DECISION of the FEI TRIBUNAL
dated 16 December 2014

Positive Controlled Medication Case No.: 2013/FT09

Horse: LISLAN ROCKENROLLER      FEI Passport No: IRL40772

Person Responsible/NF/ID: Quinton George/RSA/10061876

Event: CIC3* – Shongweni (RSA)/2013_CI_1216_C_S_03_01

Date: 2 - 3 March 2013

Controlled Medication Substance: Scopolamine

I. COMPOSITION OF PANEL

Mr. Henrik Arle, Chair
Ms. Randi Haukebø, Panel member
Mr. Vladan Jevtic, Panel 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 and at the oral hearing, as also made available by and to the PR.


III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

   Statutes 23\textsuperscript{rd} edition, effective 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.
General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.


Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2013, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. **Person Responsible:** Mr. Quinton George

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).”

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

**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 Panel 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 LISLAN ROCKENROLLER (the “Horse”) participated at the CIC3* in Shongweni, South Africa, from 2 to 3 March 2013 (the “Event”), in the discipline of Eventing. The Horse was ridden by Mr. Quinton George, who is the Person Responsible in accordance with Article 118 of the GRs (the “PR”).

1.2 The Horse was selected for sampling on 3 March 2013.

1.3 Analysis of urine and blood sample no. 5508822 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory, Sport Science (“HFL”) in the United Kingdom by R. Schiller, Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Scopolamine.

1.4 The Prohibited Substance detected is Scopolamine. Scopolamine is a smooth muscle relaxant, used to treat gastro-intestinal spasm. Scopolamine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.

1.5 No request had been made to administer Scopolamine to the Horse, and no Veterinary Form had been provided by the PR for the use of the substance on the Horse. Therefore, the positive finding for Scopolamine in the Horse’s sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Proceedings

2.1 The presence of the Prohibited Substance following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the South African Equestrian Federation (“RSA-NF”), by the FEI Legal Department on 5 June 2013.

2.2 The proceedings were initiated under the Administrative Procedure (otherwise referred to as the “Fast Track” procedure) insofar as the respective prerequisites under Article 8.3 of the ECM Rules were fulfilled. The PR was afforded the opportunity to accept the following administrative sanctions: (i) Disqualification from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of thousand five hundred Swiss Francs (CHF 1,500), and (iii) the payment of thousand Swiss Francs (CHF 1,000) in costs. The PR was further informed that in case he did not accept the administrative sanctions offered, the case would be submitted to the FEI Tribunal procedure, and, provided the presence of the substance was established, the Tribunal would impose penalties which would be more or less severe than the administrative sanctions offered.

2.3 On 12 June 2013, and after having been made fully aware of the potential risks and consequences of declining the administrative
sanctions by the FEI, the PR informed the FEI that he did not accept the administrative sanctions offered to him in the Notification Letter of the same day.

3. The B-Sample Analysis

3.1 Together with the Notification Letter of 5 June 2013, the PR was also informed that he was entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

3.2 On 14 December 2013, the PR requested the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis. Further, the PR requested that a representative attended the B-Sample analysis. Several attempts were undertaken to schedule the B-Sample analysis in accordance with the availability of the PR’s witness, however to no avail. Given the situation the PR agreed for the B-Sample analysis to be performed without his representative, but his representative was given the opportunity to contact the laboratory in charge of the B-Sample analysis prior to and after the analysis.

3.3 From 30 January to 4 February 2014, the B-Sample analysis was performed on the urine sample at the Laboratoire des Courses Hippiques (“LCH”) in France, by Ms. Isabelle Pottier, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director.

3.4 The B-Sample analysis confirmed the presence of Scopolamine.

3.5 On 13 February 2014, the results of the B-Sample analysis were provided to the PR through the RSA-NF.

4. Proceedings

4.1 On 5 June 2013, the PR explained that he confirmed that the Horse had never received any treatment for gastro-intestinal function since he had bought it in mid-2011. Further that according to the Horse’s records, the Horse had received Iwrap, Hyalouronic Acid and other lubrication treatments by Dr. John McVeigh on 14 January 2013, ahead of a major show, and a Protec Flu vaccination on 5 February 2013 at the Boshoek Equine hospital. Finally the PR explained that Dr. Mc Veigh had informed him that the Scopolamine concentration of certain plants was high enough to be detected in a doping control sample.

