Human Anti-Doping Case No.: 2019/HD02

Athlete: Hilary MCNERNEY
FEI ID No: 10054409/USA

Event/ID: CSI3* - Lexington, Horse Park KY (USA)/2019_CI_1082_S_S_01

Date: 26 – 27 April 2019

Prohibited Substances: Amfetamine, Spironolactone metabolites 7a-thiomethylspironolactone, Canrenone

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, 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").

Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("ADRHA").


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)."

**ADRHA Scope:** "These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events. (...)"

Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, the following Athletes shall be considered to be International-Level Athletes for purposes of these Anti-Doping Rules, and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (as regards Testing but also as regards TUEs, whereabouts information, results management, and appeals) shall apply to such Athletes who:

(a) are registered with the FEI; and/or

(b) participate in an International Event. “

**ADRHA Article 2.1.1:** "It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.1”

**ADRHA Article 7.10.1:** "At any time during the results management process the Athlete or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and agree with the FEI on the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping 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 13.2.3 as provided in Article 14.2 and published as provided in Article 14.3.2.”
III. DECISION

1. The Parties

1.1 Ms. Hilary McNerney (the "Athlete"), is a jumping rider for the United States of America.

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. Factual Background

2.1 Between 26 and 27 April 2019, the Athlete competed at the CSI3* in Lexington, Horse Park, Kentucky, in the United States. The Event is recorded with the FEI as 2019_CI_1082_S_S_01 (the “Event”).

2.2 On 27 April 2019, the United States Anti-Doping Agency (USADA) took In-competition urine samples from the Athlete, which analysis results returned positive for amphetamine (S6. Stimulants), and Spironolactone metabolites 7a-thiomethylspironolactone, Canrenone (S5. Diuretics and Masking Agent).

2.3 On 12 September 2019, the FEI notified the Athlete of the positive findings (the “Notification Letter”).

2.4 On 14 October 2019, the FEI provisionally suspended the Athlete.

3. Previous Tribunal Decisions

3.1 On 28 October 2019, the Tribunal issued an Abridged Preliminary Decision (operative part), and on 31 October 2019 the reasoned Preliminary Decision. The Hearing Panel decided not to lift the Provisional Suspension effective as of 14 October 2019 and to maintain it.

3.2 On 8 November 2019, the Tribunal issued a Final Decision concerning the Athlete’s Appeal against the FEI decision to deny her request to abstain from publishing the fact and related details of her Provisional Suspension. The Tribunal decided to dismiss the Appeal.

4. Further proceedings

4.1 On 27 February 2020, the FEI informed the Tribunal that the Parties had
reached an Agreement in the context of the Case 2019/HD02 Hilary McNerney and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.10.1 of the ADRHA.

5. Agreement between Parties

5.1 On 24 February 2020, the Parties reached the following Agreement:

*** Quote***

(a) The Athlete accepts that she inadvertently committed a violation of Article 2.1 of the ADRHA;

(b) the FEI accepts that the Athlete’s fault or negligence was not significant in the totality of the circumstances and that the Athlete therefore bears No Significant Fault or Negligence for that ADRV. Thus, in accordance with Article 10.5.2 of the ADRHA, the Athlete shall be sanctioned with a period of Ineligibility of 1 year;

(c) In accordance with Articles 9.1 and 10.1 of the ADRHA, the results achieved by the Athlete at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

(d) In accordance with 10.11.1 ADRHA “Delays Not Attributable to the Athlete” the period of ineligibility shall commence on 27 April 2019 (i.e. the date on which the Sample was collected) and end on 26 April 2020;

(e) In addition, all the results obtained by the Athlete from 27 April 2019 (i.e. the date on which the Sample was collected) until 14 October 2019 (i.e. the date when the provisional suspension was imposed) shall be disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

(i) The Athlete will pay a fine of CHF 1500;

(ii) This settlement agreement will be submitted before the FEI Tribunal (in accordance with Article 23.2 of the Internal Regulations of the FEI Tribunal and Article 7.10.1 ADRHA), in order to seek the FEI Tribunal’s approval;

