

**DECISION of the FEI TRIBUNAL
dated 26 August 2020**

Case: 2019/BS41

Horse/Passport: GELO DELLE SCHIAVE/104RW65/ITA

Person Responsible/ID/NF: Pierluigi SANGIORGI/10025969/ITA

Event/ID: CDI-W – Lipica (SLO)/2019_CI_0052_D_S_01

Date: 24-26 May 2019

Prohibited Substance: Aripiprazole

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR):

The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

3. Oral hearing: none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, 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, effective 1 January 2018.

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

January 2018.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Pierluigi SANGIORGI.

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. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts,

allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

1. Factual Background

- 1.1 GELO DELLE SCHIAVE (the "**Horse**") participated at the CDI-W in Lipica, Slovenia, from 24 to 26 May 2019 (the "**Event**"). The Horse was ridden by Mr. Pierluigi Sangiorgi, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event on 26 May 2019. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, the LGC in the United Kingdom (the "**Laboratory**") analysed the Horse's blood sample number 5572822 (the "**A-sample**") and reported an adverse analytical finding of Aripiprazole.
- 1.4 Aripiprazole is an antipsychotic used in the treatment of schizophrenia and bipolar disorders in humans. Aripiprazole has a similar chemical structure and/or similar biological effects as Benperidol, Droperidol, Trifluoperidol, Carphenazine, Fluphenazine, Moperone and Zuclopenthixol, all classified as Banned Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding of Aripiprazole in the A-sample gives rise to an EAD Rule violation under the EADCMRs.

2. The Notification Letter

- 2.1 On 27 August 2019, the FEI Legal Department officially notified the PR, through the National Federation of Italy ("**ITA-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**"). The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 27 August 2019, until 26 October 2019. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 The PR and the Owner of the Horse were informed that they were entitled to request an analysis of the B-sample in the Notification Letter. They did not request for the confirmatory analysis to be conducted. Neither did they challenge the analysis results of the A-sample.

4. Further proceedings

- 4.1 On 22 July 2020, the FEI informed the Tribunal that the PR requests for the lifting of the Provisional Suspension imposed on him and for a Preliminary Hearing to be held.
- 4.2 On 23 July 2020, the FEI Tribunal chair nominated a one member panel for the case at hand. Both Parties confirmed not having any objection to the constitution of the panel.
- 4.3 On 28 July 2020, the panel suggested expedited proceedings for the entire case, given the fact that the proceedings in the case at hand were already at an advanced stage. The panel further invited the PR to submit his full explanations with regard to the merits of the case at his earliest convenience, and set a deadline for the FEI to provide its Answer.
- 4.4 On 31 July 2020, the PR provided his full submission for the matter at hand.
- 4.5 On 18 August 2020, the FEI provided its Response. The FEI further clarified that the FEI did not request for a hearing to be held and was satisfied for the matter to be adjudicated based on written submissions only.
- 4.6 On 19 August 2020, the PR informed the Tribunal that he waived his right for a hearing in the case at hand. As a result, the Tribunal decided the case solely based on the submissions received in writing.

5. Written submission by and on behalf of the PR

- 5.1 Together with his submission the PR provided a statement from the Groom's doctor and a copy of the prescription for the medication, as well as an expert statement by Dr. M. M., specialized in Toxicology.
- 5.2 The Groom's doctor confirmed that on 16 January 2019 the Groom was prescribed with the product "ABILIFY" containing Aripiprazole 1 mg/mL, which was to be taken orally 2/3 times a day during meals with a dosage of 10mg.

5.3 The expert statement dated 10 March 2020 reads as follows:

"From the scientific publications it is evident that a prolonged treatment with specialties containing the active ingredient ARIPRIPAZOLO¹ leads to the achievement of the "STEADY STATE" in the patient treated.

[The Groom] at the time of the facts was in this situation since he had been receiving therapy with Aripiprazole for many months.

Therefore the possibility that the active substance can be eliminated in the patient's urine is no longer ascribable as an occasional fact but as a given.

In fact, the combined provision of the "STEADY STATE" and continuity of assumption leads to the objective data that each urination carried out in the horse's box has a certain concentration of Aripiprazole.

(....)

So in the case of the alleged positivity of GELO DELLE SCHIAVE it can be said that all the variables that can lead to an involuntary positivity are present

- *Presence of subjects subjected to therapy with the found molecule*
- *Active substance secreted in the urine*
- *the molecule is absorbable from the gastro-enteric tract after an oral intake.*
- *Use of a highly sensitive analytical method*
- *a very low concentration of analyte present in biological liquids*

All these conditions are present in the case under consideration.

Therefore, following the concentrations made in the previous chapters, it is deducted that the presumed quantity of ARIPRIPAZOLE present in the biological liquid of GELO DELLE SCHIAVE cannot be correlated with a voluntary administration but with the intake of litter polluted with the active ingredient ARIPRIPAZOLE."

