



**DECISION of the FEI TRIBUNAL**

**dated 19 May 2015**

**Positive Controlled Medication Case No.:** 2013/FT27

**Horse:** ELGORA Z REGULA

**FEI Passport No:** 104CB67

**Person Responsible/NF/ID:** Joanna Zarzecka/POL/10071517

**Event:** CEI1\* 90 – Leersum (NED)/2013\_CI\_1395\_E\_S\_01\_01

**Date:** 23 – 25 August 2013

**Controlled Medication Substance:** Morphine

**I. COMPOSITION OF PANEL**

Mr. Erik Elstad (One member panel)

**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 the oral hearing, as also made available by and to the PR.
- 3. Oral hearing:** 13 May 2015 – via telephone conference.

Present:

The FEI Tribunal Panel  
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Joanna Zarzecka, PR  
Mr. Bartosz Sokalszczuk, Legal Counsel

For the FEI:

Ms. Carolin Fischer, FEI Legal Counsel

### III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23<sup>rd</sup> edition, effective 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

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

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

FEI Equine Controlled Medication Rules ("ECM Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2013.

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

FEI Code of Conduct for the Welfare of the Horse.

#### 2. Person Responsible: Ms. Joanna Zarzecka

#### 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 a valid *Veterinary Form*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 *ECM Rules* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish 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 at the Final Hearing. 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 ELGORA Z REGULA (the "Horse") participated at the CEI1\* 90 in Leersum, The Netherlands, from 23 to 25 August 2013 (the "Event"), in the discipline of Endurance. The Horse was ridden by Ms. Joanna Zarzecka, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 24 August 2013.
- 1.3 Analysis of urine and blood sample no. 5526737 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 Sarah Parkinson, Scientist, under the supervision of S. Hines, Team Leader. The analysis of the urine sample revealed the presence of Morphine.
- 1.4 The Prohibited Substance detected is Morphine. Morphine is an opiate with analgesic effect. Morphine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Morphine 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 Morphine 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 Polish Equestrian Federation ("POL-NF"), by the FEI Legal Department on 17 October 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 she did not accept the administrative sanctions offered, the case would be submitted to the 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 17 November 2013, and after having been made fully aware of the potential risks and consequences of declining the administrative sanctions offered by the FEI, the PR informed the FEI that she did not accept the administrative sanctions offered to her. On 25 November 2013, the PR further confirmed that she had understood the contents of explanations by the FEI regarding the potential risks and consequences of declining the administrative sanctions, including the application of the Strict Liability principle to Equine Anti-Doping and Controlled Medication cases.

### **3. The B-Sample Analysis**

- 3.1 Together with the Notification Letter of 17 October 2013, the PR was also informed that she 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 The PR did not request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

### **4. Further Proceedings**

- 4.1 On 28 October 2013, the PR explained that the only possibility how the Morphine had entered the Horse's system was by means of a pine syrup, of which 40 ml per day had been administered to the Horse on 22 and on 23 August 2013 after arrival at the Event. The PR further explained that the pine syrup had been administered with the intention to prevent the Horse from coughing after a twelve hour trailer journey. Further she explained that she had now carefully analysed the ingredients of the pine syrup, and that she had noticed that the pine syrup contained codeine at the amount of 0.05g/100g. Moreover, that the pine syrup was commonly used and available without prescription, and that due to her little experience and lack of knowledge, she had not known that a commonly used medicine, such as pine syrup, might contain Prohibited Substances.
- 4.2 On 7 November 2013, the FEI – upon request of the PR – provided the complete Laboratory Report of the A-Sample to the PR. The FEI further informed the PR that Morphine was not a threshold substance under the

EADCMRs, and that therefore no qualitative analysis had been performed on the sample.