(iii) if the FEI Tribunal approves that settlement, such as to bring to an end the proceedings against the Athlete:

(A) The FEI shall bring no further proceedings of any kind in relation to the Sample;
(B) the Athlete shall immediately withdraw the First CAS Appeal, the Second CAS Appeal and the Third CAS Appeal (the “Three Appeals”);

(C) the Parties shall bear their own legal costs as regards all proceedings, procedures, applications, disputes etc that have arisen in relation to the Sample, however the Athlete shall bear all the cost related to the CAS proceedings, in connection with her withdrawal of the Three Appeals. In addition, should there be any fees due to CAS related to the late cancellation of the CAS hearing scheduled for 23 January, 2020, the Athlete shall be responsible for such fees.

(f) In all events, the Athlete’s medical information shall be kept confidential and shall not be published on the FEI website or otherwise. To the extent that it is necessary to set out the Athlete’s medical information in any settlement agreement that is put before the FEI Tribunal, the FEI will redact that medical information from any FEI Tribunal decision approving that settlement agreement prior to any publication of that FEI tribunal decision.

(g) During the course of any period of provisional suspension or ineligibility the Athlete shall be permitted to attend, exclusively in the capacity of a spectator, equestrian shows and events, including but not limited to the 2020 Winter Equestrian Festival in Wellington, Florida.

(h) The Athlete shall follow and complete either:

(i) an anti-doping education course such as WADA’s ALPHA or equivalent, or

(ii) an education course provided by USADA and/or by US Equestrian, or

(iii) an appropriate course on FEI Campus.

This condition shall be fulfilled within one year from the final decision of the FEI Tribunal.

The terms set out in this Agreement have been agreed as a full and final settlement of all claims and potential claims relating to the subject-matter of these proceedings.

***End Quote***
5.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

1A "Background"

1.1 On 27 April 2019, Ms Hilary McNerney, FEI ID: 10054409 (the “Athlete”), provided an in-competition urine sample (the “Sample”).

1.2 On 20 May 2019, the Athlete was notified by the United States Anti-Doping Agency (“USADA”) that analysis of the Sample had revealed the presence of amfetamine, 7α-thiomethylspironolactone (spironolactone metabolite), and canrenone (together, the “Substances”). Amfetamine is listed as a non-specified substance whereas Spironolactone and Canrenone are listed as specified substances under the 2019 WADA Prohibited List.

1.3 The presence of the Substances in the Sample was caused by the Athlete’s use of two medications (the “Medications”) that had been prescribed by her doctor – and which she had disclosed on her doping control form:

(a) 

(b) 

1.4 As advised by USADA, the Athlete promptly applied to the Fédération Equestre Internationale (the “FEI”) Therapeutic Use Exemptions Committee (the “FEI TUEC”) for prospective Therapeutic Use Exemptions (“TUEs”) for the medications. On 29 June 2019 the FEI TUEC granted the Athlete the requested prospective TUEs.

1.5 On 10 July 2019, USADA wrote to the Athlete again, confirming that: (i) her TUE applications had been granted; and (ii) she had not committed an anti-doping rule violation (an “ADRV”).

1.6 Between 16 and 23 August 2019, USADA notified the Athlete that (i) it did not consider, after all, that it had results management authority over her; (ii) it was, therefore, rescinding its decision that she had not committed an ADRV; and (iii) it was referring the matter to the FEI.

1.7 On 12 September 2019, the FEI notified the Athlete of “an
apparent Anti-Doping Rule violation”. The FEI informed the Athlete that she had the right to apply for a retroactive TUE and granted her a 10-day window to do this, before the imposition of the mandatory provisional suspension.

1.8 On 8 October 2019, the FEI TUEC decided not to grant the retroactive TUEs resulting in the FEI provisionally suspending the Athlete on 14 October 2019.

1.9 Applications for retroactive approval of the TUEs

1.9 On 18 September 2019, the Athlete submitted an application seeking retroactive approval of her TUEs to the FEI TUEC (the “First Retroactive Application”).

