Decision of the FEI Tribunal
dated 5 March 2020

Positive Controlled Medication Case No.: 2019/CM09

Horse: ALRAHAWI  FEI Passport No: 104ZE19/KSA

Person Responsible/NF/ID: Abdulelah ALONAIZI/10104001/KSA

Trainer/ID/NF: Alyazeed AL DAWOOD/10183333/KSA

Event/ID: CEI2* 120 – Al Ula (KSA)/2019_CI_0094_E_S_01

Date: 2 February 2019

Prohibited Substance(s): Phenylbutazone, Oxyphenbutazone, Lidocaine, 3-Hydroxylidocaine, Flunixin, Meloxicam, Dexamethasone

I. COMPOSITION OF PANEL

Ms. Valérie Horyna, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR) and Trainer: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available to the PR and Trainer.


III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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


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. Abdulelah ALONAIZI.

3. **Trainer:** Mr. Alyazeed AL DAWOOD.

4. **Justification for Tribunal finding:**

**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."

**ERs Article 800:** "3. For the purpose of this Codex, the “Trainer” is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. 4. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice."
IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully 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 ALRAHAWI (the “Horse”) participated at the CEI2* 120 in Al Ula, in the Kingdom of Saudi Arabia (“KSA”), on 2 February 2019 (the “Event”), in the discipline of Endurance. The Horse was ridden by Mr. Abdulelah Alonaizi, who is considered as the Person Responsible in accordance with Article 118.3 of the GRs (the “PR”). The registered trainer for the Horse at the time of the Event was Mr. Alyazeed Al Dawood (the “Trainer”).

1.2 The Horse was selected for sampling during the Event on 2 February 2019. Analysis of the urine and blood samples at the FEI approved laboratory – The Hong Kong Jockey Club (the “Laboratory”) – revealed the presence of Phenylbutazone, Oxyphenbutazone, Lidocaine, 3-Hydroxylidocaine, Flunixin, Meloxicam and Dexamethasone in the urine.

1.3 Phenylbutazone and Oxyphenbutazone (metabolite of Phenylbutazone) are anti-inflammatory medications with analgesic effects. Lidocaine and 3-Hydroxylidocaine (metabolite of Lidocaine) are local anaesthetics and also used for the treatment of certain skin diseases. Flunixin is an anti-inflammatory medication with analgesic effects. Meloxicam is a non-steroidal anti-inflammatory medication with anti-inflammatory and analgesic effects. Dexamethasone is a corticosteroid with anti-inflammatory effect. These substances are all classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (the “FEI List”). Furthermore, no valid Veterinary Form exists for the respective substances. Therefore, the positive finding for Phenylbutazone, Oxyphenbutazone, Lidocaine, 3-Hydroxylidocaine, Flunixin, Meloxicam and Dexamethasone in the Horse’s sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. Notification Letters

2.1 On 5 March 2019, the FEI Legal Department officially notified the PR, through the KSA National Federation (“KSA-NF”), of the presence of the
Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated. 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 On 5 March 2019, the FEI Legal Department officially notified the Trainer, through the KSA-NF, that as registered Trainer of the Horse he qualified as a member of the Support Personnel, and he was the Additional Person Responsible for the rule violation. The Trainer was notified of an apparent ECM Rule violation under Article 2.1 of the ECM Rules. The Notification Letter included notice that the Trainer was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.

3. The B-Sample analysis

3.1 Together with the Notification Letters of 5 March 2019, the PR, the Owner and the Trainer were also informed that they were 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 None of those individuals requested the performance of the confirmatory analysis.

4. Written submissions by the PR and the Trainer

4.1 On 16 July 2019, the PR submitted (and his statement was co-signed by the Trainer, owner and veterinarian) that he was not aware of any "material given to the horse before the tournament, as I was contacted by the owner to ride this horse in the race without knowing any details".

4.2 Following the positive findings he had allegedly contacted the owner and Trainer of the Horse to investigate regarding the Prohibited Substances, and he was apparently informed that the veterinarian of the Horse had informed them that "the time period Sufficient for the exit of drugs from the body of the horse" until the Event.

4.3 Moreover, he stated that he always respected the rules and kept the horses healthy. Further, he had participated in many events "without any irregularities".