- 4.3 On 22 January 2014, the PR submitted that the level of Morphine found in the Horse's blood was important in order to establish whether the Morphine might have enhanced the Horse's performance at the Event. Moreover, that the codeine administered to the Horse had been metabolised to Morphine in the Horse's system, and that she could only be held personally responsible for assuring that no Controlled Medication Substances entered the Horse's system during an Event without valid Veterinary Form, but not for the presence of those Controlled Medication Substances which were created in the Horse's body as part of its metabolism. Finally, that she had had no intent to administer codeine to the Horse, and that insofar as no codeine had been detected in the Horse's sample there was only attempted use of a Prohibited Substance. That therefore she should be released from all accusations.
- 4.4 On 29 August 2014, following several requests of clarification to the PR, the FEI argued that the explanations provided by the PR until that point in time were rather vague and did not – in the opinion of the FEI – allow a clear determination of the source of the Prohibited Substance.
- 4.5 On 11 September 2014 upon request by the PR – the FEI informed the PR that according to HFL, the concentration of free Morphine in the A-Sample of the urine had been estimated to be 1000 ng/ml.
- 4.6 On 2 December 2014, the PR provided a list of the ingredients of the pine syrup and a web link to the product page of the pine syrup allegedly used by her. Amongst others the list included codeine phosphate (0.05 g per 100 g pine syrup) as ingredient.
- 4.7 Together with her submission, the PR submitted an expert statement by Dr. Wojciech Karlik, PhD DVM, from the Faculty of Veterinary Medicine of the Warsaw University of Life Sciences. In his statement Dr. Karlik explained that - according to the PR - the Horse had been orally administered 40 mg of the pine syrup – containing 50 mg of codeine phosphate in 100 mg of the product - on two consecutive days, and that therefore on each of those days the Horse had been administered 20 mg of codeine phosphate twice a day for two days. Further, that no research findings with regards to pharmacokinetics of codeine in horses had been published, but that the results of studies carried out on other animal species had shown that codeine might transform to Morphine. That the degree of conversion would vary in various species from five to eighty percent of the administered dose, depending on the temporary action of liver enzymes. That however the data obtained as a result of the other animal species could not be used as basis to infer the degree of the transformation of codeine to Morphine in the equine organism. Moreover that the data regarding pharmacodynamics/pharmacokinetics of Morphine in horses clearly indicated that Morphine might be detected in the equine urine even if the administered dose had been very low, and even when it had no pharmacological effect. Dr. Karlik further contended that neither Morphine nor codeine were effective drugs and that their

use might even weaken the efficiency of the trained horse during prolonged effect. Lastly, Dr. Karlik explained that in Poland, anti-cough medicinal products containing plant (herbal) extracts of similar composition and names to the pine syrup used by the PR could be found and bought over the counter. That it was therefore possible to unintentionally administer a medicinal product containing codeine instead of a medication without codeine, and that insofar as errors had been frequent in both human and veterinary use, restrictions on the sale of codeine-containing syrups had been imposed a few years ago.

## **5. Written submission by the FEI**

- 5.1 On 12 February 2015, the FEI provided its Response to the explanations received by the PR. Together with its Response, the FEI provided an expert statement by Dr. Stuart Paine, BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS. Dr. Paine stated that he generally agreed with Dr. Karlik that a certain amount of codeine phosphate was metabolised in the Horse, to Morphine. However, Dr. Paine explained that in his opinion, a higher percentage of the codeine phosphate than that accepted by Dr. Karlik had to have been metabolised into Morphine, in order for the alleged administration to have caused the positive finding at the concentration as detected in the case at hand.
- 5.2 In essence the FEI argued that:
  - a) as a Controlled Medication Substance, for which no valid Veterinary Form had been submitted, had been present in the Horse's A-Sample taken at the Event, and as the PR had waived her right to the B-Sample analysis, a violation of Article 2.1 of the ECM Rules had been established. The FEI further highlighted that it was irrelevant whether or not the administration of a product containing codeine had been intended, as the violation in question was one of Article 2.1 of the ECM Rules, i.e. for the presence of a Prohibited Substance. That the charge was not – as contented by the PR – for a violation for “use” of a Prohibited Substance. Further that Morphine was not a threshold substance under Article 2.1.3 of the ECM Rules, and that therefore any quantity of the substance was prohibited. Moreover that in the context of establishing a rule violation for the presence of a Prohibited Substance, the concentration detected and the question whether there had been any pharmacological effect resulting from the presence of the Prohibited Substance were irrelevant. Finally, that Article 1048 of the VRs clearly stipulated that prior to the use of a Controlled Medication Substance at an Event, the PR had to apply for a Veterinary Form. That in case the Controlled Medication Substance had been administered prior to the Event, the PR had to retroactively apply for a Veterinary Form 1. That the PR had however not provided any explanation as to why she had not abided by the Veterinary Form process.
  - b) the PR had only discharged her burden of proving how the Morphine had entered the Horse's system if she accepted that – as confirmed

