



DECISION of the FEI TRIBUNAL

dated 30 August 2018

Positive Anti-Doping Case No.: 2017/BS30

Horse: FYF DUTCH **FEI Passport No:** 103CM43

Person Responsible/NF/ID: Nicki Meuten/USA/10030582

Event/ID: CSI3* 160 Coates Creek (CAN)/ 2017_CI_1170_E_S_03_01

Date: 2 July 2017

Prohibited Substance: O-Desmethyl Venlafaxine ("**ODMV**")

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, chair
Mr. Cesar Torrente, member
Ms. Constance Popineau, member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1



January 2016.

Veterinary Regulations (“**VRs**”), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Nicki Meuten.

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).”

GRs Art. 118.3: “The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible.”

EAD Rules Art. 2.1.1: “It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1.”

EAD Rules Art. 7.6.1: “At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an *EAD Rule* violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these *EAD Rules* or (where some discretion as to Consequences exists under these *EAD Rules*) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was



applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”

EADCMRs APPENDIX 1 – Definitions:

“Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not



significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system.”

III. DECISION

1. Parties

- 1.1 The Person Responsible (“**PR**”), Ms. Nicki Meuten, is an endurance rider for the United States of America (USA).
- 1.2 The Fédération Equestre Internationale (the “**FEI**” and together with the PR, the “**Parties**”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Preliminary Decision

- 2.1 On 18 May 2018, the Preliminary Hearing Panel decided to lift the Provisional Suspension of the PR.
- 2.2 The Preliminary Hearing Panel agreed to such lifting, having considered the written submissions and documents, in particular the scientific evidence, as well as the fact that the FEI did not oppose to the lifting of the Provisional Suspension of the PR, and confirmed not having any objection to the issuance of an order to lift the Provisional Suspension of the PR.

3. Further proceedings

On 17 August 2018, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2017/BS30 – FYF DUTCH (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.



I – Case Summary (as provided to the Tribunal by the Parties as part of the Agreement referred to Article 4 below)

- “3.1 The PR took part with her horse FYF DUTCH (the “Horse”) at the CEI3* 160 - Coates Creek in Canada, from 2 July 2017 (the “Event”). As a member of the USA Equestrian Federation (the “USEF”), the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 3.2 The Horse was selected for testing on 2 July 2017. The resulting samples were transported to the FEI approved the U.S. Equestrian Federation Equine Drug Testing and Research Laboratory, USA, for analysis.
- 3.3 By notification letter dated 16 October 2017 the FEI informed Ms. Nicki Meuten, in her capacity as the Person Responsible, and the USEF of an alleged violation by Ms. Nicki Meuten of Article 2.1 (*The Presence of a Banned Substance or its Metabolites or Markers in a Horse’s Sample*) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules, a Provisional Suspension had been imposed on her following (i) the positive finding of the Banned Substance O-desmethyl venfaxine in the A Sample of the Horse.
- 3.4 *O-Desmethyl Venlafaxine* is an anti-depressant for treatment of depression and anxiety and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. A positive finding for O-Desmethyl Venlafaxine in a Horse’s Sample constitutes a *prima facie* Equine Anti-Doping Rule violation.
- 3.5 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 15 December 2017, had been imposed on the Horse.
- 3.6 In the Notification Letter of 16 October 2017, the PR was informed that she had the right to request that the Horse's B Sample be analysed. The PR requested for the B Sample analysis, which confirmed the results of the A sample, namely the presence of O-Desmethyl Venlafaxine.
- 3.7 On 11 May 2018, the PR requested the lifting of the Provisional Suspension of the PR with immediate effect with a full submission.
- 3.8 On 16 May 2018, the FEI had verified with external expert Professor Stuart Paine (Annex 4) who found the PRs explanations plausible for the positive finding. Hence the FEI did not at this stage oppose to the lifting of the Provisional Suspension of the PR.
- 3.9 The Panel agreed to such lifting in a Preliminary Decision of 18 May 2018 (Annex 1). The Preliminary Hearing Panel took note that Based on the arguments presented by the PR the fact that the FEI does not object to the lifting of the Provisional Suspension, the Preliminary Hearing Panel decides to lift the Provisional Suspension of the PR, in



accordance with Article 7.4.4 (ii) of the EAD Rules.