1.10 On 8 October 2019, the FEI TUEC refused the First Retroactive Application (the “First FEI TUEC Decision”).

1.11 In response to the First FEI TUEC Decision, the Athlete:

(a) on 22 October 2019, submitted a second retroactive application to the FEI TUEC for review (the “Second Retroactive Application”);

(b) on 29 October 2019, asked WADA to review the First FEI TUEC Decision, in accordance with Article 4.4.6.1 of the FEI Anti-Doping Rules for Human Athletes (the “ADRHA”);¹ and

(c) on 29 October 2019, filed an appeal with the CAS (CAS 2019/A/6551) against the First FEI TUEC Decision (“the First CAS Appeal”). All applicable deadlines are currently suspended in the First CAS Appeal.

1C Provisional suspension

1.12 Following notification that her First Retroactive Application had been rejected, on 14 October 2019, the FEI provisionally suspended the Athlete, on the basis that she had violated Article 2.1 of the ADRHA.

1.13 On 21 October 2019, the Athlete applied to the FEI Tribunal, seeking to have her provisional suspension lifted with immediate effect. On 31 October 2019, the FEI Tribunal refused that application (the “FEI Tribunal Decision”).

1.14 On 1 November 2019, the Athlete filed an appeal with the CAS

¹ WADA ultimately declined to review the First FEI TUEC Decision.
(CAS 2019/A/6550) appealing the FEI Tribunal Decision to the CAS ("the Second CAS Appeal").

1D The Second FEI TUEC Decision

1.15 By decision dated 20 December 2019, the FEI TUEC rejected the Athlete’s Second Retroactive Application (the "Second FEI TUEC Decision").

1.16 In response to the Second FEI TUEC Decision, on 6 January 2020, the Athlete:

(a) filed an appeal with the CAS (CAS 2020/A/6699) appealing the Second FEI TUEC Decision ("the Third CAS Appeal"). All applicable deadlines are currently suspended in the Third CAS Appeal; and

(b) wrote to WADA requesting that it review the Second Retroactive Application under Article 4.3(b) of WADA’s International Standard for Therapeutic Use Exemptions (the "Second WADA Request for Review").

1.17 On 20 January 2020, WADA informed the Athlete that it was declining to make any decision on the Second WADA Request for Review.

1E The Athlete

6. Jurisdiction

6.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the ADRHA, as well as Article 18 of the IRs.

6.2 At the time of the Event, the Athlete was registered with the FEI, and participated in the Event, an International Event. Therefore, the Athlete was bound by the ADRHA.

6.3 Further, Article 7.10.1 of the ADRHA allows for agreements between
6.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

7. Approval of Agreement

7.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has taken note, that the FEI accepts *inter alia* that the Athlete committed the rule violation inadvertently, *i.e.*, non-intentional, and bore No Significant Fault or Negligence for the rule violation.

7.2 Pursuant to Article 10.2.2 of the ADRHA if Article 10.2.1 does not apply, *i.e.*, intentional rule violation for a non-Specified Substance, the period of Ineligibility shall be two (2) years. Further, pursuant to Article 10.5.2 of the ADRHA, where an athlete establishes that she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete’s degree of fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.

7.3 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous case law.

7.4 In addition, the FEI accepts that Article 10.11.1 of the ADRHA (Delays Not Attributable to the Athlete or other Person) is applicable in the case at hand, and the Parties agreed for the period of Ineligibility to start with the date of sample collection.

7.5 To conclude, the Tribunal finds that the Agreement between Parties falls within the consequences that are mandated by the ADRHA.

7.6 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, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/HD02 Hilary McNerney.

8. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the Athlete, Ms. Hilary McNerney, concerning the case 2019/HD02 Hilary McNerney is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 5 above are incorporated into
this Decision.

2) This Decision is subject to appeal in accordance with Article 13.2.3 of the ADRHA. 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 14.3.2 of the ADRHA, in taking into account any redaction of medical information, as agreed between the Parties.

IV. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. The President of the NF of the Athlete: Yes

c. The Organising Committee of the Event through the NF: Yes

d. Any other: WADA & NADO

FOR THE PANEL

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Mr. Cesar Torrente, one member panel