4.4 Finally, he requested that the veterinarian, Trainer and owner shall bear responsibility and sanctions be transferred to those individuals.
4.5 The Trainer did not provide – other than co-signing the PR’s statement – any explanations for the positive findings.

5. Written submissions by the FEI

5.1 On 24 February 2020, the FEI provided its Responses for both cases and requested that the cases of the PR and Trainer be consolidated.

5.2 Regarding the Trainer, the FEI submitted that according to the definition of Trainer pursuant to Article 800.3-4 of the ERs, and due to the specificities of the Endurance discipline with Trainers making relevant decisions about the horse, the Trainer was regarded as an additional Person Responsible in accordance with Article 118.3 of the GRs. In the discipline of Endurance the Trainer has an important role and responsibility for each and every horse that he is training. It is therefore mandatory to register the Trainer in charge of each horse in the FEI database. The FEI as a prosecutor relied on the FEI database system, and the registration system allowed the FEI to hold registered people accountable in case of violations of FEI Rules and Regulations. By registering in the FEI Database as a Trainer, the registered person acknowledged and accepted the definition of a Trainer as per Article 800 of the ERs. Once a person was registered as a Trainer in the FEI Database that person was irrebuttably presumed to be the person that is responsible for taking relevant decisions on the Horse.

5.3 The FEI requested the following prayers for relief:

a) With regard to the PR:

i. **upholding the charge that the PR has violated Article 2.1 of the ECM Rules;**

ii. **disqualifying the results of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the ECM Rules;**

iii. **imposing a period of Ineligibility of one (1) year on the PR, commencing from 5 March 2019 (the date upon which the Provisional Suspension was imposed on the PR);**

iv. **fining the PR in the amount of 3,500 CHF; and**

v. **ordering the PR to pay the legal costs of 1,500 CHF that the FEI has incurred in these proceedings.**

b) With regard to the Trainer:

i. **upholding the charge that the Trainer has violated Article 2.1 of the ECM Rules;**

ii. **imposing a period of Ineligibility of one (1) year on the Trainer, commencing from 5 March 2019 (the date upon which the**
Provisional Suspension was imposed on the PR);

iii. fining the Trainer in the amount of 3,500 CHF; and

iv. ordering the Trainer to pay the legal costs of 1,500 CHF that the FEI has incurred in these proceedings.

5.4 In essence the FEI submitted that:

a) Article 3.1 of the ECM Rules makes it the FEI’s burden to establish all of the elements of the ECM 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 ECM Rule violation under Article 2.1”. Instead it is a “strict liability” offence, established simply by proof that a Controlled Medication 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 Phenylbutazone, Oxyphenbutazone, Lidocaine, 3-Hydroxylidocaine, Flunixin, Meloxicam and Dexamethasone and constituted “sufficient proof” of the violation of Article 2.1 of the ECM Rules. In any event, the PR, or the Owner or the Trainer did not dispute the presence of those substances in the Horse’s sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR and the Trainer have violated Article 2.1 of the ECM Rules.

c) Where a Controlled Medication Substance is found in a horse’s sample, a clear and unequivocal presumption arises under the ECM 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 ECM Rules provides that a Person Responsible and/or an Additional Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six (6) months, unless they are able to rebut the presumption of fault. If the PR/Trainer fails to do so, the six (6) months period of Ineligibility applies.

d) The ECM 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/Trainer proves how the substances 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 and/or Trainer’s degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Controlled Medication Substances in the Horse. The FEI submitted in this context that the PR/Trainer have to provide clear and
convincing evidence that proves how the Prohibited Substances have entered the Horse’s system. In this case, the PR has provided only a general reply to the charges brought against him by the FEI. Upon request by the FEI, the PR has not provided any further details with regards to the treatment performed on the Horse prior to the Event. The Trainer on the other hand has not provided any explanation with regard to the rule violation. The threshold requirement for proving how the substance entered the Horse’s system has, therefore, not been fulfilled.

e) Since the PR/Trainer have not established how the Controlled Medication Substances entered the body of the Horse, there could be no reduction of the standard sanction for Controlled Medication Substances, namely six (6) months period of Ineligibility.