3.10 The PR submitted together, with her submission several documents, as well as expert and witness statements, on both 14 February and 12 May 2018, (Annex 2-3) which are summarised below:

- She was a practising veterinarian, owned and runs a small animal hospital, had no violations on her DVM or DEA licenses and would not risk any potential harm to her reputation or her DEA license.
- She judged endurance rides, and has mentored young riders and adult riders starting endurance. She has had no violations with AERC or FEI and would not risk her veterinary or competition reputations.
- Her husband was a retired professor of Veterinary Pathology, who had been teaching for thirty years, and who did not tolerate cheating nor would he cheat himself.
- Neither she, nor her husband, had never taken Effexor or its metabolites, or given this substance to the Horse. She and her husband did not have any entourage, and that they crewed for each other.
- The source of the ODMV was from environmental contamination by sludge and effluent deposited and spread at the Event site. Sludge was discharged and spread at fields used by the Endurance ride in Coates Creek. As Mr. Gielen demonstrated, one of the trails was used at this ride, and right next to the trail were standing pools of septic water, a pile of sludge and a sign. Environmental contamination with ODMV was now a documented common occurrence. It was present in effluent from treatment plants in Ontario, Canada, it was in drinking water and streamed in USA and other countries. Given the sensitive testing of current methodologies combined with ODMV presence in our environment and the miniscule amount present in the urine of the Horse, it was abundantly clear that contamination was the most likely scenario explaining how the ODMV entered the Horse's system. The concentration of the Horse's urine sample (9 ng/ml) coupled with the apparent absence of any reporting finding in the blood (and therefore the absence of the possibility of any pharmacological effect on the performance of the Horse) were entirely consistent with environmental contamination. It was highly unlikely that there was any other reasonable explanation.
- The PR submitted that the grass around the pools was lush and tall. While she did not allow the Horse to graze there, there were other areas with lush grass next to the trail where the Horse had eaten multiple times. An endurance horse on a 160 km ride needed to eat and drink all day and grass was the best food for them. They



always let their endurance horses eat grass and drink from “natural water” or supplied water on the trail.

- She and her husband were both veterinarians and would not use any Banned Substances. After having researched the drug it would be stupid for anyone to use it, as the side effects were terrible, and neither was it a performance enhancing drug. One of the side-effects was increased heart rate which no endurance rider would want to risk.
- Both she and her husband had suspended themselves and all their horses since being notified of the positive result, which among others prevented them from competing for a USA Team member in the WEG 2018. They (she and her husband) did not want to be labelled as abusers, cheaters etc.; they were 100% for horse welfare and totally against drug and physical abuse.
- The PR further submitted an expert statement by Dr. Clara K. Fenger, DVM, PhD, Dipl. ACVIM which is summarised as follows in relation to environmental contamination:

"35. It is my expert opinion within a reasonable degree of scientific certainty that the ODMV in the system of FYF Dutch on July 2, 2017 resulted from inadvertent environmental exposure and was insufficient to have any effect on the performance of the horse at the time of the competition.

36. This opinion is based on the facts detailed above:

- a. Venlafaxine requires days to weeks of ongoing consistent treatment in order to exert any effect.*
- b. There is no evidence that venlafaxine has any effect on athletic performance in any species at any blood level.*
- c. Venlafaxine is a commonly used human anti-depressant, sufficiently common to be an almost ubiquitous contaminant of wastewater and waterways associated with humans.*
- d. As venlafaxine has become a more commonly prescribed antidepressant, low concentrations of venlafaxine in urine samples have been identified in post-competition samples in jurisdictions across the globe with increasing frequency.*
- e. Such identifications are consistent with random exposure of competition horses to humans that require human prescription medications.*
- f. The Federal Government, the RCI, and the Maryland Racing Commission, as well as an increasing number of regulatory bodies, laboratories and other NGOs, acknowledge environmental contamination as a source of post-competition identifications, and, when the facts of a particular case warrant such a finding, do not penalize horses or horsemen for such environmental exposures.*

37. This case exemplifies the problems associated with the failure of

regulatory agencies to account for inadvertent environmental exposure as a source of pharmacologically insignificant concentrations of substances in post-competition samples at the same time that the technology available in testing laboratories permit the identification of ever-lower concentrations of these substances.”