4.2 On 12 and on 14 June 2014, upon respective request by the PR, the FEI informed the PR that there was no difference between Scopolamine from a natural source or from a pharmaceutical source, and that therefore it was not possible to determine the nature of the Prohibited Substance detected from the A-Sample. Further that the FEI had established a screening limit for Scopolamine which was designed to eliminate normal
background amounts of natural sources. That however in case the PR adduced evidence that the positive result in the case at hand had nevertheless been caused by contamination, this would be considered both by the FEI as well as by the FEI Tribunal.

4.3 On 12, 14 and on 17 June 2014, the PR explained that he was convinced that the detection of the substance Scopolamine in his case and in previous FEI cases – specifically the case of “Gold Rush” (case 2007/42) – and furthermore also in a number of South African race horses was the result of contaminated feed or grass. That in the case of Gold Rush, Dr. Frits Sluyter of the FEI Veterinary Department had confirmed that the sample had tested positive for Scopolamine, and not N-butyl-scopolamine - the synthetic drug - and that therefore there had to be a possibility to differentiate the nature of Scopolamine. Furthermore that the issue of positive Scopolamine findings resulting from something ingested with the feed or grass, in particular a plant called Datura, was well known in South Africa, and that in the context of the Gold Rush case the FEI had acknowledged that a potential threshold for Scopolamine had to be considered. That in South Africa, only Scopolamine positives for which it was clear that they did not originate from a natural source should be treated as positives, as any different approach would prejudice those living in Datura exposed areas. The PR further argued that if indeed the risk of Scopolamine contamination was well known then “stringent quality controls” should be implemented over all feed administered to every horse competing in FEI events at least four days prior to an event. Moreover, that he had found a Datura plant alongside the paddock on which the Horse was kept. Finally, that he had sent samples of all his horses to the South African Racing test laboratory, and had requested a report confirming how regularly Scopolamine was detected in the racing industry. That he had been informed that over 10% of horses in the racing industry would test positive for Scopolamine, and that the South African Racing test laboratory had therefore to adjust the threshold levels of Scopolamine in the samples. Throughout the proceedings and up until the date of this decision the PR has not provided any testing results from the South African Racing test laboratory or any other test results.

4.4 On 21 June 2014, the FEI explained that the case of Gold Rush dated back to a time when an entirely different Equine Anti-Doping system had prevailed. Moreover, that the FEI had decided to further investigate the case at hand and the PR’s concerns, and that in the meantime all time-limits were suspended.

4.5 On 11 December 2013, the FEI informed the PR of the outcome of the investigations. The FEI explained that amongst others, HFL had re-examined the screening data for the sample in question and had concluded that there was no definitive proof that the Scopolamine finding resulted from contaminated feed. Specifically that HFL had looked for the Datura markers apotropine, noratropine and meteloidine, as well as atropine, and had found no convincing evidence for the presence of any of these other alkaloids. The FEI further stated being confident that the screening limit applied to Scopolamine at the
time was adequate, and that it had to be taken into account that the screening limit had to be applied world-wide, and not only in South Africa. That for those reasons it had been decided to prosecute the case as usual.

4.6 On 14 December 2013, the PR argued that unless it was established whether the Scopolamine resulted from a pharmaceutical source – which the investigations of the FEI seemed not to have established – riders living in areas of prolific Datura growth would be prejudiced and would risk being unfairly punished by the FEI. That if the FEI was not able to find a solution to the problem then each rider in South Africa would have to notify the FEI Veterinarian at Events that their horse had been eating grass and had potentially ingested Scopolamine. That as a result, if one of these horses tested positive for Scopolamine, the riders should not be fined or punished.

4.7 On 21 February 2014, the FEI informed the PR of the Final Decision taken by the FEI Tribunal in the Honky Tonk Whiz case, a case of another South African rider that also involved Scopolamine.

4.8 On 21 February 2014 the PR explained that he did not agree with the FEI Tribunal decision in the Honky Tonk Whiz case, and requested that in his case the Tribunal took into consideration more scientific facts than it would have done thus far, and that it realized that South Africa could not adhere to FEI criteria with respect to Scopolamine.

5. The PR’s written submissions

5.1 On 6 March 2014, the PR provided his explanations for the positive finding. In summary, the PR argued that it was clear that it was impossible to control Scopolamine contamination in South Africa, and that the FEI could therefore not apply any fines and sanctions on him or any other South African riders in the future.