5.4 In essence, the PR submitted that:

- a) Following the notification of the rule violation he conducted an investigation and discovered that his Groom was on a medication

¹ The Tribunal notes the spelling mistake and understands that the expert meant to refer to the substance in question "Aripiprazole" throughout his statement.

namely "ABILIFY" that was prescribed to him in order to treat his severe depression disorder. The Groom has been taking the medication since January 2019.

- b) Further, the Groom who had accompanied him to the Event, confessed that he had repeatedly fulfilled his physiological needs (urine) inside the box of the Horse from the moment he arrived at the Event on Wednesday, i.e., on 22 May 2019.
- c) In referring to the expert report, the PR argued that the result of the commissioned study by his expert ascertained with reasonable sufficiency beyond any possible doubt, that the active substance could have entered the Horse's system through the ingestion of straw from the litter contaminated with the Groom's urine. Urinating on the straw bedding of the Horse for several days, several times a day, had led, without any doubt, to an involuntary contamination of the Horse. This was also compatible with the very low level of substance found in the sample of the Horse.

6. Written Response by the FEI

6.1 On 18 August 2020, the FEI provided its Response in this case.

6.2 The FEI submitted that:

- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
- b) The elements of an Article 2.1 violation are straightforward. "*It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1*". Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event confirmed the presence of Aripiprazole and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of this Prohibited Substance in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the

EADM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.

- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Aripiprazole entered the Horse's system. In this case, the PR has provided a statement from the Groom's doctor and a copy of the prescription for the medication. In addition, the PR provided a statement from his expert witness with regard to the science of the case.
- e) The FEI submitted that the FEI has consulted its expert on the scientific plausibility of the provided explanation taking into account the daily dosage of the medication that the groom was taking, frequency of the daily oral administration of the medication and the estimated concentration of Aripiprazole in the Horse's sample. In this context the FEI further submitted as follows:

"The FEI's expert stated that there is very limited data with regard to the pharmacokinetics of Aripiprazole in humans and no data in the horses. Aripiprazole has high oral bioavailability in humans – approx. 87% of the dose gets into the blood circulatory system. It has a very long half-life (76 hours) and takes 14 days to get to steady-state levels. Less than 1% of aripiprazole itself ends up in the urine and when including metabolites comes to 25% of the original dose in the urine. Summary of its pharmacokinetics in humans can be found in the FDA (US food and drug administration) document on pages 3-4. (Exhibit 3)

Taking into account the daily dosage of the medication the Groom was taking, the amount of Aripiprazole entering the blood circulation and urine based on the oral bioavailability of Aripiprazole (approx. 87%), the max deposit of the medication through urination and if assuming the bioavailability in the horse is the same as in a human, the horse upon ingestion of all the Groom's deposit, would excrete through urine a max concentration of 11 ng/ml which would be 4 times higher than the estimated concentration found in the horse's sample (between

2.4ng/ml and 3.6ng/ml).

The FEI's expert concludes that submitted explanation is scientifically plausible, however it is based on several assumptions as there is very limited available data on the substance of Aripiprazole and its pharmacokinetics."

- f) With regard to the source of the Banned Substance, the FEI submitted that, taking into consideration the submitted evidence and the opinion of the FEI's expert, the FEI was satisfied that the PR established, on a balance of probabilities, how the Aripiprazole entered the Horse's system, namely through ingestion of straw bedding that was contaminated with the Groom's urine with the Groom undergoing a treatment with the medication Abilify.
- g) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse. It was the PR's personal duty to ensure that no Banned Substance was present in the Horse's body. For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the PR has to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse, or the Horse's system otherwise contained, a Banned Substance.
- h) The FEI has had a few previous Anti-Doping Rule violations resulting from the horse's bedding being contaminated with human medications via human urination, which ultimately resulted in the finding that the PR bore No Fault or Negligence for the Rule violation.² In the FEI's view, although the PR's Support Personnel should have been aware of the risk of human to horse cross contamination through urination on the horse's bedding, the PR in the present case could not reasonably have known that the Groom was on medication that could lead to the presence of the Prohibited Substance in the Horse's system. Therefore, and in line with the aforementioned case law, the FEI was satisfied that the PR has established that he bore No Fault or Negligence for the Rule violation in accordance with Article 10.4 of the EAD Rules and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated.
- i) The FEI respectfully requested that the Tribunal issue a decision:
 - (i) *upholding the charge that the PR violated Article 2.1 of the EAD Rules; (The presence of a Banned Substance and/or its*

² Case no. 2017/BS32 SAURA DE FONDCOMBE, 2018/BS16 TRYNYTEE DES AUNETES, 2018/BS22 BARDOLINA 2

- Metabolites or Markers in a Horse's Sample);*
- (ii) disqualifying the result of the PR and Horse combination obtained in the Event, with all resulting consequences, including forfeiture of any related medals, points and prizes pursuant to Articles 9 and 10.1.2 of the EAD Rules;*
 - (iii) finding the PR to be No Fault or Negligence for the Rule Violation with the otherwise applicable period of Ineligibility (i.e. two years) and fine being eliminated;*
 - (iv) finding that each party will bear its own costs incurred in connection with these proceedings.*

7. Jurisdiction

- 7.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs and Article 18 of the IRs.