f) Additionally, the FEI highlighted that there were 7 different Controlled Medication Substances (2 of them being metabolites) present in the Horse’s sample. The “cocktail” of the Controlled Medication Substances present in the horse’s sample consists of anti-inflammatory medication, local anaesthetics, medications used for the treatment of certain skin diseases and corticosteroids. This indicated several medical conditions of the Horse that in the FEI’s view would render the horse absolutely unfit to compete.

g) Further, it was a well-known fact that removing the very fundamental protective function of sensitivity of a horse by practices such as local or regional injections of anaesthetic substances will increase the risk of catastrophic injury. This was especially relevant for fractures that are due to bone fatigue (stress fractures) where the horse will not show any signs of pain such as lameness while under the influence of the injected substance. This meant that the Veterinary Delegates at a Competition will not be able to identify the horse as lame and the horse will continue the competition instead of being eliminated.

h) The presence of in total 7 different Controlled Medication Substances was an aggravating circumstance that needed to be considered and which required a greater sanction than the standard sanction in accordance with Article 10.7 of the ECM Rules.

i) The FEI therefore submitted that the applicable period of Ineligibility imposed on the PR and on the Trainer in the present case should be one (1) year. The recommended period of Ineligibility was in line with the previous Tribunal decisions in similar cases, e.g., 2019/CM01 SANAD, 2018/CM03 DR BURN and 2018/CM05 CHIRO D’ANDRUERE.
6. Further proceedings

6.1 On 24 February 2020, the Tribunal was provided by the FEI with the case file in the present cases, and requested to adjudicate the cases. In addition, the FEI requested that the cases be consolidated.

6.2 On 28 February 2020, the FEI Tribunal Chair nominated a panel for the cases at hand. Neither party objected to the constitution of the panel.

6.3 On the same day, the Trainer was once more granted with the opportunity to provide his explanations for the positive findings. In addition, both, the PR and the Trainer were granted with the opportunity to respond to the FEI Response of 24 February 2020. However, no further submissions by either the PR or the Trainer have been received by the Tribunal.

6.4 Moreover, the Tribunal asked the Parties to inform it whether a hearing is requested by either party. All parties waived the right for a hearing as no submission was received in this regard.

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, as well as Article 18 of the IRs.

8. The Person Responsible & the Additional Person Responsible

8.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event.

8.2 In accordance with Article 118.3 of the GRs, Support Personnel may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. Pursuant to the definition of Support Personnel in the EADCMRs, trainers are included in the notion of Support Personnel. Furthermore, the term “Trainer” is defined in the ERs in Article 800.3-4 as “the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice”.

8.3 The Tribunal notes that according to the FEI Database the Trainer was the registered Trainer for the Horse at the time of the Event. The
Tribunal understands that the purpose of registering trainers in the discipline of Endurance is precisely in order to know and if necessary to hold accountable those persons who take the actual decisions of the Horse in preparation for competitions.

9. The Decision

9.1 To start with, and for the avoidance of any doubt, the Tribunal considers the cases of the PR and Trainer as consolidated. The cases de facto concern the same rule violation.

9.2 As set forth in Article 2.1 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. 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 Phenylbutazone, Oxyphenbutazone, Lidocaine, 3-Hydroxylidocaine, Flunixin, Meloxicam and Dexamethasone in the urine sample taken from the Horse at the Event. The PR or the Trainer did not challenge the accuracy of the test results and the positive finding. These substances are considered Controlled Medication Substances under the FEI List and the presence of these substances in a Horse’s body during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.

9.3 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 ECM Rules.

9.4 Pursuant to Article 10.2.1 of the ECM Rules the period of Ineligibility for an Article 2.1 violation, i.e., the Presence of a Controlled Medication Substance in a Horse’s sample, as in the case at hand, shall be six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the ECM Rules.

9.5 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, a PR/Trainer 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 ECM Rules, or “No Significant Fault or Negligence,” as set forth in Article 10.5 of the ECM Rules.

9.6 In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR/Trainer must establish as a threshold requirement how the Prohibited
Substances entered the Horse’s system. Furthermore, the Tribunal notes that the PR or Trainer do not claim the applicability of Article 10.6 of the ECM Rules.