5.2 Together with his explanations the PR submitted answers provided by Dr. Schalk de Kock, Laboratory Director of The National Horseracing Authority of Southern Africa, to a list of questions by the PR. The PR further submitted a letter by Mr Douglas Welsh, Chairman of Eventing KZN and member of the Board of Eventing South Africa, addressed to the Discipline Chairs of the FEI disciplines and aiming to draw their and all South African FEI competitors’ attention to the potential risks inherent in South Africa pertaining to Scopolamine contamination via feed sources. Mr. Welsh explained that apart from the Datura plant, the product Buscapan, used to treat colic and for which an extraction period of 24 hours had been determined, could be the source of a positive Scopolamine finding. That however, whereas it would be scientifically possible to differentiate between Scopolamine being caused by a natural source or by the use of a drug, the FEI Rules would not foresee any differentiation in case of a positive finding. Mr. Welsh therefore suggested that all FEI disciplines in South Africa apply for a blanket exemption for Scopolamine due to local conditions. Alternatively that all
FEI competitors should apply for either a Veterinary Form 1 or 4 at each Event, despite the fact that neither of those forms was specifically designed for Scopolamine findings.

5.3 Dr. de Kock explained that the only means to differentiate between synthetically produced Scopolamine and naturally ingested Scopolamine was carbon isotope studies, which would however not be a methodology required in horseracing forensics. That in Europe, levels of naturally ingested Scopolamine would be very low, but that in South Africa, during certain periods, the levels could also be much higher. That higher levels would usually be detected in numerous samples during the same period of time, both in samples from racing and from eventing, and that this would trigger investigation into the possibility of Datura contamination. That in South Africa, especially in dry periods during which the Datura plant grew well, feed contamination was observed, most often a short period after the particularly dry periods. That the problem would usually last for a couple of months, often in the period from October to May. Dr. de Kock further confirmed that March 2013 had been the start of a period of very significant Scopolamine findings, both in terms of numbers as well as in terms of concentration. That at times when his laboratory would constantly detect high levels of Scopolamine for at about 5% of horse urine received at the laboratory, it would inform the National Racing Authority, as it would be a sign of contamination. That whereas the National Racing Authority would not have a recognised threshold for Scopolamine, upon respective information by the laboratory it would adjust the levels used for Scopolamine upwards, for a certain period of time. Dr. de Kock further explained that more expensive feed was probably of better quality as the farming practice applied to produce it was better insofar as weeds such as Datura were better controlled and removed. That however by choosing high quality feed, riders could only partly control the risk of consumption of contaminated feed as during times when feed supply was short, feed of poorer quality (more Datura containing) would also find its way into the system. That in those situations, feed of lower quality would often be sold at expensive prices (due to the shortage) and that it would be difficult for riders in those situations to know whether they buy high or low quality feed. Further that atropine was a common marker for Datura contamination, but that the absence of atropine in a given sample would not allow any conclusions as the concentration of atropine was lower than that of Scopolamine, and as atropine would be metabolised and excreted more rapidly than Scopolamine. That furthermore the occurrence of increased amounts of colic incidents in the veterinary clinics would allow the conclusion that Datura is the cause of both the positive Scopolamine findings as well as the colic findings. Lastly, that as far as he knew, the intake of the Datura plant by horses could cause colic for as long as five days, and could even end fatal for some horses. That other horses however would be able to compete, showing very high Scopolamine levels in the urine.

5.4 On 17 July 2014, the PR provided a witness statement by Dr. Mike Ross, BSc BVSC. Dr. Ross stated having known the PR for several years, and that he had considered him professional in his approach to horses and
eventing. Further that Scopolamine was a major cause of intractable colic, which would raise the question as to why anyone would give it to his or her horses.

5.5 On 1 August 2014, the PR provided a statement by Mr. Welsh. Mr. Welsh stated that South Africa was relatively new in the FEI family and that riders had minimum or no knowledge of the risks of naturally ingested Scopolamine (Datura plant) and the consequences thereof. That the feed industry in South Africa was not advanced enough to supply Scopolamine free feed, and that it would be lacking awareness of the problem. Further that the number of customers that would potentially purchase feed certified free of Scopolamine would not warrant the costs involved in supplying this guarantee.

5.6 On 8 August 2014, Mr. Graeme Cooke, FEI Director Veterinary Department, informed the RSA-NF and the FEI National Head Veterinarian of the RSA-NF that in accordance to Article 1051 of the VRs, no other substances than those listed as Self-Declaration Substances could be entered onto a Veterinary Form 4. That Scopolamine was not included on the list of Self-Declaration Substances and that therefore any inaccurately completed Veterinary Form 4 would not prevent the FEI from its obligation to pursue positive findings. That he therefore requested that the regulation was enforced.

