DECISION of the FEI TRIBUNAL
dated 27 November 2019

Positive Controlled Medication Case No.: 2019/CM17

Horse: ECLIPSE  FEI Passport No: 105VI22/NED

Person Responsible/NF/ID: Rob SCHERPHOF/NED/10024698

Event/ID: CSI2* - Tubbergen (NED), 2019_CI_0682_S_S_02

Date: 23 – 26 May 2019

Prohibited Substance: Prednisolone, Dembrexine

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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


General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2nd edition, changes effective 1 January 2019.


Veterinary Regulations ("VRs"), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Rob SCHERPHOF.
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.”

**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 a Rule violation under Article 2.1.”

**ECM Rules Art. 7.6.1:** “In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an anti-doping 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 ECM Rules or (where some discretion as to Consequences exists under these ECM 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"), Mr. Rob SCHERPHOF, is a rider for the Netherlands.

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. Further proceedings

2.1 On 9 August 2019, following a Preliminary Hearing on 5 August 2019, the Preliminary Hearing Panel issued a Preliminary Decision. The Preliminary Hearing Panel decided to maintain the Provisional Suspension of the PR, as none of the conditions of Article 7.4.4 of the ECM Rules, which would allow for a lifting of the Provisional Suspension, were fulfilled at the time.

2.2 On 18 November 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2019/CM17 ECLIPSE and submitted the Agreement, on 19 November 2019 the Parties submitted a revised Agreement, and on 26 November 2019 the Parties submitted a fully signed version of the Agreement - (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 EADCMRs.

2.3 In addition, in accordance with the agreed terms of the settlement the FEI requested the Tribunal to lift the Provisional Suspension of the PR on 24 November 2019.

2.4 On 23 November 2019, the Tribunal issued a Preliminary Decision, and decided to lift the Provisional Suspension of the PR as of 24 November 2019, midnight CET.
3. Agreement between Parties

3.1 The Parties reached the following Agreement:

*** Quote***

3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR’s horse ECLIPSE at the CSI2* in Tubbergen, Netherlands on 25 May 2019, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

(a) The PR admits the violation of Article 2.1 of the ECM Rules (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse’s Sample);

(b) The PR established on a balance of probabilities how Prednisolone and Dembrexine entered the Horse’s system;

(c) The PR bears fault for the Rule Violation and the applicable period of Ineligibility shall be six (6) months, commencing as of the date of sample collection i.e. 25 May 2019 until 24 November 2019 at midnight, taking into account the already served period of provisional suspension;

(d) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

(e) In addition, all the results of the PR achieved from the time period from sample collection (25 May 2019) until the date of the imposition of the provisional suspension (2 July 2019) shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes;

(f) The PR shall pay a fine of 2’000 CHF;

(g) Each party will bear its own legal and other costs incurred in connection with these proceedings;

(h) No other Sanctions will apply in this case;

(i) This violation of the ECM Rules shall be considered a prior
violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.

3.2 This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.

3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

***End Quote***

3.2 In addition, the Parties submitted the following Case Summary and the Full Reasoning for the Agreement:

2.1 Mr. Rob SCHERPHOF (FEI ID 10024698), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a rider for the Netherlands.

2.2 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 Dressage and Para Driving).

2.3 The PR participated with the horse ECLIPSE (FEI ID: 105VI22) (the "Horse") in CSI2* in Tubbergen, the Netherlands between 23-26 May 2019 (the "Event"). As a member of the Royal Dutch Equestrian Federation (the "NED-NF"), the latter being a member of the FEI, the PR was bound by the FEI EADCM Regulations.¹

2.4 The Horse was selected for testing on 25 May 2019. Urine and blood samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.

2.5 Analysis of the samples identified the presence of Prednisolone in the blood sample and Dembrexine in the urine sample. Prednisolone is a corticosteroid used in the treatment of autoimmune disorders, and as an inflammatory and immunosuppressive medication. Dembrexine is

¹ FEI Equine Anti-Doping and Controlled Medication Regulations 2nd edition, changes effective 1 January 2019
a mucolytic that reduces the viscosity of respiratory mucus. The substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List.

2.6 The positive finding of Prednisolone and Dembrexine in the Horse’s sample gave rise to a Controlled Medication Rule Violation.

2.7 By notification letter dated 2 July 2019, the FEI informed the PR, in his capacity as the Person Responsible, along with the NED-NF of a violation of Article 2.1 (The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample) of the FEI Equine Controlled Medication Rules (the "ECMRs") based on the Laboratory's adverse analytical finding of Prednisolone and Dembrexine in the Horse's Sample collected at the Event. (Exhibit 1)

2.8 In accordance with Art. 7.4.1 of the Equine Controlled Medication Rules (the "ECMRs") the PR was provisionally suspended as of the date of the notification letter.

2.9 The PR was provided with the right to request a B Sample analysis of the positive sample. The PR did not exercise his right to a B-sample analysis.