8. The Person Responsible

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the Horse's rider at the Event. This remains undisputed by the PR.

9. The Decision

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-sample where 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 Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Aripiprazole in the blood sample taken from the Horse at the Event. The PR did not challenge the accuracy of the test results and the positive finding. Aripiprazole has a similar chemical structure and/or similar biological effects as several other Banned Substances on the FEI List and the presence of those substances, and resulting thereof also the presence of Aripiprazole, in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a

Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.

- 9.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 9.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Further, the PR does not claim the application of Article 10.6 in this case.
- 9.6 The Tribunal notes the PR's submission with regard to the source of the Aripiprazole, namely the ingestion of straw from the litter contaminated with the Groom's urine who was taking a medicine containing Aripiprazole 2/3 times daily at a dosage of 10mg. Further, that the Groom was repeatedly urinating in the Horse's box during the Event starting from the day of arrival, i.e., 4 days prior to sampling.
- 9.7 In this respect, the Tribunal notes that the experts of both Parties conclude that the PR's explanation is scientifically plausible, and the FEI is satisfied that the PR has established the source of the positive finding.
- 9.8 In following the experts' conclusions, and even though the FEI has not submitted a statement from the FEI's expert, the Tribunal finds that the PR has established on a balance of probability – as required under the EAD Rules – how the Aripiprazole entered the Horse's system.
- 9.9 In a further step, the Tribunal has to decide on the PR's degree of fault and whether any of the Articles 10.4 or 10.5 of the EAD Rules, which allow for a reduction of suspension of the two (2) year period of Ineligibility, are applicable.
- 9.10 In accordance with Articles 2.1.1 and 2.2.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any time.
- 9.11 *In casu*, the Tribunal notes that the PR has not provided any information as to which procedures he had in place in order to avoid any Prohibited Substances entering the Horse's system. Neither did the PR provide any information on whether he trained his Groom with regard the EADCMRs,

and the possibility and risks of human cross contamination through urination on the Horse's bedding, as was the case in the present case.

- 9.12 Nonetheless, the Tribunal takes note that the FEI accepts that the PR could not reasonably have known that the Groom would urinate in the Horse's box and moreover that the PR could not reasonably have known that the Groom was on medication that could lead to the presence of Prohibited Substance in the Horse.
- 9.13 In taking into account all circumstances of the case at hand, the Tribunal accepts that this seems to have been the case, and thus follows the FEI's submission that the PR bore No Fault or Negligence for the Rule violation.
- 9.14 The Tribunal is however concerned regarding the number of reoccurring cases where urinating in the horses' boxes led to cross contamination of those horses. In the view of the Tribunal those are clearly cases which could easily be avoided if all stakeholders in equestrian sport were properly educated about the risks of this kind of contamination. The Tribunal therefore strongly encourages the FEI, as well as those expected to educate others, for example riders that are supposed to educate their Support Personnel, to re-enforce their information and education duties.
- 9.15 From the foregoing, the Tribunal finds that the otherwise applicable period of Ineligibility, i.e., two (2) years and fine shall be eliminated in the case at hand.
- 9.16 The Tribunal takes note that the PR has been provisionally suspended since 27 August 2019. The Tribunal also notes that the PR requested the lifting of his Provisional Suspension only on 22 July 2020 for the first time, despite having been in possession of his expert report in March 2020 already. For the avoidance of any doubt, the Tribunal confirms that the Provisional Suspension has been rightfully imposed under the EAD Rules, and it was for the PR to request for a Preliminary Hearing where he believed that the conditions of Article 7.4.4 of the EAD Rules have been fulfilled. In this regard the Tribunal notes that the PR has been duly informed of his right to request for a Preliminary Hearing in the Notification Letter.
- 9.17 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

10. Disqualification

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR

combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

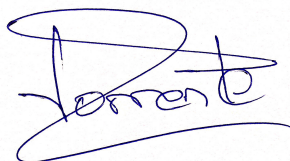
11. Sanctions

- 11.1 As a result of the foregoing, the otherwise applicable period of Ineligibility, i.e., two (2) years, as well as any fine shall be eliminated.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Articles 9 and 10 of the EAD Rules:
- 1) The PR has violated Article 2.1 of the EAD Rules. No period of Ineligibility or fine shall be imposed on the PR.
 - 2) All results of the PR and Horse combination from the entire Event shall be disqualified.
 - 3) Each party shall bear its own legal costs in these proceedings.
- 11.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.4 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) 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



Mr. Cesar Torrente, one member panel