- 3.11 Furthermore, the PR provided several scientific studies, among others the one referenced by Dr. Fenger (Antidepressants and their Metabolites in Municipal Wastewater, and Downstream Exposure in an Urban Watershed by Metcalfe et al. in 2009). The study area was the Grand River in southern Ontario, Canada, and the analysis of the antidepressants and their metabolites in wastewater collected showed that venlafaxine and its O- and N-desmethyl metabolites were present at the highest concentrations ($>0.1 \mu\text{g/L}$) with a mean concentration of O-desmethyl venlafaxine of $2.6 \pm 0.2 \mu\text{g/L}$ in untreated wastewater.
- 3.12 Finally, Mr. Robert Gielen, ride coordinator of the Event stated – among others – that the trail used at the Event did pass through “at least one field where human sludge ... i.e. sewage is dumped heavily”. Furthermore, Mr. Gielen confirmed that “the site of ride camp is located at a Girl Guide camp, with huge septic field, upon which many of the horses grazed during the completion”. Mr. Gielen also provided some photographs, one of them showing a sign “HAULED SEWAGE SITE”.
- 3.13 Based on the submissions, the FEI finds that in accordance with the opinion of the expert Professor Paine, an environmental contamination of the water or the grass that the horse ingested at the Event is the most likely source of the substance O-Desmethyl Venlafaxine.”

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 4 below)

- “4.1 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF15,000 shall also be imposed and appropriate legal costs.
- 4.2 Article 10.4 of the EAD Rules states “*If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse’s system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this*



Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.6 below." Article 10.4 of the EAD Rules also states that it "only applies in exceptional circumstances".

- 4.3 Based on the evidence and documentation supplied by the PR (as described in Section 3 above), and the scientific information in the Preliminary Decision, the FEI has evaluated whether or not Article 10.4 was applicable. The FEI has considered if the PR has established by a balance of probabilities, a plausible explanation of how the Banned Substance had entered the Horse's system. In this regard, the FEI finds that there is a plausible explanation as to how the Banned Substance entered the Horse's system based on the information that the Horse both drank water and grazed at the competition site, where sludge was present, hence an environmental contamination is highly likely.
- 4.4 The FEI is therefore satisfied that an environmental contamination of the water or the grass at the competitions site, is the most likely and plausible explanation for how the Prohibited Substance entered the Horse's system. The FEI is thus satisfied that the requirement of establishing by a balance of probabilities how the Prohibited Substance entered the Horse's system has been fulfilled.
- 4.5 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is satisfied that the PR had demonstrated that she bore no Fault or Negligence since she had procedures in place in order to prevent positive findings, such as:
- The PR owns and runs a small animal hospital, and both the PR and her husband being veterinarians, they are very precautious and would not risk anything in relation to the horse's welfare of any Banned Substances. The PR also has great knowledge of any drug policies.
 - They do not have any entourage or support personnel and would care for their horses themselves, and crew for each other at events. They have the full control of their horses.
 - According to witnesses, Ms Meuten has always had an unquestionable reputation that has been admired by all. She rides her horses to finish with horses always looking in great condition and keeps her horses going year after year. The PR's horses are mostly homebred and she takes excellent care of them throughout their entire lives. If all endurance riders, thought and rode like she does, endurance riding would be a better sport. Her approach to horses is totally inconsistent with the use of any performance enhancing drug.