by Dr. Paine – a higher percentage of the codeine phosphate than that accepted by Dr. Karlik had been metabolised into Morphine, insofar as the percentage of conversion accepted by Dr. Karlik would not have explained the positive finding at the concentration detected. That is was therefore not yet clear whether the first prerequisite for an elimination or reduction of the period of Ineligibility under Article 10.4 of the ECM Rules had been fulfilled.

- c) however, even if the PR would have fully established how the Morphine had entered into the Horse's system, she could not sustain her burden of showing No (or No Significant) Fault or Negligence for the rule violation. That the starting point in assessing fault under Articles 10.4.1 and 10.4.2 of the ECM Rules was the strict requirement under Article 2.1.1 of the ECM Rules, according to which it was each Person Responsible's duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. That the PR appeared to not have undertaken any steps to ensure that no Prohibited Substances were present in the Horse's body during the Event, without valid Veterinary Form. That she had administered the syrup without having first consulted a veterinarian, and that she seemed to not have studied the list of ingredients of the syrup prior to using it - or, more precisely, seemed to not have double checked the list of ingredients with the FEI Equine List of Prohibited Substances. That moreover, the PR appeared to not have been aware of the applicable process for administering Prohibited Substances prior to or at an Event. That the PR had therefore failed to ensure that no Controlled Medication Substance was present in the Horse's system during the Event without a valid Veterinary Form, and that she was not entitled to any elimination or reduction under Article 10.4 of the ECM Rules.
- d) a period of Ineligibility "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" had to be imposed on the PR, in accordance with Article 10.2 of the ECM Rules, without any elimination or reduction under Article 10.4 of the ECM Rules. That such a period of Ineligibility should be of six months.

## **6. Rebuttal Submission by the PR**

- 6.1 On 12 March 2015, the PR provided her Rebuttal Submission. She explained not to deny the presence of the Morphine in the Horse's system. At the same time she maintained that no Article 2.1 violation had been committed, and that therefore she could not be held responsible for such violation. In this context the PR argued that the FEI had not established that a Banned Substance had been administered to the Horse by her or any other third party, and that the FEI had neither established the source of the Morphine in the Horse's system. Moreover, that she could only be held liable for the presence of a Banned Substance in the Horse's system,

but not for the presence of a Controlled Medication Substance, such as Morphine. That Controlled Medication Substances, such as Morphine, were substances which could be used under veterinary control, and that therefore the application of Article 2.1 in such cases was not possible. Finally, that the presence of a metabolite in the Horse's system did not mean that the metabolite as such was prohibited, but could only potentially suggest the use of a Banned Substance. That for the foregoing reasons no penalties should be imposed on her.

## **7. Final Hearing**

- 7.1 During the Final Hearing the PR further argued that whereas it was out of question that the Controlled Medication substance Morphine had been found in the sample taken from the Horse at the Event, she could only be charged with a Controlled Medication Rule violation per Article 2.1 of the ECM Rules if the Morphine had "entered" the Horse's system during the Event, or a few days prior to the Event. That she had however proven that the Morphine had not entered the Horse's system, but had been metabolised from the codeine in the Horse's body. That if at all, she had to be charged with the administration of a Banned Substance, i.e. Codeine, under the EAD Rules. That however even then Article 2.2 of the EAD Rules was not applicable, since she had had no intention to administer the codeine, as she had not known that the pine syrup contained codeine.
- 7.2 The FEI clarified that the PR had been charged for the presence of a Controlled Medication Substance, i.e. Morphine, in accordance with Article 2.1 of the ECM Rules, and not for the administration of a Controlled Medication Substance. That in accordance with the strict liability concept of the ECM Rules it was each PR's personal duty to ensure that no Controlled Medication Substance was present in the horse's body during an Event without valid Veterinary Form. Further, that it was therefore not relevant whether the presence of the Morphine had been caused by administration of that substance to the Horse, or whether it resulted from a metabolic process in the Horse's body. The FEI further maintained that it was the PR's burden of proof to establish the source of the positive finding, not the FEI's. That irrespective of the question whether the PR had established the source, she was clearly at fault for the Rule violation, as she had used the pine syrup without prior veterinary consultation, and without having read the ingredients' list prior to administration.