6. Written submissions by the FEI

6.1 On 19 August 2014, the FEI provided it’s Answer to the written submissions by the PR.

6.2 In essence, the FEI submitted that:

a) insofar as a Controlled Medication Substance, for which no valid Veterinary Form had been submitted, had been present in the Horse’s A- and B-Sample taken at the Event, a violation of Article 2.1 of the ECM Rules is deemed to be sufficiently proven. That Scopolamine was not a substance included on the List of Self-Declaration Substances as regulated under Article 1051 of the FEI Veterinary Regulations and that therefore any Veterinary Form 4 completed for this substance was unduly completed and would therefore not remove liability for a respective positive finding.

b) when establishing a positive finding it was irrelevant whether the substance in question was synthetic in nature or natural, as the EADCMRs did not distinguish in any way between the source of the Prohibited Substance. In addition, that it was for the FEI List Group to consider any reasons to reconsider the classification of Scopolamine (or the FEI screening limit for Scopolamine) as Controlled Medication Substance, and that pending cases were not the appropriate forum to either discuss the issue or to take any decisions. Further, that all International Events had to adhere to FEI Rules and Regulations, and that it was not possible to have different
Rules and Regulations being tailored expressly in accordance with the particularities of one (or more) specific National Federations.

c) as the PR had not accepted the Administrative Sanctions offered to him, Article 10 of the ECM Rules applied, and that a period of Ineligibility of six months – which was commensurate with the seriousness of the offence, taking into account the underlying objectives and rationale of the ECM Rules and FEI Medication Code, as well as principles of fair play - should be imposed on the PR.

d) as the PR had not discharged his burden of proving how the Scopolamine had entered the Horse’s system, no elimination or reduction of the period of Ineligibility under Article 10.4 of the ECM Rules was possible. That the PR had not provided any concrete explanations, let alone evidence, regarding his allegation that the positive Scopolamine finding had been caused by feed contamination.

e) even if the PR’s allegations regarding the source of the Prohibited Substance were proven and correct, according to the explanations and statement submitted by the PR himself, the danger of Datura seed in particularly for equines and humans had been long recognised in South Africa. That the PR should have made himself familiar with at least the most common and known risks of contamination of feed in his country, and should have taken preventive measures to avoid any such contamination. That the PR seemed to have failed to ensure that no Controlled Medication Substances came to be present in the Horse’s system during the Event. Finally that the claim of the PR that the ingestion of Scopolamine through contaminated feed was not deliberate did not release him from his liability as rider and PR. That therefore he would not be entitled to any elimination or reduction under Article 10.4 of the ECM Rules.

7. Final Hearing

7.1 During the Final Hearing Mr. Welsh explained that he had had “an eye on” the Horse whilst the PR had not yet arrived at the Event and that the Horse had not been medically treated. That it was in the context of the case at hand that he had heard of Scopolamine for the first time.

7.2 Dr. Ross explained that very often, horses suffered from colic caused by Scopolamine, and that certain horses would never recover from such colic, in particular in cases where high amounts of Scopolamine were involved. Dr. Ross further explained that the product Buscopan contained the substance butoscopolamine, which was different to Scopolamine found in the Datura plant. That in South Africa, a medication used to treat colic was a Buscopan composita, which contained two substances, both of which were Prohibited Substances and should have been detected in the context of the analysis of the sample. That in his understanding and based on discussions with Dr.
Kock, butoscolamine could be definitely differentiated from naturally occurring Scopolamine that was found in the Datura plant. Dr. Ross further explained that in South Africa no screening for plants such as Datura would be undertaken/conducted by farmers or those selling roughage, and that even if riders would remove plants themselves, contamination of the roughage had already occurred. That insofar as Datura grew wide and natural in South Africa, total eradication of Datura would never happen, and that therefore Datura contamination was not comparable with for example poppy seed contamination in Europe. That even if feed was screened much more, such as by Jockey clubs and Racing stables, a Scopolamine contamination problem would continue to exist. That therefore he did not believe that it was possible to reduce the risk of Datura contamination in South Africa.

7.3 The PR explained that he did not dispute the positive finding. That he would not know how to administer Scopolamine to the Horse, and that therefore the conclusion had to be that the Scopolamine had entered the Horse’s system via natural sources, without his intention. That he had had no intention to enhance the Horse’s performance and was not trying to win competitions or qualify for the Olympic Games because riding was only a hobby to him. Further, that he did not know how to prevent a future positive finding for Scopolamine resulting from contamination, and that he was aiming at making the FEI change its rules in a way that existing local conditions were taken into account in order to not compromise certain countries.