- The PR does not expose her horses to other stables, not even at completion, since endurance horses are not stabled, and they keep the horses tied to the trailer. Hence, the horse could not have been exposed to a stall where a horse or person may have left contaminated urine on bedding.
 - Additionally, sludge was discharged and spread at fields used by the Endurance ride in Coates Creek. The PR did not allow her horse to graze close those pools, hence avoiding the risk of contamination.
- 4.6 The PR could therefore reasonably not have been expected to take any further measures which would have prevented the Prohibited Substances entering the Horse's system. She already took precaution when not letting her Horse graze and drink near the sludge pools. She could not have suspected that the water or the grass at other parts of the Event site or close to the trail was contaminated with Venlafaxine.
- 4.7 The FEI is of the opinion that the circumstances of the PR are unfortunate and could not have been foreseen by her as a Person Responsible. Thus in this case, the most plausible explanation for the presence of the Prohibited Substances is such environmental contamination of the water or the grass that the Horse drank and grazed at the Event. Therefore, the FEI is satisfied that the PR bears No Fault or Negligence for the anti-doping rule violation.
- 4.8 The FEI is satisfied that the criteria for the application of Article 10.4 of the EAD Rules had been met in that (i) the PR has established how the Banned Substances came to enter the Horse's system, (ii) the PR has demonstrated that she bore No Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated and that no other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply, except from the cost of the B-sample testing requested by the PR."

4. Agreement between Parties

On 17 August 2018, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

- 5.1 All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping Rules ("EAD Rules")

- 5.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from), Ms. Nicki Meuten's horse FYF DUTCH (the "Horse") at the CEI3* 160 - Coates Creek in Canada, on 2 July 2017 (the "Event"), Ms. Nicki Meuten (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties") agree, in accordance with Article 7.6.1 (*Agreement between Parties*) of the EAD Rules, on the following:
- 1) The **Presence of the Banned Substance(s) in the Horse's sample** constitutes a violation of Article 2.1 of the EAD Rules.
 - 2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.4 of the EAD Rules (*Elimination of the Period of Ineligibility Where there is no Fault or Negligence*) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be eliminated.
 - 3) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall **not be considered a prior violation** for the purpose of Article 10.8 (*Multiple Violations*) of the EAD Rules.
 - 4) **Provisional Suspension of the Horse:**
The PR has not contested the Provisional Suspension imposed on the Horse and therefore accepts that it remained in place until 15 December 2017.
 - 5) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horse at the Event are disqualified, including forfeiture of medals, points and prizes.
 - 6) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Ms. Nicki Meuten, including the horse FYF DUTCH. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.
 - 7) **No Other Sanctions:**
No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs. The PR should however, bear the costs for the B-sample analysis, as agreed at the time of the B-sample request.
 - 8) **Right of Appeal:**
This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.



9) **Public Disclosure:**

This agreement is subject to approval of the FEI Tribunal, who will issue a final decision in the case. All final decisions of the FEI Tribunal are published on the FEI website.

End Quote

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EAD Rules.
- 5.2 As a member of the USA National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note that the case at hand is most likely the result of environmental contamination of the water or the grass at the competition site. In this respect, the Tribunal has taken note of the various scientific evidence provided by the Parties. On the other hand, the Tribunal has also taken note that the PR allowed the Horse to eat the defiled grass.
- 6.2 However, in taking into account the specific circumstances of the case at hand, the Tribunal finds that exceptional circumstances exist in the present case. Therefore, the Tribunal does not object to or disapprove the terms of the Agreement and is satisfied the Agreement constitutes a *bona fide* settlement of the present case.
- 6.3 In accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Article 4 above. Further, this Decision shall terminate the present case 2017/BS30 – FYF DUTCH.

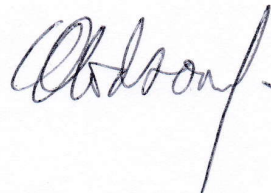
7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Nicki Meuten, concerning the case 2017/BS30 FYF DUTCH is hereby ratified by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

- a. The Person Responsible: Yes**
- b. The President of the NF of the Person Responsible: Yes**
- c. The Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL



THE CHAIRMAN, Mr. Chris Hodson QC