9.7 The Tribunal takes note of the PR’s explanations with regard to the positive findings, namely that the Horse’s veterinarian had treated the Horse prior to the Event. While this veterinarian seems to have co-signed the PR’s statement in this regard, the PR has not provided any evidence of any treatment of the Horse, i.e., timing and dose of substances administered. The Trainer on the other hand has – despite several reminders – not provided any explanations for the positive finding. As a result, the Tribunal finds that neither the PR nor the Trainer have established – on a balance of probability, as required under Article 3.1 of the ECM Rules – how the Prohibited Substances entered the Horse’s system.

9.8 In the absence of establishing on the balance of the probability how the Prohibited Substances entered the Horse’s system, the Tribunal cannot evaluate the degree of fault of the PR/Trainer for the rule violation.

9.9 Even if the source of the Prohibited Substances was established, the Tribunal would still conclude that No (Significant) Fault or Negligence does not apply in this case, because under Article 2.1.1 of the ECM Rules, it is the PR’s and Trainer’s personal duty to ensure that no Prohibited Substances are present in the Horse’s system during an Event without a valid Veterinary Form and neither the PR nor Trainer have provided any information/evidence on whether any procedures were in place or what due diligence was exercised to fulfil this duty. Further, it can be assumed from the PR’s submission that he did not inquire, prior to the Event, whether the Horse was free of any Prohibited Substances.

9.10 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted, neither in the case of the PR nor in the case of the Trainer.

9.11 In addition, the Tribunal takes note that several different Prohibited Substances were detected in the Horse’s sample. It follows from Article 10.7 of the ECM Rules, that the occurrence of multiple substances may be considered as a factor in determining aggravating circumstances. In taking into consideration the cocktail of the anti-inflammatory drug, local anaesthetics, medications used for the treatment of certain skin diseases and corticosteroids considered as Prohibited Substances found in the Horse’s sample, the Tribunal finds that indeed aggravating circumstances are present in the case at hand. The Tribunal therefore decides to impose a period of Ineligibility greater than the standard sanction provided for in Article 10.2 of the ECM Rules. The Tribunal
agrees with the FEI on the length of the period of Ineligibility to be imposed on the PR and on the Trainer, *i.e.*, one (1) year.

9.12 Moreover, the Tribunal notes the FEI’s submissions especially with regard to the fact that local or regional injections of anaesthetic substances might increase the risk of catastrophic injury. The Tribunal also notes that the FEI has, however, not sufficiently substantiated these explanations. Nevertheless, the Tribunal finds that, the mere fact that the Horse competed with this many Prohibited Substances in its system, has to be considered as an aggravating circumstance. Finally, the Tribunal acknowledges and agrees that the Controlled Medication Substances might have put the welfare of the Horse in danger.

9.13 Further, the Tribunal takes note that the PR and the Trainer have been provisionally suspended since 5 March 2019, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension, and neither was the Trainer involved in any capacity while provisionally suspended; at least the Tribunal has not been provided with information otherwise.

9.14 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 ECM 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 ECM Rules.

**11. Sanctions**

11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR and the Trainer for the present rule violation shall be one (1) year.

11.2 The Tribunal imposes the following sanctions on the PR and the Trainer 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 **one (1) year**, the period of Provisional Suspension, effective from 5 March 2019 shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the PR is eligible as from the date of this Decision.
2) The Trainer shall be suspended for a period of one (1) year, the period of Provisional Suspension, effective from 5 March 2019 shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the Trainer is eligible as from the date of this Decision.
3) The PR is fined three thousand five hundred Swiss Francs (CHF 3,500.-).
4) The Trainer is fined three thousand five hundred Swiss Francs (CHF 3,500.-).
5) The PR shall contribute one thousand five hundred Swiss Francs (CHF 1,500.-) towards the costs of these proceedings.
6) The Trainer shall contribute one thousand five hundred Swiss Francs (CHF 1,500.-) towards the costs of these proceedings.

11.3 No Person Responsible and member of Support Personnel, i.e., the Trainer, 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 10.11.1 of the ECM Rules).

11.4 Where a Person Responsible or a member of the Support Personnel, i.e., the Trainer, who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the ECM Rules).

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

11.6 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 twenty-one (21) days of receipt hereof.
V. DECISION TO BE FORWARDED TO:

a. The persons sanctioned: Yes
b. The President of the NF of the persons sanctioned: Yes
c. The President of the Organising Committee of the Event through the NF: Yes
d. Any other: No

FOR THE PANEL

Ms. Valérie Horyna, one member panel