7.4 In essence the FEI further argued that:

a) the PR had not provided any explanation of how the Prohibited Substance had entered the Horse’s system. That – in contradiction to Dr. Ross’ statement - Mr. Welsh had previously confirmed in this written statement that the product Buscopan could be the source of a positive Scopolamine finding.

b) the PR had not provided any explanation regarding any measures taken by him to avoid that any Prohibited Substances entered the Horse’s system. The FEI further argued that it followed from Dr. de Kock’s statement that feed of different quality existed and that therefore there would be possibilities to avoid positives caused by contamination.

c) the present case related to the presence of a Prohibited Substance in the Horse’s sample, and that the PR was not accused of having used a Prohibited Substance on the Horse. That in cases of positive findings, once the rule violation was established, the automatic Disqualification of the Horse and the PR combination from the Competition as foreseen under Article 9 of the ECM Rules would be justified insofar as due to the fact that a Prohibited Substance had been found in the Horse’s system, the level playing field had been disturbed.

d) there had been no request, neither from South Africa or from any
other country, to the FEI List Group – the body of the FEI in charge to create the list of Prohibited Substances - to re-consider the classification of Scopolamine. That the FEI Tribunal had to apply the FEI Rules and Regulations in place at the time of the positive finding, i.e. amongst others the 2013 ECM Rules (1st edition, effective 5 April 2010, updates effective 1 January 2013) and the 2013 List of Prohibited Substances. Further that the FEI - as an international governing body - had to establish Rules and Regulations for all its member countries. Moreover, that the FEI was not in a position to work with a “floating” screening limit as suggested by the PR, as in its opinion this would lead to unpredictability and unequal treatment.

8. Jurisdiction

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

9. The Person Responsible

9.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he had competed with the Horse at the Event.

10. The Decision

10.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse’s A-Sample and B-Sample. The Tribunal is satisfied that the laboratory reports relating to both the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HFL and the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Scopolamine 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. Scopolamine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.

10.2 To start with the Tribunal will address the PR’s claim that natural Scopolamine should not be considered as a Controlled Medication Substance, and his request for a threshold for Scopolamine to be applied for cases arising from South Africa, in order to take into account that Scopolamine contamination from Datura plants was well known and frequent in South Africa, and could not be controlled. The Tribunal notes in this regard that Scopolamine is included as Controlled Medication Substance in the FEI Prohibited Substances List, and that generally, the FEI Prohibited Substances List does not differentiate between naturally occurring substances or substances of synthetic nature. The Tribunal therefore finds that the PR’s claim that natural Scopolamine should not
be included on the FEI Prohibited Substances List has no legal grounds and therefore has to be dismissed. The panel in charge of the present case takes also note that only recently, the FEI Tribunal has taken a decision in a case of another Scopolamine finding also involving a rider from South Africa (FEI Case 2013/FT02 - HONKY TONK WHIZ, Final Tribunal Decision dated 20 February 2014). The PR in the case of HONKY TONK WHIZ had also alleged that the positive finding had been caused by contamination from Datura plants, without however producing sufficient evidence for her allegations. As the panel in the HONKY TONK WHIZ case the panel of the case at hand has to treat and consider Scopolamine as a Prohibited Substance. With regards to the request for the FEI to introduce a threshold for Scopolamine the Tribunal is of the opinion that such a request has to be submitted to and decided by the FEI List Group, and not the FEI Tribunal. The FEI – as world governing body of equestrian sport - has to apply its Rules and Regulations equally for each rider and National Federation, worldwide. The PR’s claim for an exception for Scopolamine cases arising from South Africa has therefore to be dismissed. Finally, the Tribunal takes note that Scopolamine is not listed as a Self-Declaration substance and that therefore any application for a Veterinary Form 4 would have had to be rejected. The PR had not been granted any other type of valid Veterinary Form which would have allowed him to apply Scopolamine on the Horse.

10.3 With regards to the PR’s claim that no medication existed worldwide that contained Scopolamine, and that the product Buscopan would not contain Scopolamine, but buscoscopalmine, the Tribunal further takes note that on the FEI Clean Sport Prohibited List Database, Buscopan is registered as containing Scopolamine. The Tribunal however finds that it does not matter whether Buscopan contains Scopolamine or buscoscopalmine, as for aforementioned reasons the nature of the Scopolamine, i.e. natural or synthetic, does not matter.