## **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 she 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 where the PR waives analysis of the B-Sample and the B-Sample is not analysed. 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 HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Morphine 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. Furthermore, the Tribunal holds that whereas Morphine is not classified as a Banned Substance, it is however classified as a Controlled Medication Substance. The presence of Morphine in a horse's body during an Event without a valid Veterinary Form therefore constitutes a rule violation under Article 2.1 of the ECM Rules.
- 10.2 As regards the PR's claim that she should not be held responsible for the presence of a Controlled Medication Substance in the Horse's system which resulted from a metabolic process in the Horse's body, the Tribunal considers that according to the wording of Article 2.1.1 of the ECM Rules, 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 valid Veterinary Form. According to the wording of Article 2.1.1 ECM Rules it is not relevant whether the presence of a Controlled Medication Substance has been caused by administration of that substance to a horse, or whether it results from a metabolic process in a horse's body.
- 10.3 The FEI has thus established an Adverse Analytical Finding for Morphine, and has thereby sufficiently proven the objective elements of an offence, in accordance with Article 3 of the ECM Rules.
- 10.4 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 – in case of proceedings prosecuted as administrative proceedings, the PR did not accept the administrative sanctions offered to him or her - the PR has the burden of proving that she bears "No Fault or 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.
- 10.5 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 Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.

- 10.6 With regard to the question as to how the Morphine had entered the Horse's system the Tribunal finds that the PR errs in her position that it is for the FEI to establish the source of the Prohibited Substance, as it clearly follows from Article 10.4.1 of the ECM Rules that it is for the PR to establish the source of the Prohibited Substance. Having taken into account the PR's explanations on how the Controlled Medication Substance had entered the Horse's system as well as the FEI's position in this regards, the Tribunal understands that the Parties do not agree on the question whether the PR's explanations establish the source of the Prohibited Substance. The Tribunal further notes that – despite being afforded the opportunity to do so - the PR has not provided any response to the FEI's position that she had failed to establish the source of the Prohibited Substance. However the Tribunal finds that it does not have to decide this question as, in the opinion of the Tribunal, the PR has not established that she bears "No (Significant) Fault or Negligence" for the Rule violation. The reason for this is that under 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 without a valid Veterinary Form. However, according to the PR herself, she had administered a product, i.e. the pine syrup, containing codeine "due to her little experience and lack of knowledge". The Tribunal acknowledges that insofar as codeine is listed as a Banned Substance on the FEI Prohibited List, its administration to a horse at any time also constitutes a violation of the EAD Rules. The Tribunal further finds that the PR, prior to using the pine syrup, should have consulted her veterinarian, and should have further checked the syrup's ingredients against the FEI Prohibited List. However, only once she had been notified of the positive findings the PR has checked the ingredients of the syrup. By this measure the PR could have easily been aware that the product administered contained a Prohibited Substance.
- 10.7 The Tribunal therefore concludes that no reduction or elimination of the otherwise applicable period of Ineligibility under Article 10.4 of the ECM Rules is warranted.

## **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 **18 November 2015**.
- 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1,500,-)**.
- 3) The PR shall contribute **one thousand Swiss Francs (CHF 1,000,-)** towards the legal costs of the judicial procedure.

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.

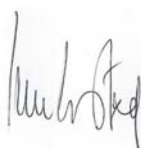
12.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

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**



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**Mr. Erik Elstad, Chair of the FEI Tribunal**