2.10 Upon the PR’s request a preliminary hearing was held on 6 August 2019 wherein the PR requested for the provisional suspension to be lifted. A preliminary decision of the FEI Tribunal was issued on 9 August 2019 maintaining the provisional suspension of the PR. (Exhibit 2)

2.11 The PR promptly admitted the Rule Violation and provided his written submission alongside with the treating veterinarian statement explaining how the Prohibited Substances entered the body of Eclipse (Exhibit 3-4):

- On 15 May 2019, the PR took the horse Eclipse to the animal (horse) clinic in Telgte for an inspection due to the horse having some nasal discharge a week before. Despite the horse feeling well the PR wanted to be sure that the horse is ok;

- After an antibiogram test and cytological examination the horse was diagnosed with purulent subacute bronchitis. Consequently, the following treatment was recommended: oral administration of Sputolysin (Dembrexin), Equisolon (Prednisolon) and Antibiotics – Pulmodox (Doxicyclin);
• The PR started with the horse’s treatment on 23 May 2019, on the day of the start of the Event and two days before the Horse was sampled under the EADCMRs;

• The PR never thought that these medications could also be on the FEI list of Prohibited Substances;

• The PR is an amateur rider in equestrian sport as he rides two horses as a hobby. In addition to working and having a family the PR uses his free time for his horses, usually in the evening hours;

• The PR wants the best for his horses so he went to the best clinic in Germany, almost 2 hours away;

• The PR expected that the clinic would warn him about the medications being on the FEI List of Prohibited Substances. They did not do so;

• As an amateur he does not have a team of people around him;

• The PR regrets that this has happened.

2.12 The FEI finds that Sputolysin and Equisolon were first administered to the Horse on 23 May 2019. Based on the written instructions on how to administer the medications which the PR has received from the clinic and which have been submitted as evidence in the pertinent case, the horse received Equisolon for at least four weeks as of 23 May 2019. In addition, according to the manufacturer’s instruction on use, Sputolysin is to be administered over a minimum of 12 days. The detection time of Dembrexine is 5 days and the detection time of Prednisolone is 2 days. Therefore, it is plausible that the Adverse Analytical Finding of Prednisolone and Dembrexine can be attributed to the treatment with Sputolysin and Equisolon commencing on 23 May 2019.

2.13 The FEI is therefore satisfied that the PR established, on a balance of probabilities, how Prednisolone and Dembrexine entered the Horse’s system.

2.14 In evaluating the PR’s fault or negligence, the FEI took into account in particular the following considerations:

(a) Prior to the treatment, the PR did not inquire with the treating veterinarian if any of the prescribed medications might contain a Prohibited Substance, furthermore, the PR did not inform the treating veterinarian of the horse’s upcoming participation in the Event;
(b) The PR himself did not check the active ingredients of the medications against the FEI List of Prohibited Substances or the FEI Database of Prohibited Substances. In consequence, the PR was ignorant of the fact that two out of three prescribed medications contain a Prohibited Substance;

(c) Consequently, the PR did not consult the FEI List of Detection Times;

(d) The PR has not establish any specific or relevant circumstances that would justify the PR’s departure from the expected standard of care.

2.15 Based on the above, the FEI finds the PR to be at high fault for the Rule Violation. Consequently, no elimination or reduction of the period of Ineligibility is possible under Art. 10.4. or Art. 10.5 of the ECMRs. The applicable period of Ineligibility shall therefore be six (6) months.

2.16 The FEI finds it important to emphasize that the PR has a personal duty to ensure that no Prohibited Substances are present in the horse’s body. That duty is non-delegable and cannot be placed on a treating veterinarian or an equine clinic. It is on the PR to be knowledgeable of any treatment that is administered to his/her horse and specifically to check whether that treatment i.e. medications contain a Prohibited Substance.

2.17 The FEI acknowledges that the PR promptly admitted the Rule Violation and was fully cooperative and transparent throughout the procedure. In consequence, the FEI agrees to apply Art. 10.10.3 of the ECMRs and start the period of Ineligibility as of the date of Sample collection i.e. 25 May 2019.

2.18 Lastly, based on the PR’s past participation in only a few Events per year, with the Events mostly being low-level Events (2*) the FEI agrees to lower the otherwise applicable fine to 2’000 CHF.”

4. Jurisdiction

4.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EADCMRs.

4.2 As a member of the National Federation of the Netherlands, the latter being a member of the FEI, the PR was bound by the EADCMRs.

4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between
parties.

4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

5.1 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 FEI accepts that the PR has established the source of the Prohibited Substances.

5.2 Furthermore, the Tribunal takes note that the FEI accepted that the PR promptly admitted the Rule violation, and the disqualification of the results starting from the sample collection.

5.3 Following from Article 10.10.3 of the ECM Rules, where a PR promptly after being confronted with the Rule violation by the FEI, the period of Ineligibility may start as early as the date of Sample collection. In each case, however, where this Article is applied, the Person who committed the ECM Rule violation shall serve at least one-half of the period of Ineligibility going forward from the date Ineligibility is imposed or accepted.

5.4 Therefore, and 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 3 above. Further, this Decision shall terminate the present case 2019/CM17 ECLIPSE.

6. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Rob Scherphof, concerning the case 2019/CM17 ECLIPSE is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above. Therefore, the PR is ineligible until 24 November 2019.

2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM 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 ECM 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

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Mr. Henrik Arle, one member panel