, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) Dr. Kamaal shall be suspended for a period of **two (2) years** for the present rule violation. The period of Provisional Suspension, effective from 16 November 2015, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, Dr. Kamaal will be ineligible **through 15 November 2017**.
 - 2) A fine in the amount of **two thousand five hundred Swiss Francs (CHF 2'500,-)** shall be imposed on Dr. Kamaal.
 - 3) Dr. Kamaal shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of this procedure.
- 8.4 No member of the Support Personnel, who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.9.1 of the EAD Rules). Under Article 10.9.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.
- 8.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 8.6 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within thirty (30) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The Support Personnel: Yes**
- b. The President of the NF of the Support Personnel: Yes**
- c. Any other: No**

FOR THE PANEL



THE CHAIR, Mr. Laurent Niddam