10.4 The Tribunal further wishes to clarify the difference between “rule making” and “rule implementation”. Whereas the FEI is the international body establishing the Rules and Regulations for all its member countries, the Tribunal’s function is to apply, i.e. implement the FEI Rules and Regulations in place at the time. The Tribunal further understands that the FEI Rules and Regulations foresee specific procedures that allow to reconsider the classification of Scopolamine (or the FEI screening limit for Scopolamine) as Controlled Medication Substance and that respective requests could be made to the FEI List Group, the body in charge of those considerations.

10.5 The FEI has thus established an Adverse Analytical Finding for Scopolamine, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.

10.6 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, and the PR did not accept the administrative sanctions offered to him or her under the Fast Track procedure, the PR has the burden of proving that he bears “No Fault or
Ne negligence” for the rule violation as set forth in Article 10.4.1 of the ECM Rules, or “No Significant Fault or Negligence,” as set forth in Article 10.4.2 of the ECM Rules.

10.7 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse’s system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.

10.8 The Tribunal takes note of the PR’s allegation that contaminated feed had to be the reason for the positive finding. The Tribunal also takes note of Dr. de Kock’s statement confirming that March 2013 had been the start of a period of very significant Scopolamine findings in South Africa, both in terms of numbers as well as in concentration. The Tribunal however holds that the PR has not provided any concrete evidence for his allegations, but has only provided potential explanations for the positive finding. In the opinion of the Tribunal the allegation that March 2013 had been the start of a period of significant Scopolamine findings is not sufficient to establish that in the case at hand, contamination has caused the positive finding. In this context the Tribunal also takes into account that the Event where the positive finding had been sampled had only taken place at the very beginning of March 2013, i.e. that it had only taken place at the very beginning of the alleged period of significant Scopolamine findings. The Tribunal therefore finds that the PR has not established, by a balance of probability as required under Article 3.1 of the ECM Rules, how the Scopolamine had entered the Horse’s system.

10.9 However, even if the Tribunal would accept that the PR has established how the Scopolamine had entered the Horse’s system, the Tribunal nevertheless holds that the PR has not established that he bears “No (Significant) Fault or Negligence” for the rule violation. In accordance with Article 2.1.1 of the ECM Rules, it is the PR’s personal duty to ensure that no Controlled Medication Substance is present in the Horse’s body during an Event. In this respect the Tribunal takes note of the PR’s claim that he had no possibility of knowing that the Horse had inadvertently ingested Scopolamine. The Tribunal however also takes note of the PR’s explanation according to which the danger of contaminated feed with Datura had long been recognised in South Africa. The Tribunal finds that the PR did not adduce any evidence as to whether, prior to the case at hand, he had made himself familiar with the most common risks of potential inadvertent findings of Prohibited Substances. And that he had neither established that he had taken preventive measures in order to address the well-known risk of his Horse ingesting contaminated feed.

10.10 Accordingly, the Tribunal comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

10.11 The Tribunal takes further note of the PR’s request that insofar as – as alleged by him - it was impossible to control Scopolamine contamination in South Africa, no fine or sanctions should be applied on him. However,
according Article 169 of the GRs and Article 10 of the ECM Rules, once an ECM Rule violation has been established, as it is the case in the case at hand, fines and sanctions have to be applied. The Tribunal does not agree with the PR’s view that no fine and no sanctions shall be imposed on him. This is because the PR has not established – to the Tribunal’s satisfaction - that the risk of Datura contamination is uncontrollable in South Africa. In deciding the sanctions imposed on the PR the Tribunal is considering the circumstances of the case at hand, including but not limited to the level of the Event.

11. Disqualification

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

12. Sanctions

12.1 The FEI Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

1) The PR shall be suspended for a period of six (6) months to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through 15 June 2015.

2) The PR is fined one thousand five hundred Swiss Francs (CHF 1500,-).

3) The PR shall contribute one thousand Swiss Francs (CHF 1000,-) towards the legal costs of the judicial procedure, as well as the cost of the B-Sample analysis, including the cost of the transport of the sample from HFL to LCH.

12.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

12.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

12.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.
V. DECISION TO BE FORWARDED TO:

a. The person sanctioned: Yes

b. The President of the NF of the person sanctioned: Yes

c. The President of the Organising Committee of the Event through his NF: Yes

d. Any other: No

FOR THE PANEL

[Signature]

The Chair, Mr. Henrik Arle